

Confidential

New Grafton Correctional Centre - Project Deed

The Minister for Corrections on behalf of the Crown in right of the State of New South Wales, Infrastructure New South Wales and the Commissioner of Corrective Services

and

NorthernPathways Pty Limited (ACN 618 985 452) in its capacity as trustee for the NorthernPathways Project Trust (ABN 36 175 930 685)

Contents

Part A - Interpretation and project parameters.....	1
1. Definitions.....	1
2. General rules of interpretation	57
2.1 Interpretation.....	57
2.2 Composition of this Deed and order of precedence	59
2.3 Plans, Reports and Procedures.....	60
2.4 Version of documents with which Project Co must comply	61
2.5 Approvals, directions and notices in writing	61
2.6 Prior approval or consent	61
2.7 Action without delay.....	61
2.8 Provisions limiting or excluding Liability, rights or obligations	61
2.9 Relationship of the parties	61
2.10 State's executive rights, duties and functions.....	61
2.11 Reasonable endeavours and obligations to act in good faith.....	62
2.12 No State liability for review	62
2.13 Indexation	63
2.14 Cost of carrying out obligations	63
2.15 Exclusion of Civil Liability Act 2002 (NSW)	63
2.16 Final and binding	64
2.17 Governing Law.....	64
2.18 Entire Agreement.....	64
2.19 Further acts and documents.....	64
2.20 Project Co and its Associates.....	64
2.21 Survival of certain provisions.....	64
2.22 Waiver.....	65
2.23 Severance.....	65
2.24 Counterparts	65
2.25 Moratorium legislation	65
Part B - Project commencement	67
3. Conditions Precedent.....	67
3.1 Commencement	67
3.2 Satisfaction of Conditions Precedent.....	68
3.3 Waiver of Conditions Precedent	68
3.4 Failure to satisfy by the Condition Precedent Deadline	68
3.5 Model Output Schedule	69
4. Term	69
4.1 Commencement date	69
4.2 Expiry Date	69
Part C - General Obligations.....	70
5. Overarching obligations.....	70
5.1 Project Co's primary obligations	70
5.2 Disputed Directions	71
5.3 All Risks	71
5.4 Fit For Purpose Warranty	72
5.5 Minimum requirements not sufficient.....	72
5.6 Corrections Legislation	72
6. Approvals and consents	73
6.1 Key Planning Approvals	73
6.2 Other Approvals.....	74
6.3 Stage 2 Development Consent.....	74
6.4 Information and notification	74
6.5 Appealing the Stage 2 Development Consent	75
6.6 Modification to the Stage 2 Development Consent	76
6.7 Other Approvals.....	76

6.8	Working Hours Restriction.....	76
7.	Project Information	77
7.1	No representations from the State.....	77
7.2	Site Data	77
7.3	Project Information under this Deed.....	78
7.4	Project Information representations and warranties by Project Co.....	78
8.	The Site	78
8.1	Project Co to inform itself	78
8.2	No representations from the State.....	79
8.3	Environmental issues	79
8.4	Contamination.....	80
8.5	Contamination Remediation Plan	81
8.6	Project Co's entitlement to compensation for Remediation.....	81
8.7	Liability under the NGER Legislation.....	82
8.8	Reporting Emissions and Energy Data	82
8.9	Provision of Emissions and Energy Data to the State.....	83
8.10	Native Title Claims, Heritage Claims and Artefacts.....	83
8.11	General Site undertakings	84
9.	Facilitation Works, Utilities Infrastructure and Utilities	86
9.1	Facilitation Works	86
9.2	Utilities Infrastructure and Utilities	86
10.	Parties, personnel and community	88
10.1	Authorities.....	88
10.2	State Representative	88
10.3	Project Co Representative.....	88
10.4	Operational Readiness Co-ordinator	89
10.5	General Manager.....	90
10.6	Operations Manager.....	91
10.7	Key People	91
10.8	Project Control Group.....	91
10.9	General requirements for meetings	93
10.10	Communications and Community Relations	93
10.11	Conflicts of Interest.....	94
10.12	Aboriginal participation (construction)	94
10.13	Aboriginal participation (operations).....	95
10.14	Training and apprenticeships	96
11.	Quality Assurance.....	96
11.1	General Obligations.....	96
11.2	Audits and Rectification of non-conformance.....	97
11.3	Audits for compliance with this Deed.....	97
12.	Subcontracting and third party arrangements	99
12.1	Subcontracting.....	99
12.2	Key Subcontracts and Significant Subcontracts.....	100
12.3	Requirements for subcontracting.....	101
12.4	Payment of amounts owed to Subcontractors.....	102
12.5	Obligations as to Claims made on pass-through basis	103
12.6	Industrial issues	103
12.7	Competence	103
13.	Workforce	104
13.1	Employee Requirements	104
13.2	Principal contractor.....	104
13.3	Work Health and Safety.....	106
13.4	State may act if Project Co fails to comply	109
13.5	Long service leave levy	109
13.6	Security clearances	109
13.7	Employment of CSNSW Employees	110

13.8	Compensation for transfer of accrued annual leave and extended leave	111
13A	Superannuation for Transferring Employees	111
13A.1	Definitions	111
13A.2	Objectives	112
13A.3	Continuation of membership.....	113
13A.4	New Employer to become a participating employer or contributor of the Transferring Employee's Superannuation Scheme	113
13A.5	State responsible for superannuation benefits for service up to the Transfer Date.....	114
13A.6	New Employer to fund superannuation benefits for service from the Transfer Date.....	115
13A.7	Delayed scheduling of the New Employer.....	115
13A.8	No interest in the State's Employer Reserve in a Defined Benefit Scheme.....	115
13A.9	If the New Employer ceases to be the employer - DB Employees.....	116
13A.10	Transferring Employees who are not DB Employees.....	117
14.	Independent Certifier	117
14.1	Appointment of Independent Certifier.....	117
14.2	Other Project roles of Independent Certifier	117
14.3	Determinations of Independent Certifier.....	118
14.4	Replacement of Independent Certifier	118
15.	NSW Code and Guidelines	119
15.1	Reference	119
15.2	Primary obligation	119
15.3	Access and information	119
15.4	Sanctions	120
15.5	Compliance.....	120
Part D - Delivery Phase obligations.....		122
16.	Delivery Phase Plans and Reports and Delivery Phase Program.....	122
16.1	Delivery Phase Plans and Reports.....	122
16.2	Delivery Phase Program.....	122
17.	Design	124
17.1	Design warranties	124
17.2	Purpose of Design Development Process.....	124
17.3	Design Development Changes.....	124
18.	Equipment during Delivery Phase.....	125
18.1	Equipment Schedule	125
18.2	Equipment selection	125
18.3	Equipment procurement and installation	125
19.	Construction.....	126
19.1	Delivery Phase Sub-Licence	126
19.2	Construction.....	126
19.3	Proceed at risk.....	127
19.4	Corrective Action Plan	127
20.	State access during the Delivery Phase.....	128
20.1	State's right to enter, inspect and test	128
20.2	Site Access and Interface Protocols.....	129
20.3	Project Co to assist.....	129
20.4	Costs of inspection or testing	129
21.	Testing and comments.....	130
21.1	Testing	130
21.2	Right to comment.....	130

22.	Quality Assurance during the Delivery Phase	130
23.	Technical Completion.....	131
23.1	Requirement	131
23.2	Notice before Technical Completion.....	131
23.3	Notice of Technical Completion Tests	131
23.4	Additional Technical Completion Tests	131
23.5	Technical Completion Testing	132
23.6	Unsuccessful Technical Completion Test	133
23.7	Technical Completion Report	133
23.8	Notice of Technical Completion.....	134
23.9	Determination of Technical Completion	134
23.10	Technical Completion Outstanding Items.....	135
24.	Commissioning Period	136
25.	Commercial Acceptance	136
25.1	Requirement	136
25.2	Notice before Commercial Acceptance	136
25.3	Notice of Commercial Acceptance Tests	136
25.4	Additional Commercial Acceptance Tests	137
25.5	Commercial Acceptance Testing.....	138
25.6	Unsuccessful Commercial Acceptance Test	138
25.7	Commercial Acceptance Report.....	138
25.8	Notice of Commercial Acceptance	139
25.9	Determination of Commercial Acceptance	139
25.10	Commercial Acceptance Outstanding Items	140
25.11	Post Completion	140
25.12	Release after Completion	141
26.	Early Completion.....	141
Part E - Operating Phase obligations		142
27.	Operating Phase Plans and Operating Phase Reports	142
28.	Operating Phase Site Access	142
28.1	Operating Phase Sub-Licence.....	142
28.2	State access to the Correctional Complex, records and Inmates	144
28.3	Access to the Correctional Complex and Inmates by third parties.....	145
28.4	Correctional Complex Access Protocols	145
29.	Obligation to perform the Services	146
29.1	General	146
29.2	Material Defects.....	146
29.3	Applicable Laws.....	146
29.4	Emergency Services Costs	147
29.5	Industries	147
29.6	Available Inmate Places	148
29.7	Pharmaceutical Supply arrangements.....	148
30.	Equipment during the Operating Phase	150
30.1	Title and responsibility for risk	150
30.2	Replacement.....	150
30.3	Computer requirement.....	151
31.	Quality Assurance during the Operating Phase	151
32.	Asset Ownership and Condition	152
32.1	Fixtures	152
32.2	Refurbishment Works	152
32.3	Deferral of Refurbishment Works by Project Co	152
32.4	Residual life and Design Life	153
33.	Repricing Reviewable Services	153

33.1	Reviewable Services Schedule	153
33.2	State benchmarking.....	155
33.3	Preparation for repricing	155
33.4	Request for offer to reprice.....	155
33.5	No offer made.....	156
33.6	Competitive tender.....	156
33.7	Outcome of competitive tender process.....	160
33.8	Consultation.....	160
33.9	Appointment and Payment	160
33.10	Failure to agree.....	161
33.11	Continued provision of Reviewable Services	161
33.12	Probity of process.....	161
34.	Benchmarking of Utilities.....	162
Part F - Payment Provisions.....		164
35.	Conditional Debt Pay Down	164
35.1	CDPD Conditions.....	164
35.2	CDPD Payment Date.....	164
35.3	Satisfaction of CDPD Conditions.....	164
35.4	Waiver of CDPD Conditions	165
36.	Payments Adjustments & Taxes	166
36.1	State's payment obligations.....	166
36.2	Monthly Service Payments	166
36.3	Payment adjustments under the Performance Regime and Payment Schedule	167
36.4	Refund	169
36.5	Interest.....	169
36.6	Set-off	169
36.7	Liability for Taxes.....	170
36.8	GST	172
36A.	Securitised Licence Structure	173
36A.1	Completion Price and Completion Payment.....	173
36A.2	Securitized Modification Payment	174
36A.3	Reduction in debt finance requirements.....	174
36A.4	No Change in Risk Allocation.....	175
36A.5	Indemnity	176
Part G - Expiry and Handover obligations		177
37.	Expiry obligations	177
37.1	Assistance in securing continuity.....	177
37.2	Dedicated Transition Person	178
37.3	Handover	178
37.4	Appointment of Handover Reviewer.....	179
37.5	Handover Reviewer Role.....	179
37.6	State election	180
37.7	Implementing Final Refurbishment Works	181
37.8	Security for Final Refurbishment Works.....	181
37.9	Handover Escrow Account	182
37.10	Handover Bond.....	182
Part H - Change in Circumstances		184
38.	Delivery Phase - delay	184
38.1	Delay to Completion	184
38.2	Entitlement to Claim	184
38.3	Change Notice	184
38.4	Conditions precedent to extension of time or relief	185
38.5	Extension of time and relief determined by Independent Certifier	185
38.6	Unilateral extensions	186
38.7	Entitlement to Costs	186

38.8	Not used	187
38.9	Concurrent delays.....	187
38.10	Acceleration by Project Co	187
38.11	Acceleration Notice.....	187
38.12	Reasonably achievable	187
38.13	Acceleration	188
38.14	Force Majeure during Delivery Phase	188
38.15	Time not at large.....	189
38.16	Not used	189
38A.	Compensable Events – Delivery Phase	189
38A.1	Applicability.....	189
38A.2	Early Warning	189
38A.3	Entitlement to Costs	190
38A.4	Change Notice	190
38A.5	Conditions precedent to a claim for compensation	190
38A.6	Compensation determined by Independent Certifier.....	190
38B.	Sole remedy	191
38B.1	Sole remedy (Project Co)	191
38B.2	Sole remedy (State).....	191
39.	Operating Phase – Intervening Events	192
39.1	Intervening Events entitling Claim	192
39.2	Conditions precedent to relief.....	192
39.3	Services suspended and no breach	192
39.4	Continue to provide Services.....	193
39.5	Essential Services	193
39.6	Intervening Events other than Insured Risks or Force Majeure Events	193
39.7	Intervening Event which is an Insured Risk.....	194
39.8	Intervening Event which is a Force Majeure Event	195
39.9	Alternative arrangements	195
39.10	Cessation of Intervening Event.....	196
39.11	Sole Remedy	196
40.	Modifications	196
40.1	Modification Request by the State.....	196
40.2	Estimate of cost of Change Notice	196
40.3	Modification Proposal	197
40.4	Payment for Change Notice prepared by Project Co	197
40.5	Change Response	197
40.6	Omission by State.....	197
40.7	Instruction to proceed	198
40.8	Modifications proposed by Project Co	198
40.9	Directions.....	198
40.10	Change in Mandatory Requirements.....	199
40.11	Extension of time	200
40.12	Minor Modifications.....	200
40.13	Implementation	202
41.	Refinancing.....	202
41.1	Project Co to provide details of Refinancing	202
41.2	State consent to Refinancing.....	202
41.3	Review process	203
41.4	Refinancing documents	204
41.5	Calculation of Refinancing Gain or Refinancing Loss	204
41.6	Sharing Refinancing Gains.....	205
41.7	Costs relating to a Refinancing.....	205
41.8	Adjustments to Financial Model upon a Refinancing Gain.....	205
42.	Emergencies and Step-In by the State.....	206
42.1	State may instruct.....	206
42.2	Relief and Payment	206

42.3	Right of Step-In.....	207
42.4	Notice.....	207
42.5	Consequences of the State exercising its rights	207
42.6	Payments.....	208
42.7	Project Co to assist the State	209
42.8	Undertake Project consistent with this Deed.....	209
42.9	Limits on State liability during step-in	209
42.10	Cessation of step-in rights	209
43.	Relief Events.....	210
43.1	Reduction in State liability for Relief Events	210
43.2	Meetings and other information	211
Part I - Risk, Indemnity and Insurance		212
44.	Loss or Damage	212
44.1	Risk of loss or damage	212
44.2	Notification of Loss and Damage.....	212
44.3	Repairing and rebuilding.....	212
44.4	Uninsurable Risk or Day 1 Uninsurable Risk	213
44.5	Minor damage.....	214
44.6	Consequences of State election not to repair or rebuild	214
44.7	State may repair or reinstate	214
44.8	Damage to third party property.....	214
45.	Indemnities and Consequential or Indirect Loss.....	215
45.1	Indemnity for Project Co breach	215
45.2	General indemnity.....	215
45.3	Corrections Act Indemnity	215
45.4	Project Information.....	215
45.5	Intellectual Property and Moral Rights Indemnity.....	216
45.6	Privacy indemnity.....	217
45.7	Release.....	217
45.8	Limits on Project Co liability to indemnify and release	217
45.9	Third party claim under indemnity	217
45.10	Continuing obligation	218
45.11	Exclusion of Consequential or Indirect Loss – Project Co	218
45.12	Exclusion of Consequential or Indirect Loss – State	220
46.	Insurance	221
46.1	Delivery Phase Insurances	221
46.2	General insurance requirements	221
46.3	Terms of Insurances.....	222
46.4	Insurances primary	222
46.5	Notification and making of claims	223
46.6	Operating Phase Insurances	223
46.7	Evidence of Insurances	224
46.8	State may effect Insurances	224
46.9	Proportionate liability	224
46.10	Deductibles.....	224
46.11	Application of Insurance proceeds	225
46.12	Benchmarking of Insurance Component of Monthly Service Payment	225
47.	Uninsurable Risks.....	226
47.1	Risks become Uninsurable	226
47.2	No obligation to insure	226
47.3	Agreed Uninsurable Risks resulting in loss or damage.....	226
47.4	Review of insurance markets	227
Part J - Default, Termination and Disputes.....		228
48.	Major Default	228
48.1	Meaning of remedy or cure.....	228
48.2	Notice of Major Default	228

48.3	Project Co to provide remedy program and comply with Major Default Notice.....	230
48.4	Extension of remedy program	231
48.5	Effect of curing.....	232
49.	Termination.....	232
49.1	Sole basis	232
49.2	Voluntary Termination	232
49.3	Termination for Force Majeure	232
49.4	Default Termination Event	233
49.5	Assistance	233
49.6	Payment on termination.....	233
49.7	Novation of liabilities to the State	234
49.8	Waiver.....	234
49.9	Additional rights and obligations on Termination.....	235
50.	Dispute Resolution procedure.....	235
50.1	Procedure	235
50.2	Selection of resolution process.....	236
51.	Senior Negotiations	236
52.	Expert determination	236
52.1	Expert determination	236
52.2	Selection of expert	237
52.3	Rules of expert determination.....	237
52.4	Expert finding.....	238
52.5	Liability of expert.....	238
52.6	Costs.....	238
52.7	Proportional Liability	238
53.	Arbitration.....	239
53.1	Reference to Arbitration.....	239
53.2	Arbitration	239
53.3	Appointment of arbitrator	239
53.4	General Principles for conduct of arbitration	239
53.5	Civil Liability Act 2002 (NSW).....	240
53.6	Proportional liability	241
53.7	Continue to perform.....	241
53.8	Governing law of arbitration agreement	241
53.9	Interlocutory relief	241
53.10	Jurisdiction of courts.....	241
Part K - Corporate obligations		242
54.	Representations and warranties	242
54.1	State's representations and warranties	242
54.2	Project Co's representations and warranties.....	242
54.3	Repetition of representation and warranties.....	243
55.	Benefits held on trust for its Associates.....	243
56.	Project Co general undertakings.....	244
57.	Assignment and amendments.....	244
57.1	Assignment, amendments and other dealings by Project Co Entities.....	244
57.2	Amendment of State Project Document	246
57.3	Assignment by the State.....	246
57.4	Copies of Finance Documents	247
57.5	Financiers' securities	247
58.	Change in Control	247
58.1	Initial status of ownership	247
58.2	Designated Investor.....	247

58.3	Notification of changes in control / management	247
58.4	Restrictions on Changes in Control	248
58.5	Notice to State	248
58.6	State's right to withhold consent	248
58.7	Consent to a Change in Control	249
58.8	Permitted Changes in Control	249
58.9	On-market acquisitions	249
58.10	Costs relating to a Change in Control	250
59.	Financial Model	250
59.1	Updating the Base Case Financial Model at Financial Close	250
59.2	Status of the Financial Model	250
59.3	Varying the Financial Model	250
59.4	Principles for variations to the Financial Model	251
59.5	Procedures for variations to the Financial Model	251
59.6	Access to information	253
59.7	Custody of Financial Model	253
60.	Records and Accounts	253
60.1	Accounting records	253
60.2	Cost to complete information	254
60.3	Financial statements	254
60.4	Records	254
60.5	Other information	254
60.6	Project Co Material	255
61.	Intellectual Property Rights	255
61.1	Warranties	255
61.2	Background IP	256
61.3	Developed IP	256
61.4	Project Co licence for Project Co Background IP	257
61.4A	Proprietary Software	258
61.5	Other third party software	258
61.6	Project Co Material and Relevant Infrastructure	258
61.7	Use of State Background IP	258
61.8	Moral rights	259
61.9	Escrow	259
62.	Confidential Information and disclosure	260
62.1	Confidential Information and disclosure by the State	260
62.2	Confidential Information and disclosure by Project Co	261
62.3	Public announcements by Project Co	262
62.4	Information public or known	262
62.5	Disclosure by the State under GIPA Act	262
62.6	Personal Information	263
62.7	Confidential Design Information	263
62.8	Privacy	264
63.	Probity Events and Probity Investigations	264
63.1	Probity Event	264
63.2	Probity Investigation	264
63.3	State costs of Probity Events and Probity Investigation	265
64.	Notices and bar to Claims	265
64.1	Notices	265
64.2	Notices of Claims	266
64.3	Prescribed notices	266
64.4	Continuing events	267
64.5	Notice to Financiers	267
64.6	Power of attorney	267
65.	PPSA	267

Schedules

- Schedule 1 Contract Particulars
- Schedule 2 Conditions Precedent Schedule
- Schedule 3 Output Specification
- Schedule 4 Programming Requirements
- Schedule 5 Change Compensation Principles
- Schedule 6 Site Plans
- Schedule 7 Site Access and Tenure Schedule
- Schedule 8 Design Development Schedule
- Schedule 9 Review Procedures
- Schedule 10 Moral Rights Consent
- Schedule 11 Delivery Phase Plans and Reports Schedule
- Schedule 12 Completion Schedule
- Schedule 13 CDPD Adjustment Protocol
- Schedule 14 Ramp-Up Profile Schedule
- Schedule 15 Operating Phase Plans and Reports Schedule
- Schedule 16 Payment Schedule
- Schedule 17 Performance Regime
- Schedule 18 Residual Life Schedule
- Schedule 19 Ownership Schedule
- Schedule 20 Equity Documents Schedule
- Schedule 21 Finance Documents Schedule
- Schedule 22 Insurance Schedule
- Schedule 23 Commercially Sensitive Information Schedule
- Schedule 24 Termination Payments Schedule
- Schedule 25 Independent Certifier Deed
- Schedule 26 Design Subcontract Side Deed
- Schedule 27 D&C Side Deed
- Schedule 28 Operator Side Deed
- Schedule 29 Subcontract Side Deed
- Schedule 30 Expert Determination Agreement
- Schedule 31 PAFA Act Deed Poll of Guarantee
- Schedule 32 Proprietary Software
- Schedule 32A Escrow Deed

New Grafton Correctional Centre Project Deed

Date 14 June 2017

Parties The Minister for Corrections on behalf of the Crown in right of the State of New South Wales, Infrastructure New South Wales (ABN 85 031 302 516) and the Commissioner of Corrective Services

NorthernPathways Pty Limited (ACN 618 985 452) in its capacity as trustee for the NorthernPathways Project Trust (ABN 36 175 930 685)
(**Project Co**)

Background

- A. The State has conducted a public tender process and selected Project Co as the preferred tenderer for the Project.
- B. This Deed sets out the terms on which:
- (a) Project Co agrees to design, construct, and procure the finance for, the Correctional Complex and deliver the Services;
 - (b) the State agrees to pay the CDPD Amount to Finance Co and the Monthly Service Payments to Project Co; and
 - (c) the risks associated with the Project are allocated as between the State and Project Co.

Operative provisions

Part A - Interpretation and project parameters

1. Definitions

In this Deed, unless the context otherwise requires:

Abatement means an amount in dollars deducted in accordance with the Payment Schedule, from a Monthly Service Payment, in respect of Unavailability, Meal Availability Failure or a Quality Failure.

Aboriginal Participation Plan (Construction) means the Delivery Phase Plan of that name.

Aboriginal Participation Plan (Operations) means the Operating Phase Plan of that name.

Aboriginal Participation Report (Construction) means the Delivery Phase Report of that name.

Aboriginal Participation Report (Operations) means the Operating Phase Report of that name.

Accounts and Records has the meaning given in clause 60.1(a).

Additional Commercial Acceptance Tests has the meaning given in clause 25.4(a).

Additional Payment Date has the meaning given in the Receivables Purchase Deed.

Additional Receivables has the meaning given in the Receivables Purchase Deed.

Additional Technical Completion Tests has the meaning given in clause 23.4(a).

Adjoining Property means any land adjoining or in close proximity to, or in the vicinity of, the Site, and each and every part of that land, including improvements on the land such as walls, fencing, buildings and infrastructure on, under or within the land.

Adjustment Note has the meaning given in the GST Law.

Adverse Rights means all (if any) interests, rights, affectations, encumbrances, Easements, covenants (including any rights, Easements and other affectations or encumbrances in respect of conduits) and other restrictions on use (excluding rights of light and air):

- (a) affecting or impacting the Site as set out in the Project Information; or
- (b) of which Project Co has actual knowledge,

in each case as at the date of this Deed.

Agent means the person appointed from time to time as agent under the Facility Agreement and, as at the date of this Deed, is Commonwealth Bank of Australia (ABN 48 123 123 124).

Agreed Uninsurable Risk means each:

- (a) Day 1 Uninsurable Risk; and
- (b) Uninsurable Risk, but only as agreed or determined in accordance with clause 47.1.

Amendment has the meaning given in clause 57.1(a).

Appointed Principal Contractor means:

- (a) in respect of the Delivery Phase Sites, during the period prior to and including the Date of Technical Completion, the D&C Subcontractor; and
- (b) in respect of the Delivery Phase Sites, during the period after the Date of Technical Completion until the Date of Commercial Acceptance, the Operator; and
- (c) in respect of the Operating Phase Site, during the period after the Date of Commercial Acceptance until the Expiry Date, the Operator.

Approval means:

- (a) each Key Planning Approval;
- (b) the Stage 2 Development Consent; and
- (c) any other licence, permit, authorisation, consent, assessment, approval, determination, certificate, accreditation, registration, clearance, permission, exemptions, notification, application, filing, lodgement, deed, direction or declaration or the like, which must be obtained or satisfied (as the case may be) in connection with the Project.

Artefacts means any places, fossils, bones, artefacts, coins, articles of value or antiquity, structures, natural features or remains or things of scientific, geological, historical, aesthetic, social, spiritual, cultural or aboriginal heritage or archaeological interest.

Assessment Period means the period:

- (a) commencing on the date the Development Consent Authority receives Project Co's last response to submissions following the expiry of the Exhibition Period; and

- (b) ending on the date the Development Consent Authority issues the Stage 2 Development Consent.

Asset Management Plan means the Operating Phase Plan of that name.

Associate or **Associates** means, in relation to a person, any Related Body Corporate of that person, and any officer, agent, adviser, consultant, contractor or employee of that person or that Related Body Corporate and:

- (a) in the case of Project Co, includes:
- (i) the Project Co Representative;
 - (ii) the General Manager;
 - (iii) any Consortium Member (other than Project Co) and their respective officers, agents, advisers, consultants, contractors, employees, nominees and licensees, each acting in connection with the Project;
 - (iv) the Equity Investors, any Subcontractors (that are not covered by paragraph (a)(iii)) and their respective officers, agents, advisers, consultants, contractors, employees, nominees or licensees, each acting in connection with the Project; and
 - (v) any person on or at the Site at the express or implied invitation of Project Co or a Subcontractor in connection with the performance of the Project Activities,

but does not include the State or any of the State's Associates, the Independent Certifier or any Handover Reviewer; and

- (b) in the case of the State, includes:
- (i) officers, agents, advisers, consultants, contractors, authorised officers and employees of the State, each acting in connection with the Project;
 - (ii) the State Representative and any other person responsible for the administration or management or implementation of the Project, or any aspect of the Project, for and on behalf of the State; and
 - (iii) the Minister;
 - (iv) the Commissioner;
 - (v) Monitors;
 - (vi) the Parole Authority;
 - (vii) Official Visitors; and
 - (viii) any other person to whom the State delegates a right, power, function or duty under this Deed,

but does not include Justice Health, Project Co or any of Project Co's Associates, the Independent Certifier, any Handover Reviewer or the author of the Site Data.

Australian Industry Participation Compliance Report (Delivery) means the Delivery Phase Report of that name.

Australian Industry Participation Compliance Report (Operations) means the Operating Phase Report of that name.

Australian Industry Participation Plan (Delivery) means the Delivery Phase Plan of that name.

Authority means:

- (a) any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality; and
- (b) any other person having jurisdiction over, or ownership of, any Utilities, External Infrastructure or Utility Infrastructure.

Bank Bill means a bill of exchange (as defined in the *Bills of Exchange Act 1909* (Cth)) that has been accepted by a bank authorised under a law of the Commonwealth of Australia or any state to carry on banking business.

Bank Bill Rate, for a period, means:

- (a) the rate, expressed as a yield per cent per annum (rounded up (if necessary) to four decimal places) that is quoted as the average bid rate on the Reuters monitor system page 'BBSY' (or any page that replaces that page) at about 10.10am (Sydney time) on the first day of the relevant period for which the rate is sought, for Bank Bills that have a tenor in Months which is closest to that period; or
- (b) if there is a manifest error in the calculation of that average bid rate, or if no average bid rate is published for Bank Bills of that tenor by about 10.30am, then the Bank Bill Rate will be the rate reasonably determined by the State, having regard to the rates otherwise bid for Bank Bills having a tenor as described above, at or around that time, to be the appropriate equivalent rate.

Base Case Financial Model means Project Co's audited financial model for the Project, as at the date of this Deed, a copy of which has been initialled by both parties and is annexed as Attachment 1.

Benchmarked Insurances means the industrial special risks insurance and public and products liability insurance required to be taken out by Project Co in accordance with the Insurance Schedule.

Beneficiaries has the meaning given in clause 61.8.

Best Delivery Practices means design, supply, construction, installation, commissioning and repair practices which are carried out:

- (a) with the standard of skill, care and diligence which may reasonably be expected of a skilled and experienced professional carrying out design, supply, construction, installation, commissioning and repair work similar to the Delivery Phase Activities;
- (b) in a manner safe to all people and the Environment;
- (c) in a manner which facilitates Best Services Practices;
- (d) with the intent of ensuring reliable, long term and safe operation of the Correctional Complex;
- (e) by trained and experienced personnel using high quality, safe and proper equipment, tools, procedures and industry standards;
- (f) with adequate levels of resources, including personnel, materials and supplies; and
- (g) using suitable, new and high quality finishes and materials which are free from defects.

Best Industry Practices means Best Delivery Practices and Best Services Practices (or either as the context requires).

Best Services Practices means the practices required for the operation and maintenance of a correctional complex similar to the Correctional Complex with services similar to the Services, which are performed:

- (a) with the standard of skill, care and diligence which may reasonably be expected of a skilled and experienced professional suitably qualified in the provision of services similar to the Services at a correctional complex similar to the Correctional Complex;
- (b) in a manner safe to all people and the Environment;
- (c) with the intent of ensuring reliable, long term and safe operation of the Correctional Complex;
- (d) by trained and experienced personnel using high quality, safe and proper equipment, tools, procedures and industry standards;
- (e) with adequate levels of resources, including personnel, materials and supplies;
- (f) using suitable, new and high quality finishes and materials which are free from defects; and
- (g) with a commitment to continually providing innovation and meeting advancements in technology and improving the standards and quality of the Services, provided that this requirement in and of itself does not require Project Co to upgrade the Correctional Complex.

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Sydney, New South Wales.

Business Hours means between 9:00 am and 5:00 pm on a Business Day.

CCE Model Variation Event has the meaning given in clause 59.3(a)(iii).

CCU has the meaning given in clause 15.2(b).

CDPD Adjustment Protocol means the protocol to update the Financial Model and the Model Output Schedule for the payment of the CDPD Amount (if applicable) in accordance with clauses 35 and 59, as attached in Schedule 13.

CDPD Amount means the lesser of:

- (a) [REDACTED] of the Debt outstanding immediately prior to the scheduled amortisation payment which falls due on the CDPD Payment Date; and
- (b) [REDACTED] of the Debt forecast in the Financial Model to be outstanding immediately prior to the scheduled amortisation payment which falls due on the CDPD Payment Date in the Financial Model.

CDPD Conditions has the meaning given in clause 35.1.

CDPD Notice Date means the date of the notice issued by Project Co under clause 35.3(c).

CDPD Payment Date means the last day of the "Interest Period" (as that term is defined in the Facility Agreement) which is at least 15 Business Days after:

- (a) the delivery of the CDPD Satisfaction Notice; or

- (b) such other date determined by the State in its absolute discretion, which date must be after the commencement of the CDPD Period.

CDPD Period means the period of time:

- (a) beginning on the second anniversary of the later of the Original Date for Commercial Acceptance and the Date of Commercial Acceptance; and
- (b) ending on the fourth anniversary of the later of the Original Date for Commercial Acceptance and the Date of Commercial Acceptance.

CDPD Satisfaction Notice has the meaning given in clause 35.3(d)(i).

Certificate of Commercial Acceptance has the meaning given in clause 25.9(a)(i).

Certificate of Technical Completion has the meaning given in clause 23.9(a)(i).

Change Compensation Event has the meaning given in the Change Compensation Principles.

Change Compensation Principles means Schedule 5.

Change in Control means:

- (a) where, at any time, any person or Entity alone or together with any Associate or Associates, ceases to or commences to, directly or indirectly have Control of an Entity; or
- (b) a change in the manager, trustee or Responsible Entity of any Group Member that is a trust.

For the purposes of this definition, Associate or Associates has the meaning given in the Corporations Act and includes a person deemed to be an Associate of a designated body (within the meaning of section 12 of the Corporations Act).

Change in Law means:

- (a) the coming into effect of, or a change to, or the repeal of, Legislation; or
- (b) any judgement or decision of a court of law which changes the way a Law is applied or interpreted,

after the date of this Deed, but does not include:

- (c) a change in the way a Law is applied or interpreted due to:
 - (i) the failure of Project Co or any of its Associates to comply with a Law, Policy or Approval; or
 - (ii) a Project Co Act or Omission;
- (d) any new Law or change in existing Law relating to Taxes including the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth) and the GST Law;
- (e) any new Law or change in or repeal of any existing Law which was not in force at the date of this Deed but which:
 - (i) had been published in the Government Gazette by way of bill, draft bill or draft statutory instrument or otherwise specifically referred to prior to the date of this Deed;

- (ii) is listed or referred to in the Output Specification, the Proposal, Project Information or any Project Document;
 - (iii) a party exercising Best Industry Practices would have reasonably foreseen or anticipated prior to the date of this Deed;
 - (iv) is substantially the same as a Law in force prior to the date of this Deed; or
 - (v) is substantially the same as any other requirement with which any Project Co Entity was required to comply under any State Project Document as at the date of this Deed; or
- (f) any new Law or change in any existing Law relating to the matters (if any) specified in the Contract Particulars.

Change in Management means a change in:

- (a) any Entity which provides management functions to any Project Co Entity;
 - (b) the senior employees of any Entity which provides management functions to any Project Co Entity; or
 - (c) the senior management of any Project Co Entity,
- as applicable.

Change in Mandatory Requirements means:

- (a) a:
 - (i) Project-Specific Change in Law; or
 - (ii) Change in Policy;

that occurs after the date of this Deed and that will have an effect on the cost of carrying out the Project Activities; or
- (b) a General Change in Law that occurs after the Operational Commencement Date, that will have an effect on the cost of carrying out the Project Activities.

Change in Policy means any one or more of the following that occurs after the date of this Deed:

- (a) the introduction of a new Policy;
- (b) a change in a Policy;
- (c) any changes to or new conditions attaching to any Key Planning Approval; or
- (d) any withdrawal, revocation, suspension, invalidation or replacement of all or any part of a Key Planning Approval,

but does not include:

- (e) any one of the events referred to in paragraphs (a) to (d):
 - (i) of which the State has expressly notified any Project Co Entity prior to the date of this Deed;
 - (ii) which is contained or referred to in the Output Specification, the Proposal, any Project Document or Project Information or any other

material provided by the State to Project Co or any of its Associates in connection with the Project prior to the date of this Deed;

- (iii) which a party performing activities similar to the Project Activities in accordance with Best Industry Practices would have reasonably foreseen or anticipated prior to the date of this Deed;
 - (iv) which is substantially the same as a Policy or any condition to any Key Planning Approval in force prior to the date of this Deed; or
 - (v) which is substantially the same as any other requirement with which any Project Co Entity was required to comply with under the State Project Documents prior to the date of this Deed;
- (f) any:
- (i) new Approval;
 - (ii) new requirement to obtain a new Approval; or
 - (iii) amendment, repeal or change in, or any requirement to amend or change, an existing Approval,

other than a Key Planning Approval;
- (g) any of the events referred to in paragraphs (a) to (d) that results from or is in response to any Project Co Act or Omission; or
- (h) any new Policy or change in any existing Policy relating to the matters (if any) specified in the Contract Particulars.

Change Notice has the meaning given in the Change Compensation Principles.

Change Response has the meaning given in the Change Compensation Principles.

Charge Event means an event described as a 'Charge Event' in the Performance Regime.

Claim means any claim, action, demand, suit, proceeding, penalty or fine (including by way of contribution or indemnity) made:

- (a) in connection with the Project Documents, the Relevant Infrastructure, the Site or the Project; or
- (b) at Law or for specific performance, restitution or payment of money (including damages).

CLM Act means the *Contaminated Land Management Act 1997* (NSW).

Commercial Acceptance means when all the Commercial Acceptance Criteria have been met to the satisfaction of the State (acting reasonably).

Commercial Acceptance Criteria means those criteria identified as such in the Commercial Acceptance Schedule.

Commercial Acceptance Outstanding Item means:

- (a) any act, matter, state of affairs or thing that is required in accordance with this Deed to have been performed, achieved, undertaken, provided or completed by Project Co as at Commercial Acceptance which has not been so performed, achieved, undertaken, provided or completed by Project Co, unless the State has determined (acting reasonably), that such act, matter, state of affairs or thing (or the cumulative impact of multiple acts, matters, state of affairs or things) is likely to prevent:

- (i) the Correctional Complex from complying with the FFP Warranty; or
 - (ii) Project Co from delivering the Services in accordance with the Services Requirements; and
- (b) any Technical Completion Outstanding Items that are deemed, agreed or determined to be Commercial Acceptance Outstanding Items in accordance with clause 23.10(e) or clause 23.10(f).

Commercial Acceptance Plan means the Delivery Phase Plan of that name.

Commercial Acceptance Report means a report in respect of Commercial Acceptance required to be submitted by Project Co in accordance with clause 25.7, as amended and updated in accordance with this Deed.

Commercial Acceptance Schedule means Schedule 12.

Commercial Acceptance Tests means all tests required to be carried out in accordance with this Deed to assist in determining whether Commercial Acceptance has been achieved, including those tests identified as such in the Commercial Acceptance Schedule, and any Additional Commercial Acceptance Tests.

Commercially Sensitive Information means the information referred to in the Commercially Sensitive Information Schedule.

Commercially Sensitive Information Schedule means Schedule 23.

Commissioner means the Commissioner of Corrective Services, Department of Justice, as appointed from time to time.

Commissioning Activities means those activities to be performed by Project Co during the Commissioning Period as set out in the Commercial Acceptance Schedule.

Commissioning Period means the period between Technical Completion and Commercial Acceptance.

Commissioning Requirements means the requirements for the Commissioning Period identified as such in the Commercial Acceptance Schedule.

Commitment Deed means the document titled 'New Grafton Correctional Centre – Preferred Proponent Commitment Deed Poll' signed by Serco Australia Pty Ltd (ABN 44 003 677 352), John Holland Pty Ltd (ABN 11 004 282 268) and John Laing Investments Limited (UK company number 780225) and dated 24 March 2017.

Communications and Community Relations Plan means the Delivery Phase Plan and the Operating Phase Plan of that name.

Community Advisory Council means the council for the Correctional Complex appointed by the Minister pursuant to the Corrections Act.

Community Reference Group means the group to be established pursuant to condition A9 of the Stage 1 Development Consent.

Compensable Event means any of the following events occurring during the Delivery Phase:

- (a) the Facilitation Works (Power) not being complete on or before [REDACTED]
- (b) the Facilitation Works (Roads) not being complete on or before [REDACTED]
- (c) the Facilitation Works (Water) not being complete on or before [REDACTED]
or

- (d) an event described in paragraph (h)(ii) (unforeseeable conditions) in the definition of 'Compensable Extension Event'.

Compensable Extension Event means any of the following events occurring during the Delivery Phase:

- (a) **(State breach)**: a breach by the State of any State Project Document;
- (b) **(fraudulent act or omission)**: a fraudulent, reckless, unlawful or malicious act or omission of the State or any of its Associates in connection with the Project;
- (c) **(Contamination Compensation Event)**: a Contamination Compensation Event;
- (d) **(Native Title and Heritage Claims)**: cessation or suspension of any part of the Delivery Phase Activities (or a material change in the way the Delivery Phase Activities are carried out) because of:
- (i) a Commonwealth, State or NSW Government direction;
 - (ii) an order of a court or tribunal of competent jurisdiction; or
 - (iii) a requirement of Law,
- in connection with a Heritage Claim or a Native Title Claim (as the case may be), to the extent that the cumulative cessation or suspension (or the impact of a material change in the way the Delivery Phase Activities are carried out) exceeds 10 Business Days;
- (e) **(Project specific industrial action)**: industrial action which occurs only at the Site or otherwise only in respect of the Project, which is the direct result of an act or omission of the State or any of its Associates at the Site and in connection with the Project, other than any act or omission which is authorised or permitted under a State Project Document, Policy or Law;
- (f) **(Emergency and Step in)**: the State exercises its rights under clause 42.1(a) or its step-in rights under clause 42.3(e) to 42.3(h), other than where the event which gives rise to the exercise of the State's rights is a Force Majeure Event or is due to a Project Co Act or Omission;
- (g) **(Stage 2 Development Consent contest)**: a direction by the State to Project Co to contest a condition or requirement of the Stage 2 Development Consent pursuant to clause 6.5(a), except where Project Co fails to contest a condition or requirement of the Stage 2 Development Consent in breach of its obligations under this Deed;
- (h) **(Stage 2 Development Consent)**:
- (i) **(delays)**: the Stage 2 Development Consent is not granted by the Development Consent Authority by 2 January 2018 to the extent directly caused by:
 - A. a Development Consent Authority Delay;
 - B. the State failing to provide Project Co with landowner consent in respect of the lodgement of the Stage 2 Development Application at least 14 days before the Condition Precedent Deadline;
 - C. the Development Consent Authority requiring additional processes, peer reviews, submissions or information to be undertaken by Project Co prior to the Development Consent Authority granting the Stage 2 Development Consent

(Additional Planning Studies) but the Additional Planning Studies must:

- 1) be additional to the Stage 1 Development Consent processes, peer reviews, submissions or information required or contemplated by the Stage 1 Development Consent conditions set out in the Contract Particulars; and
 - 2) not be foreseeable at the date of this Deed by Project Co or its Associates and which would not have been foreseen at the date of this Deed by a prudent, experienced and competent designer, constructor, planner or operator of facilities similar to the Relevant Infrastructure including by having regard to the Stage 1 Development Consent, the Stage 2 SEARS, Policies and Best Industry Practices;
- D. the State lodging the Stage 2 Development Application with the Development Consent Authority after Financial Close; or
- E. the State's breach of clause 6.4(c); or
- (ii) **(unforeseeable conditions)**: any condition in the Stage 2 Development Consent:
- A. which was not foreseeable at the date of this Deed by Project Co or its Associates and which would not have been foreseen at the date of this Deed by a prudent, experienced and competent designer, constructor, planner or operator of facilities similar to the Relevant Infrastructure including by having regard to the Stage 1 Development Consent, the Stage 2 SEARS, Policies and Best Industry Practices; and
 - B. which will result in:
 - 1) a material change to the Works; or
 - 2) a material Methodology Change, and
- except to the extent due to:
- (iii) in respect of limb (h)(i) only, a Project Co Planning Risk Item;
 - (iv) in respect of limb (h)(ii) only, the batch plant set out in the Proposal being modified such that it constitutes designated development within the meaning of any clause specified in schedule 3 of the EP&A Regulation; and
 - (v) in respect of limbs (h)(i) and (h)(ii) above:
 - A. any insufficiency or incompleteness in the documentation prepared by Project Co in connection with obtaining the Stage 2 Development Consent or a modification to it which is initiated by Project Co or its Associates (including in preparing the Stage 2 Development Application);
 - B. Project Co failing to comply with a Stage 2 Development Application Obligation; or

C. the Stage 2 Development Application being inconsistent with the Stage 1 Development Consent;

- (i) **(Stage 2 Development Consent change)**: any change or modification to the Stage 2 Development Consent granted by the Development Consent Authority in response to a request by the State for that change or modification contemplated by clause 6.6;
- (j) **(Facilitation Works)**:
 - (i) the Facilitation Works (Power) not being complete on or before [REDACTED]
 - (ii) the Facilitation Works (Roads) not being complete on or before [REDACTED]
 - (iii) the Facilitation Works (Water) not being complete on or before [REDACTED] or [REDACTED]
 - (iv) the Facilitation Works (Telecommunications) not being complete on or before [REDACTED] or [REDACTED]
- (k) **(other events)**: any other event described as a Compensable Extension Event in this Deed.

Compensable Intervening Event means any of the following events occurring during the Operating Phase:

- (a) **(State breach)**: a breach by the State of any State Project Document;
- (b) **(fraudulent act or omission)**: a fraudulent, reckless, unlawful or malicious act or omission of the State or any of its Associates in connection with the Project;
- (c) **(Contamination Compensation Event)**: a Contamination Compensation Event;
- (d) **(Native Title and Heritage Claims)**: cessation or suspension of any part of the Services (or a material change in the way the Services are carried out) because of:
 - (i) a Commonwealth, State or NSW Government direction;
 - (ii) an order of a court or tribunal of competent jurisdiction; or
 - (iii) a requirement of Law,in connection with a Heritage Claim or a Native Title Claim (as the case may be), to the extent that the cumulative cessation or suspension (or the material change in the way the Services are carried out) exceeds 10 Business Days;
- (e) **(Project specific industrial action)**: industrial action which occurs only at the Site, or otherwise only in respect of the Project, which is the direct result of an act or omission of the State or any of its Associates at the Site, other than any act or omission which is authorised or permitted under a State Project Document, Policy or Law;
- (f) **(Declaration of the Site under the Corrections Act)**: on the Operational Commencement Date, the Governor has not declared the Site to be a:
 - (i) Correctional Centre for the purposes of section 225 of the Corrections Act; or
 - (ii) Correctional Complex for the purposes of section 224 of the Corrections Act; and

- (g) **(Appointment of a General Manager):** a General Manager has not been appointed in respect of the Correctional Complex in accordance with the Corrections Legislation on the Operational Commencement Date in circumstances where:
- (i) Project Co has nominated an individual to be appointed as General Manager in accordance with clause 10.5 and the Corrections Legislation at least 6 months prior to the Date of Technical Completion; and
 - (ii) the Commissioner has not responded to Project Co within 40 Business Days of that individual being nominated by Project Co in accordance with the Corrections Legislation.

Compensation Date has the meaning given in the Termination Payments Schedule.

Completion means:

- (a) Technical Completion; and
- (b) Commercial Acceptance,

or the relevant one of these as the case may be.

Completion Payment means each payment to be made in accordance with clause 36A.1 by the State to Project Co of an amount equal to the corresponding Receivables Purchase Payment for the Initial Receivables payable by Finance Co to the State under the Receivables Purchase Deed.

Completion Payment Date means, with respect to each Completion Payment, the date that the corresponding Receivables Purchase Payment for the Initial Receivables payable by Finance Co to the State is required to be made under the Receivables Purchase Deed.

Completion Plan means the:

- (a) Technical Completion Plan; and
- (b) Commercial Acceptance Plan,

or the relevant one of these as the case may be.

Completion Price means the price to be paid by the State to Project Co in accordance with clause 36A.1, being the sum of the Completion Payments, which must equal the aggregate of the amount of the Receivables Purchase Price for the Initial Receivables calculated under the Receivables Purchase Deed.

Completion Requirements means the requirements for:

- (a) Technical Completion set out in the Technical Completion Schedule;
- (b) Commercial Acceptance set out in the Commercial Acceptance Schedule; and
- (c) the Commissioning Activities set out in the Commercial Acceptance Schedule,

or the relevant one of these as the case may be.

Completion Tests means:

- (a) the Technical Completion Tests;
- (b) the Commercial Acceptance Tests; and
- (c) the Post Completion Tests,

or the relevant one of these as the case may be.

Condition Precedent means each condition precedent in the Conditions Precedent Schedule.

Condition Precedent Deadline means the date so specified in the Contract Particulars.

Condition Review Date has the meaning given in clause 37.5(a) as adjusted (if at all) in accordance with clause 37.6(a).

Conditions Precedent Schedule means Schedule 2.

Confidential Design Information means:

- (a) all Design Deliverables; and
- (b) any other information designated by the State Representative to be Confidential Design Information.

Confidential Information means:

- (a) the Project Documents;
- (b) the Project Information;
- (c) any Commercially Sensitive Information;
- (d) information provided by:
 - (i) the State or any of its Associates to Project Co or any of its Associates; or
 - (ii) Project Co or any of its Associates to the State or any of its Associates,in connection with this Deed or the Project, whether provided prior to or after the date of this Deed;
- (e) Project Co Material;
- (f) Confidential Design Information; and
- (g) Personal Information,

but does not include any report prepared by or on behalf of the State in relation to the performance or non-performance by Project Co or its Associates of its obligations pursuant to this Deed (provided that any information contained in any such report which is Commercially Sensitive Information is redacted in such report).

Consent Deed means:

- (a) the D&C Consent Deed; and
- (b) the Operator Consent Deed.

Consequential or Indirect Loss means:

- (a) any loss of opportunity, profit, anticipated profit, business, business opportunities or revenue or any failure to realise anticipated savings; or
- (b) to the extent not prohibited by Law, any penalties payable under agreements other than the State Project Documents or Key Subcontracts.

Consortium means:

- (a) any Project Co Entity;
- (b) the D&C Subcontractor up to the commencement of the CDPD Period;
- (c) the Operator;
- (d) the Parent Guarantor of the D&C Subcontractor up to the commencement of the CDPD Period; and
- (e) the Parent Guarantor of the Operator,

and **Consortium Member** means any of them.

Construction Management Plan means the Delivery Phase Plan of that name.

Consumer Price Index or **CPI** has the meaning given in the Payment Schedule.

Contamination has the meaning set out in the CLM Act.

Contamination Compensation Event means where Project Co is required under clause 8.4(f) to Remediate Contamination that:

- (a) is on, in, over, under or emanating from the Site; or
- (b) is migrating, or has migrated, onto the Site,

to the extent such Contamination has been caused or contributed to by the State or its Associates after the date of this Deed.

Contamination Remediation Notice means any notice, order or direction issued under Legislation requiring a person to take measures to Remediate any Contamination in, on, under or emanating from the Site, or any other action regarding Contamination including a clean up order or site contamination assessment order.

Contamination Remediation Plan has the meaning given in clause 8.5(a), as may be updated from time to time by Project Co in accordance with this Deed.

Contract Particulars means Schedule 1.

Control means:

- (a) 'Control' as defined in the Corporations Act;
- (b) the ability to control, directly or indirectly, the composition of the board or partnership committee (or if the Entity is a trust, the appointment of a trustee of that trust);
- (c) being in a position to cast, or control the casting of, more than 25% of the maximum number of votes that may be cast at a general meeting or similar (or if the Entity is a trust, a meeting of unit holders); or
- (d) having a relevant interest (as defined in section 608 of the Corporations Act but as if a reference in that section to 'securities' were a reference to Securities as defined in this Deed) in more than 25% of the Securities,

of an Entity (whether alone or together with any Associates). For the purposes of this definition, Associate has the meaning given in the Corporations Act and includes a person deemed to be an associate of a designated body (within the meaning of section 12 of the Corporations Act).

Controlling Entity means, in relation to a Change in Control of a Consortium Member, the person or Entity to whom Control will pass.

Controlling Unit Holder means, in respect of any trust or managed investment scheme, any entity which:

- (a) controls (within the meaning of section 50AA of the Corporations Act) the trust or managed investment scheme (either directly or through one or more intermediary entities or trusts);
- (b) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of unit holders of the trust or managed investment scheme (either directly or through one or more intermediary entities or trusts or managed investment schemes); or
- (c) holds more than one half of the units in the trust or managed investment scheme.

Corporations Act means the *Corporations Act 2001* (Cth).

Correctional Centre means a correctional centre within the Correctional Complex which is declared to be a correctional centre by the Governor pursuant to section 225 of the Corrections Act.

Correctional Complex means the correctional complex as declared to be a correctional complex by the Governor pursuant to section 224 of the Corrections Act and includes the Correctional Centres and the whole of the area inside the boundaries of the Operating Phase Site, the physical infrastructure and grounds contained within those boundaries, and all Equipment.

Corrections Act means *Crimes (Administration of Sentences) Act 1999* (NSW).

Corrections Legislation means:

- (a) the Corrections Act; and
- (b) the Corrections Regulations.

Corrections Regulations means *Crimes (Administration of Sentences) Regulation 2014* (NSW).

Correctional Complex Access Protocols means the protocols by which Visitors and others may access a Correctional Centre or the Correctional Complex during the Operating Phase included in the Operating Phase Plans.

Counterparty Details means:

- (a) in connection with each Project Co Entity:
 - (i) a certified copy of its constitution (or other constituent documents);
 - (ii) in the case of a trustee who enters into the State Project Documents on behalf of a trust, a certified copy of the relevant trust deed;
 - (iii) a certified copy of any powers of attorney under which the person executed each State Project Document; and
 - (iv) a certified copy of the extract of minutes evidencing the resolutions of its board of directors, authorising the entry into, delivery and observance of obligations in accordance with each State Project Document to which it is a party; and
- (b) in connection with each other person (other than the State) who is a party to a State Project Document, a certified copy of any powers of attorney under which the person executed each State Project Document.

Critical Incident means any of the following incidents:

- (a) suicide;
- (b) death;
- (c) Escape;
- (d) riot;
- (e) hostage situation;
- (f) siege situation; or
- (g) Staff Misconduct.

CSNSW Employees means any employee of the State who is working at any correctional centre within three months of the Operational Commencement Date.

Custodial Patients means all Inmates.

D&C Consent Deed means the document entitled 'NGCC D&C Subcontract Consent Deed' between Project Co, the Security Trustee, the D&C Subcontractor, the Parent Guarantor of the D&C Subcontractor and others.

D&C Side Deed means the document entitled 'New Grafton Correctional Centre D&C Side Deed' dated on or about the date of this Deed between the State, Project Co, the D&C Subcontractor and the Parent Guarantor of the D&C Subcontractor substantially in the form set out in Schedule 27.

D&C Subcontract means the agreement between Project Co and the D&C Subcontractor to carry out the Delivery Phase Activities, and any other contract between Project Co and a Subcontractor to carry out any part of the Delivery Phase Activities but not including any Subcontract with the Operator.

D&C Subcontractor means, as at the date of this Deed, the party listed as such in the Contract Particulars and any person who in addition or substitution is engaged by Project Co to carry out any part of the Delivery Phase Activities but not including the Operator.

Date for Commercial Acceptance means the date specified as such in the Contract Particulars, as adjusted (if at all) in accordance with this Deed.

Date for Completion means:

- (a) the Date for Technical Completion; and
- (b) the Date for Commercial Acceptance,

or the relevant one of these as the case may be.

Date for Technical Completion means the date specified as such in the Contract Particulars, as adjusted (if at all) in accordance with this Deed.

Date of Commercial Acceptance means the date specified in the Certificate of Commercial Acceptance as the date on which Project Co achieved Commercial Acceptance.

Date of Technical Completion means the date specified in the Certificate of Technical Completion as the date on which Project Co achieved Technical Completion.

Day 1 Uninsurable Risk means:

- (a) war, act of a public enemy (whether war is declared or not), civil war, rebellion, revolution, military usurped power, military insurrection, military commotion or other like hostilities (other than where undertaken by, caused by, involving or undertaken for the benefit of Inmates, Visitors, Staff or other users of the Services);
- (b) nuclear or biological contamination;
- (c) ionising radiation or contamination by radioactivity; and
- (d) any act of terrorism occurring at the Site, except to the extent coverage is provided for a declared terrorist incident under the *Terrorism Insurance Act 2003* (Cth),

save to the extent caused or contributed to by a Project Co Act or Omission or an act or omission of an Inmate, to the extent arising from a failure by Project Co or its Associates to perform the Services in accordance with this Deed.

Debt means the principal amounts properly drawn down by any Project Co Entity under the Finance Documents to finance the Project, including accrued interest and fees payable in respect of those principal amounts, and any net amounts payable under any hedging arrangements relevant to those principal amounts deducting all credit balances on all debt reserve and debt service accounts (however named) held by or on behalf of any Project Co Entity or any Financier and related to the Project but does not include default interest, equity shareholder loans, or amounts in the nature of Equity.

Deed has the meaning given in clause 2.2(a).

Default Termination Event means the occurrence of any of the following events:

- (a) **(abandonment)**: Project Co wholly or substantially abandons the Project or any material part of the Project Activities;
- (b) **(Group Member Insolvency Event)**: an Insolvency Event occurs in relation to a Group Member;
- (c) **(Project Co Entity fraud)**: a Project Co Entity or the Operator engages in fraud, collusion or dishonest conduct in performing its obligations under any Project Document;
- (d) **(assignment, transfer or disposal)**: a Project Co Entity assigns, transfers or otherwise disposes of any of its rights, title and interest in or under any Project Document, the whole or any part of the Site or the Relevant Infrastructure in breach of clause 57;
- (e) **(Change in Control)**: a Change in Control (which is not a Permitted Change in Control) occurs in respect of a Project Co Entity other than in accordance with clause 58;
- (f) **(unremedied Major Default)**: a Major Default is capable, or is deemed to be capable, of remedy and Project Co fails to remedy the Major Default within the period set out in the Major Default Notice (as extended, if at all, in accordance with clause 48.4(b));
- (g) **(unremedied Major Default by Sunset Date)**: a Major Default is capable, or is deemed to be capable, of remedy and Project Co fails to remedy the Major Default by the Sunset Date (including a failure to achieve Completion by the applicable Sunset Date);
- (h) **(Major Default not capable of remedy)**: a Major Default is not capable of remedy and Project Co fails to diligently comply with any reasonable requirements of the State to overcome the consequences of the Major Default within the time stated in the Major Default Notice (as extended, if at all, under clause 48.4(b));

- (i) **(repeated Major Default Service Failure)**: following [REDACTED] Major Default Service Failures in any [REDACTED] (whether or not they have been cured by Project Co);
- (j) **(Charge Events)**: Project Co has accrued a Charge Event liability of greater than [REDACTED] (as defined in the Payment Schedule) in any [REDACTED]. For the purposes of this paragraph only, if [REDACTED] Escapes occur concurrently, Project Co's Charge Event liability will be calculated as if this was [REDACTED] Charge Event;
- (k) **(Total Deductions)**: Project Co has incurred Total Deductions (calculated in accordance with section 13 of the Payment Schedule) and Charge Events (as determined under the Performance Regime) with an aggregate value greater than:
 - (i) [REDACTED] of the Base Fee and Volumetric Adjustment (as calculated in accordance with the Payment Schedule) in any [REDACTED] or
 - (ii) [REDACTED] of the Base Fee and Volumetric Adjustment (as calculated in accordance with the Payment Schedule) in any [REDACTED]
- (l) **(Illegality Event)**: an Illegality Event occurs;
- (m) **(Probity Event)**: Project Co fails to comply with clause 63.1(d), in relation to a Probity Event; or
- (n) **(deemed Default Termination Event)**: any other event which is deemed to be a Default Termination Event under clause 44.6(b)(i) or clause 48.2(f).

Default Termination Payment means the payment calculated in accordance with section 3 of the Termination Payments Schedule.

Defect means:

- (a) any defect, shrinkage, expansion, fault or omission in the Relevant Infrastructure (excluding any normal shrinkage or expansion of materials accommodated in accordance with Best Industry Practices); or
- (b) any other aspect of the Relevant Infrastructure which is not in accordance with the requirements of this Deed.

Delivery Phase means the period beginning on the date of this Deed and ending on and including the Date of Commercial Acceptance.

Delivery Phase Activities means:

- (a) all things which Project Co is, or may be, required to carry out or do in connection with the Works; and
- (b) all other things which Project Co is, or may be, required to carry out or do in accordance with the State Project Documents during the Delivery Phase,

but excludes the Services.

Delivery Phase CCE Model Variation Event has the meaning given in clause 59.3(b).

Delivery Phase Insurances means the Insurances referred to in Part A of the Insurance Schedule.

Delivery Phase Plans means each of the plans described in the Delivery Phase Plans and Reports Schedule.

Delivery Phase Plans and Reports Schedule means Schedule 11.

Delivery Phase Program means the Initial Delivery Phase Program, as updated in accordance with clause 16.2(b).

Delivery Phase Reports means each of the reports described in the Delivery Phase Plans and Reports Schedule.

Delivery Phase Quality Assurance Plan means the Delivery Phase Plan of that name and prepared by Project Co in accordance with the Delivery Phase Plans and Reports Schedule.

Delivery Phase Sites means all of the land on which the Works are to be constructed as identified in the Site Plans.

Delivery Phase Sub-Licence means the sub-licence granted under clause 19.1 by the State to Project Co for Project Co and its Associates to enter upon and occupy the Delivery Phase Sites to the extent necessary to carry out the Delivery Phase Activities.

Design Deliverables means all deliverables in respect of the design of the Correctional Complex (including all draft and final design standards, design reports, durability reports, drawings, specifications, manuals, designs, models, samples, patterns and calculations) in computer readable and written forms, or stored by any other means, which Project Co or any of its Associates creates, or are required to, or must necessarily, create, in carrying out the Delivery Phase Activities.

Design Development Change means any element of the design of the Works proposed by Project Co which deviates from, or does not meet or satisfy, the Design Requirements.

Design Development Process means the process for the development of the design of the Correctional Complex which is described in the Design Development Schedule.

Design Development Schedule means Schedule 8.

Design Life Item means an item specified in the Design Life Schedule.

Design Life Schedule means the schedule of design lives included in Output Specification.

Design Management Plan means the Delivery Phase Plan of that name.

Design Proposal means Annexure A.

Design Requirements means requirements for the design of the Correctional Complex as set out in:

- (a) the Output Specification;
- (b) the Design Proposal; and
- (c) the remainder of this Deed.

Design Stage has the meaning given in the Design Development Schedule.

Design Subcontract means the document entitled 'Consultant Services Agreement' dated on or about the date of this Deed between the D&C Subcontractor and the Design Subcontractor.

Design Subcontract Side Deed means the document entitled 'New Grafton Correctional Centre Design Subcontract Side Deed' dated on or about the date of this Deed between the State, Project Co, the D&C Subcontractor and the Design Subcontractor substantially in the form set out in Schedule 26.

Design Subcontractor means, as at the date of this Deed, the party listed as such in the Contract Particulars, and any person who in addition or substitution is engaged by Project Co to design a material part of the Delivery Phase Activities.

Designated Investor means an investor described as such in the Contract Particulars.

Developed IP means any Project Co Material created, developed or produced by or on behalf of Project Co or any of its Associates in the course of carrying out the Project Activities, including:

- (a) all research conducted by Project Co or any of its Associates in relation to the Project, the Inmates, the Correctional Complex, the Inmate programs, any other user of the Services (including former Inmates) or any part of them;
- (b) any data recorded by Project Co or its Associates under this Deed in respect of the management of Inmates or the Correctional Complex;
- (c) Inmates professional management, detention, case, medical and dental files;
- (d) all manuals in respect of the management of Inmates or the Correctional Complex; and
- (e) information about:
 - (i) the management of Inmates produced by Project Co or its Associates; and
 - (ii) Project Co or its Associates obligations under the Deed in respect of the management of Inmates or the Correctional Complex,

but excludes the Project Co Background IP and the Proprietary Software.

Development Consent Authority means the Authority or Authorities with jurisdiction to assess or determine the Stage 1 Development Application and the Stage 2 Development Application (as applicable) in accordance with the EP&A Act.

Development Consent Authority Delay means the following events exceeding an aggregate of 27 weeks:

- (a) the Development Consent Authority preparing for the Exhibition Period following the lodgement of the Stage 2 Development Application with the Development Consent Authority;
- (b) the Exhibition Period; and
- (c) the Assessment Period, as extended on a day for day basis for:
 - (i) any day that occurs between the date of the Development Consent Authority's request for any additional information pursuant to the EP&A Act or the EP&A Regulation due to insufficiency or incompleteness of the Stage 2 Development Application and the date on which the additional information is provided by Project Co; and
 - (ii) to the extent that the Development Consent Authority provides draft Stage 2 Development Consent conditions during the Assessment Period, any day that occurs between the first date the Development Consent Authority or the State (as the case may be) provides the draft Stage 2 Development Consent conditions to Project Co and the last date on which Project Co provides comments on the draft Stage 2 Development Consent conditions to the Development Consent Authority or the State (as the case may be).

Dispute has the meaning given in clause 50.1(a).

Distribution means, without double counting and whether in cash or kind:

- (a) any distribution by any Project Co Entity to its Equity Investors or their Related Bodies Corporate (or any Related Trust Entity of an Equity Investor), or amount available for such distribution, whether by way of dividend, return of capital, redemption, purchase, buy back, cancellation, payment, repayment, loan, contractual arrangement, transfer of assets or rights or otherwise in respect of the share capital of any Project Co Entity, units in any trust or any subordinated debt;
- (b) the receipt from any Project Co Entity by its Equity Investors or their Related Bodies Corporate (or by any Related Trust Entity of an Equity Investor) of any other benefit which is not received in the ordinary course of business or on reasonable commercial terms;
- (c) subject to paragraph (b), any payment by any Project Co Entity to any Equity Investor or Related Body Corporate of any Equity Investor (or any Related Trust Entity of an Equity Investor), which is not received in the ordinary course of business or on reasonable commercial terms; or
- (d) the release by a Group Member of any actual or contingent liability of any Project Co Entity or any Equity Investor (or any Related Body Corporate or Related Trust Entity of an Equity Investor).

Duty has the meaning given in clause 36.7(a).

Duty Estimate has the meaning given in clause 36.7(b)(ii).

Early Warning (Delivery) has the meaning given in clause 38.1.

Early Warning (Operations) has the meaning given in clause 39.1(a).

Easements means all easements, restrictions on use, covenants, agreements, or other similar arrangements together with any leases, sub-leases, licences, rights or privileges, in each case as are granted on or prior to the date of this Deed.

Electronic Security Provider means Saab Australia Pty Ltd (ABN 88 008 643 212).

Electronic Security Provider Side Deed means each of the documents entitled:

- (a) 'New Grafton Correctional Centre Electronic Security Provider Side Deed' dated on or about the date of this Deed between the State, Project Co, the D&C Subcontractor and the Electronic Security Provider; and
- (b) 'New Grafton Correctional Centre Electronic Security Provider Side Deed' dated on or about the date of this Deed between the State, Project Co, the Operator and the Electronic Security Provider,

substantially in the form set out in Schedule 26.

Emergency means any event or circumstance which:

- (a) involves serious personal injury, death or significant damage to or destruction of the Relevant Infrastructure, or any other real or personal property;
- (b) poses a serious risk to:
 - (i) the public interest;
 - (ii) the health or safety of any person;
 - (iii) the Environment;
 - (iv) the Site; or

- (v) the structural integrity of any part of the Relevant Infrastructure;
- (c) poses a serious risk of damaging or destroying the Relevant Infrastructure or any other real or personal property; or
- (d) requires Project Co to manage a disturbance including a Critical Incident.

Employee Checks means the employee checks set out in the Contract Particulars.

Employee Requirements means the employee requirements set out in the Contract Particulars.

Emissions and Energy Data means any data, information, records and reports required to be kept or provided under the NGER Legislation concerning:

- (a) greenhouse gas emissions, energy production or energy consumption;
- (b) reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions from any greenhouse gas project; or
- (c) environmental emissions or energy production, use, consumption or efficiency,

in connection with the Services.

Entity has the meaning given in section 64A of the Corporations Act, but is also deemed to include a joint venture within the meaning of Australian Accounting Standard 131 (AASB 131).

Environment means the physical factors of the surroundings of humans and other life forms, including the land, soil, plants, habitat, waters, atmosphere, climate, sounds, odours, tastes, biodiversity and the social factor of aesthetics.

Environmental Hazard means a state of danger to human beings or the Environment whether imminent or otherwise resulting from the location, storage, handling or release of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics.

Environmental Management Plan means the Delivery Phase Plan or Operating Phase Plan of that name (as applicable).

Environmental Requirements means all Laws relating to the Environment and the conditions and requirements of any Approval relating to the Environment and all environmental safeguards and measures necessary to avoid, reduce, minimise or mitigate the environmental impacts of the Project Activities, including those identified in the Output Specification.

EP&A Act means the *Environmental Planning and Assessment Act 1979* (NSW).

EP&A Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Equipment means all plant, machinery, furniture, fittings and fixtures which:

- (a) are necessary to ensure the Correctional Complex meets the FFP Warranty;
- (b) are referred to in the Design Requirements; or
- (c) without limiting paragraphs (a) and (b) above, Project Co or its Associates installs, constructs or places on the Site and which is, or becomes, part of the Correctional Complex,

but excludes all Temporary Equipment.

Equipment List means the Initial Equipment List as updated in accordance with clause 18.

Equity means all partnership interests and ordinary unit capital and ordinary share capital in, or the subordinated debt which is, in substance, equivalent to ordinary equity of, any Project Co Entity, and includes any securities which are convertible into ordinary partnership interests or ordinary unit capital or ordinary share capital in Project Co.

Equity Documents means each of the documents listed in the Equity Documents Schedule.

Equity Documents Schedule means Schedule 20.

Equity Investor means:

- (a) a person identified as such in the Ownership Schedule (until that person is replaced in accordance with clause 58);
- (b) each person who has provided or has agreed to provide:
 - (i) Equity at the times and in the amounts set out in the Financial Model (whether by way of subscription for units or shares or provision of unitholder or shareholder loans); or
 - (ii) any other equity, financial arrangement, security or option issued by or provided to a Group Member which does not constitute a Refinancing; and
- (c) any person who replaces or is added, in accordance with clause 58, to the persons referred to in paragraphs (a) or (b).

Equity IRR means the nominal blended internal rate of return to Equity Investors (equal to the percentage set out under 'Equity IRR' in the Model Output Schedule) which is calculated after the deduction of tax on project cash flows by any Project Co Entity but before any tax paid or payable by Equity Investors.

Escape has the meaning given in the Performance Regime.

Escrow Agent means the escrow agent appointed pursuant to clause 61.9(a) and the Escrow Deed or any replacement escrow agent appointed pursuant to the Escrow Deed.

Escrow Deed means the document entitled '*New Grafton Correctional Centre – Escrow Deed*' to be entered into between the State, Project Co, the D&C Subcontractor, the Operator, the Electronic Security Provider and the Escrow Agent in accordance with clause 61.9 and substantially in the form of Schedule 32A.

Escrow Material has the meaning given to it in the Escrow Deed.

Essential Service means the provision of:

- (a) accommodation;
- (b) food and water;
- (c) security and supervision; and
- (d) Services which, if not provided, may result in death or serious health problems.

Executive Representatives has the meaning given in clause 51(a).

Exhibition Period means the period commencing on the date that the Development Consent Authority places the Stage 2 Development Application on public exhibition pursuant to part 6, Division 6 of the *Environmental Planning and Assessment Regulation 2000* and ending when the final submission is provided to Project Co by the Development Consent Authority in accordance with clause 85A of the EP&A Regulation.

Exotic Swap means any hedging or swap arrangement that does not satisfy all of the following criteria:

- (a) either:
 - (i) a fixed to floating (and vice versa) interest rate swap; or
 - (ii) a cross-currency swap which swaps payments in respect of the relevant currency of any underlying financial indebtedness that is not denominated in Australian dollars to Australian dollar payments and has a tenor of no longer than five years (or such longer period as agreed by the State in writing);
- (b) does not have any element of accretion or indexation of the notational principal;
- (c) has a tenor of no longer than the tenor of the underlying principal of the Debt and may include forward start swaps provided the termination date of such swaps is no later than the term of the underlying principal of the Debt; and
- (d) together with all other hedging or swap arrangements of any Project Co Entity, has a notional amount that is no more than the underlying principal of the Debt.

Expert Determination Agreement means an expert determination agreement to be entered into between Project Co, the State and an independent expert substantially in the form set out in Schedule 30.

Expiry Date has the meaning given in clause 4.2.

Extension Event means any of the following events occurring during the Delivery Phase:

- (a) **(Compensable Extension Event)**: a Compensable Extension Event;
- (b) **(State act or omission)**: any act or omission of:
 - (i) the State; or
 - (ii) any Associate of the State,in connection with the Project other than any act or omission which is authorised or permitted under a State Project Document, Policy or Law;
- (c) **(Force Majeure Event)**: a Force Majeure Event;
- (d) **(blockade)**: a blockade or embargo that directly affects the Delivery Phase Sites or the Delivery Phase Activities (other than industrial action);
- (e) **(Change in Mandatory Requirements)**: a Change in Mandatory Requirements which occurs in respect of the Works, for which the State has issued a Modification Order in accordance with clause 40.10;
- (f) **(Modification)**: a Modification for which the State has issued a Modification Order;
- (g) **(Loss or Damage)**: the State requires Project Co to repair or rebuild the Relevant Infrastructure and clause 44.3(e) applies; and
- (h) **(Agreed Uninsurable Risk)**: the State requires Project Co to repair or rebuild the Relevant Infrastructure and clause 47.3(a)(i) applies.

External Infrastructure means infrastructure which is external to, but is to be provided to, the Site, by Project Co or its Associates, and which is used in common with other users, including roads, footpaths, transport facilities and any Utility Infrastructure external to the Site.

Facilitation Works means the Facilitation Works (Power), the Facilitation Works (Roads), the Facilitation Works (Telecommunications) and the Facilitation Works (Water).

Facilitation Works (Power) means the delivery of 12 MVA of permanent electricity supply to the boundary of the Site including the construction of a new 11 kV substation facility on Site at the Facilitation Works (Power) Location.

Facilitation Works (Power) Location means the location of the switchyard as set out in the Proposal.

Facilitation Works (Roads) means upgrade works to Avenue Road (from the intersection of Old 6 Mile Lane to a location approximately in line with the northern boundary of the Site) and 8 Mile Lane to become two way sealed roads with shoulders.

Facilitation Works (Telecommunications) means the delivery of the telecommunications to the Facilitation Works (Telecommunications) Location with a capacity of each fibre connection of 1 Gigabit.

Facilitation Works (Telecommunications) Location means the service provider carrier rack in the 'Training Building'.

Facilitation Works (Water) means the delivery of potable water supply to the boundary of the Site at the Facilitation Works (Water) Location via a 225Dia PVC supply Class 16, with a residual head pressure of 50-60 metres above Australian Height Datum.

Facilitation Works (Water) Location means the eastern boundary of the Site adjacent to the proposed new entrance to the Site on Avenue Road.

Facility Agreement has the meaning given in the Finance Documents Schedule.

FFP Warranty means the warranty given by Project Co in clause 5.4.

Final Expiry Date means the date which is the twentieth anniversary of the earlier of:

- (a) the Date for Commercial Acceptance; and
- (b) the Date of Commercial Acceptance.

Final Refurbishment Works has the meaning given in clause 37.5(b)(i).

Finance Co means NorthernPathways Finance Pty Limited (ACN 615 483 737).

Finance Documents means:

- (a) each of the documents listed in the Finance Documents Schedule;
- (b) any document entered into in relation to a Refinancing of the Debt approved by the State under clause 41; and
- (c) any other document which the parties agree is a Finance Document for the purposes of this Deed.

Finance Documents Schedule means Schedule 21.

Financial Close means the date on which the last Condition Precedent to be satisfied, has been satisfied (or waived in accordance with clause 3.3(b)) as set out in a notice given by the State to Project Co in accordance with clause 3.2(d).

Financial Close Adjustment Protocol means the protocol to:

- (a) update the Base Case Financial Model; and

(b) amend this Deed,

to be applied at Financial Close, in accordance with clause 3.5 and 59 and contained in Annexure C.

Financial Close Financial Model means the Base Case Financial Model as updated and audited in accordance with the Financial Close Adjustment Protocol.

Financial Model means the Financial Close Financial Model as updated from time to time in accordance with clause 59.

Financial Year means each 12 Month period commencing on 1 July and ending on 30 June.

Financiers means the providers of any financing facilities, financial arrangements or accommodation to a Group Member under the Finance Documents from time to time and may, where the context permits, include any agent or trustee of such Financiers (other than Finance Documents solely between Group Members).

Financiers Tripartite Deed means the document entitled 'New Grafton Correctional Centre - Financiers Tripartite Deed' dated on or about the date of this Deed between the State, Project Co, Finance Co and the Security Trustee on behalf of the Financiers.

Financing Delay Costs has the meaning given in the Change Compensation Principles.

First Pre Agreed Modification Works means additional pre cast cell moulds and additional resources and equipment required prior to 2 January 2018 as a result of the Working Hour Restriction.

Fit For Purpose or FFP means the Relevant Infrastructure:

- (a) is fit for its intended purposes, functions and uses specified in, or which can reasonably be ascertained from, clauses 1 to 65, the Output Specification, the Performance Regime or the Payment Schedule;
- (b) otherwise meets the requirements for the Correctional Complex set out in or which can reasonably be ascertained from:
 - (i) the Design Requirements and the Services Requirements; and
 - (ii) all other requirements of this Deed; and
- (c) is fit for the performance of the Services in accordance with the Services Requirements and so as to facilitate and not impair the achievement of the Project Objectives.

For Construction Documentation means all Design Deliverables which are marked 'for construction' and are reviewed or deemed to have been reviewed by the State in accordance with the Design Development Process and the Review Procedures, as amended and updated in accordance with this Deed.

Force Majeure Event means any of the following events occurring:

- (a) a Day 1 Uninsurable Risk or an Uninsurable Risk;
- (b) bushfire, lightning, cyclone, hurricane, tempest, mudslide, landslide, earthquakes, droughts declared as a state of emergency and high seas inundation;
- (c) a flood which might at the date of this Deed be expected to occur no more frequently than once in 100 years;
- (d) fire or explosion caused by events referred to in paragraphs (a) to (c); or

- (e) during the Operating Phase only, Utility Interruption due to an interruption that occurs upstream from the point at which that Utility provider's Utility Infrastructure connects specifically to the Site or the Correctional Complex,

and which:

- (f) save in relation to paragraph (e), occurs at or directly in the vicinity of the Site;
- (g) in:
- (i) respect of a claim for an extension of time pursuant to clause 38 only, prevents or delays Project Co from carrying out all or substantially all of the Project Activities; or
 - (ii) all other circumstances, prevents Project Co from carrying out all or substantially all of the Project Activities;
- (h) was not caused by Project Co or its Associates, or the State or its Associates;
- (i) was beyond the reasonable control of Project Co or its Associates; and
- (j) could not have been prevented, avoided, remedied or overcome by taking those steps which a prudent, experienced and competent designer, constructor, or operator of facilities similar to the Relevant Infrastructure and providing services similar to the Services would have taken using Best Industry Practices (including the expenditure of reasonable sums of money).

Force Majeure Termination Event means:

- (a) either party has been prevented from carrying out all or substantially all of the Project Activities for a continuous period exceeding 180 days as a result of a Force Majeure Event; and
- (b) at least 180 days has elapsed since Project Co gave notice to the State in accordance with clause 38.3 or 39.1(d) (as the case may be) of the Force Majeure Event,

or any other event expressly deemed to be a Force Majeure Termination Event in this Deed.

Force Majeure Termination Payment means the payment calculated in accordance with section 5 of the Termination Payments Schedule.

Forecast Debt means at any time the lesser of:

- (a) the Debt at that time; and
- (b) the amount forecast in the Financial Model to be owing to the Financiers at that time.

General Change in Law means a Change in Law that is not a Project-Specific Change in Law.

General Manager means the person appointed from time to time as the governor of the Correctional Complex pursuant to this Deed and the Corrections Legislation.

GIPA Act means the *Government Information (Public Access) Act 2009* (NSW).

Governor means the Governor of New South Wales from time to time.

Group means Project Co, Finance Co, each Holding Entity and any wholly owned subsidiary of any of them.

Group Member means any of Project Co, Finance Co, each Holding Entity or any wholly owned subsidiary of any of them.

GST means:

- (a) the same as in the GST Act; and
- (b) any other goods and services tax, or any Tax applying to this transaction in a similar way.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST Amount has the meaning given in clause 36.8(c)(ii).

GST Law has the meaning given in the GST Act.

Handover means the stage when Project Co has done everything that this Deed requires to enable Project Co to handover the Relevant Infrastructure in the Handover Condition.

Handover Bond means a Performance Bond provided by Project Co in favour of the State in accordance with clause 37.8(b)(ii).

Handover Condition means, if Handover of the Relevant Infrastructure is to occur:

- (a) prior to the Operational Commencement Date, the condition that the Works and the Delivery Phase Sites would be in if Project Co had complied with all of its obligations in connection with the Works, the Delivery Phase Activities and the Delivery Phase Sites under this Deed having regard to the time and circumstances of the termination;
- (b) between the Operational Commencement Date and the date that is 2 years prior to the Final Expiry Date, the condition that the Correctional Complex and the Operating Phase Site would be in if Project Co had complied with all of its obligations in connection with this Deed up to the time of termination having regard to the time and circumstances of the termination; or
- (c) any time after the date that is 2 years prior to the Final Expiry Date, the condition the Correctional Complex would be in:
 - (i) had all the scheduled and unscheduled maintenance of the Relevant Infrastructure been completed as at the Final Expiry Date in accordance with this Deed; and
 - (ii) such that when operated and maintained in accordance with comparable requirements to those in this Deed:
 - A. the relevant components of the Correctional Complex as specified in the Residual Life Schedule can reasonably be expected to:
 - (1) continue to meet their residual lives as specified in the Residual Life Schedule; and
 - (2) be free from Defects and otherwise Fit For Purpose (without any major maintenance or refurbishment works) for the relevant period specified in the Residual Life Schedule; and
 - B. components of the Correctional Complex for which no residual life is specified in the Residual Life Schedule can reasonably be expected to continue to meet the Services Requirements for 5 years after the Expiry Date without any

major maintenance or refurbishment works, other than routine maintenance that Project Co would have had to carry out under this Deed if the expiry of this Deed was in fact 5 years later than the Expiry Date.

Handover Escrow Account has the meaning given in clause 37.8(b)(i).

Handover Package means the Delivery Phase Plan of that name or Operating Phase Plan of that name or both (as applicable).

Handover Reviewer means a person with suitable expertise and experience appointed as the independent certifier for Handover in accordance with clause 37.4.

Hazardous Substance means any substance which would or might reasonably be expected to cause damage or injury to any person, any property or the Environment.

Health Services means those Services described in Section B.5 of the Output Specification.

Heritage Claim means a claim made in connection with a requirement under any Law for the protection, preservation or removal of any Artefact.

Holding Entity means, in the case of each Project Co Entity, each company or trust which, directly or indirectly, holds all of the issued shares or units in any Project Co Entity, and which is not itself wholly owned by any other Entity.

Illegality Event means Project Co or a Key Subcontractor:

- (a) ceases to hold an Approval; or
- (b) breaches applicable Legislation,

and the State forms the view (acting reasonably) that such failure or breach is material to the performance of Project Co's obligations under this Deed and such failure or breach is not remedied within 30 days after the earlier of:

- (c) the date on which the State notifies Project Co of the failure or breach; or
- (d) the date on which Project Co becomes aware of the failure or breach.

Imprest Stock means those Pharmaceuticals held in the Correctional Complex which are to be routinely administered to Inmates as circumstances require (which Pharmaceuticals must have been approved by the State in accordance with clause 29.7).

Increased State Risk Allocation means any increase in the risks for the State in relation to, or in connection with, the Project as a result of entry into or the State performing its obligations pursuant to the Securitised Licence Structure.

Indemnified IP Party has the meaning in clause 45.5(a).

Indemnified Person has the meaning in clause 45.1.

Independent Certifier means the entity appointed as the Independent Certifier under the Independent Certifier Deed, as replaced (if at all) in accordance with clause 14.4.

Independent Certifier Deed means the document entitled 'New Grafton Correctional Centre - Independent Certifier Deed of Appointment' to be entered into between the State, Project Co and the Independent Certifier substantially in the form set out in Schedule 25.

Index means each index set out in the Payment Schedule.

Indexed means the relevant amount as indexed in accordance with the Payment Schedule.

Industries Scheme means the scheme approved by the Commissioner in accordance with the Corrections Act.

Initial Delivery Phase Plans means the version of the Delivery Phase Plans current at the date of this Deed attached as Attachment 2.

Initial Delivery Phase Program means the version of the Delivery Phase Program current at the date of this Deed attached as Attachment 3.

Initial Equipment List means the list of Equipment included in Attachment 4.

Initial Equity Investor means [REDACTED]

Initial Offer has the meaning given in clause 33.4(b).

Initial Operating Phase Plans means the version of the Operating Phase Plans current at the date of this Deed attached as Attachment 5.

Initial Receivables has the meaning given in the Receivables Purchase Deed.

Inmate means those persons from time to time:

- (a) delivered; or
- (b) transferred,

under Legislation into the legal or physical custody of Project Co or its Associates.

Insolvency Event means, in relation to a party, the occurrence of any of the following events:

- (a) an application is made (other than for a frivolous or vexatious reason) for the winding up or deregistration of a party and, where an application has been made for the dismissal or withdrawal of the application for winding up within 10 Business Days, the application is not dismissed or withdrawn within 30 Business Days;
- (b) an order is made for the winding up of a party, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by the State before that order is made where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of the approval;
- (c) a party passes a resolution for its winding up or deregistration, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by the State before that resolution is passed where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of that approval;
- (d) a receiver, receiver and manager, liquidator, provisional liquidator, compulsory manager, trustee for creditors or in bankruptcy or analogous person is appointed to take possession of, or the holder of a Security Interest takes (or appoints an agent to take) possession of, any property of a party or otherwise enforces its Security Interest;
- (e) a party or any other person appoints an administrator to the party, or takes any step to do so;
- (f) a party:
 - (i) suspends payment of its debts (other than as the result of a failure to pay a debt or claim which is the subject of a good faith dispute);
 - (ii) ceases or threatens to cease to carry on all or a material part of its business;

- (iii) is or states that it is unable to pay its debts; or
- (iv) is taken to have failed to comply with a statutory demand as a result of the operation of section 459F of the Corporations Act;
- (g) a party enters into a readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or a composition with its creditors, without the prior consent of the State, except for the purposes of a solvent reconstruction or amalgamation permitted by this Deed; or
- (h) any act is done or event occurs which has an analogous or similar effect to any of the events in paragraphs (a) to (g).

Instalment Date has the meaning set out in the Termination Payment Schedule.

Insurance Component means in relation to a Benchmarked Insurance, the insurance component (being the insurance premiums, statutory charges and fees) of the Monthly Service Payment payable in respect of that Benchmarked Insurance.

Insurance Review Date means:

- (a) the anticipated Operational Commencement Date; and
- (b) each five year anniversary of the Operational Commencement Date.

Insurance Schedule means Schedule 22.

Insurances means the insurances required to be effected and maintained in accordance with this Deed.

Insured means in relation to any Insurance, any person referred to in the Insurance Schedule entitled to coverage under that Insurance.

Insured Risk means a risk which is the subject of the industrial special risks insurance.

Intellectual Property Rights means all present and future rights throughout the world conferred by Law in or in relation to copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results in the industrial, commercial, scientific, literary or artistic fields, including confidential information, whether or not registrable, registered or patentable, including:

- (a) all rights in all applications to register these rights;
- (b) all renewals and extensions of these rights; and
- (c) all rights in the nature of these rights,

but excluding Moral Rights.

Interface Deed has the meaning given to that term in the D&C Subcontract.

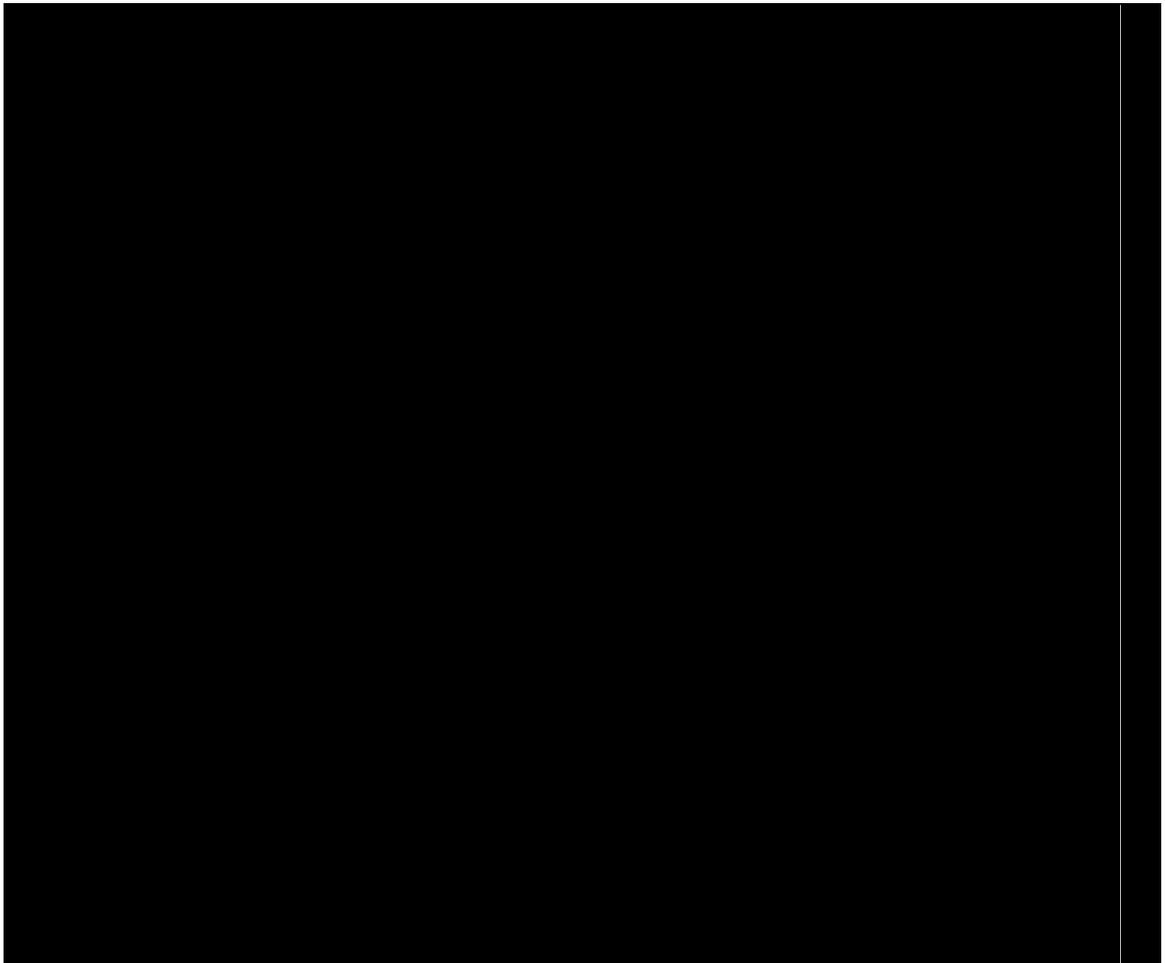
Intervening Event means any of the following occurring during the Operating Phase:

- (a) **(Compensable Intervening Event):** a Compensable Intervening Event;
- (b) **(State Act or Omission):** any act or omission of:
 - (i) the State; or
 - (ii) any Associate of the State;

in connection with the Project other than any such act or omission which is authorised or permitted under a State Project Document, Policy or Law;

- (c) **(Force Majeure Event):** a Force Majeure Event;
- (d) **(Loss or Damage):** the State requires Project Co to repair or rebuild the Relevant Infrastructure and clause 44.3(e) applies; or
- (e) **(Emergency and Step-In):** the State exercises its rights under clause 42.1(a) or its step-in rights under clause 42.3(e) to 42.3(h), other than where the event that gives rise to the exercise of the State's rights is a Force Majeure Event or a Project Co Act or Omission or an act or omission of an Inmate, to the extent arising from a failure by Project Co or its Associates to perform the Services in accordance with this Deed.

JHG means John Holland NGCC Custodian Pty Ltd (ABN 86 619 109 509) in its capacity as trustee for the John Holland NGCC Trust (ABN 30 695 789 960).



Justice Health has the meaning given in the Corrections Legislation.

Key People means the people so named in the Contract Particulars as replaced (if at all) in accordance with clauses 10.7(b), 10.7(c) or 10.7(d).

Key Planning Approval means each of those approvals identified as such in the Contract Particulars.

Key Subcontract means:

- (a) the D&C Subcontract;
- (b) the Operator Subcontract; and

- (c) any other Subcontract in respect of the Project Activities identified in the Contract Particulars as a 'Key Subcontract',

as replaced in accordance with clauses 12.2 and 12.3.

Key Subcontractors means:

- (a) the D&C Subcontractor;
- (b) the Operator; and
- (c) any other Subcontractor who is engaged to perform the Project Activities and is referred to in the Contract Particulars as a 'Key Subcontractor',

as replaced in accordance with clauses 12.2 and 12.3.

Law means:

- (a) those principles of common law and equity established by decisions of courts; and
- (b) Legislation.

Legislation means all legislation (including the Corrections Legislation), statutes, rules, regulations, by-laws, ordinances and subordinated legislation of the Commonwealth, the State of NSW or an Authority.

Liability means any debt, obligation, claim, action, cost, (including legal costs, deductibles or increased premiums) expense, loss (whether direct or indirect), damage, compensation, charge or liability of any kind (including fines or penalties), whether it is:

- (a) actual, prospective or contingent; or
- (b) currently ascertainable or not,

and whether under or arising out of or in any way in connection with this Deed, any other Project Documents or arising at Law.

Licence means:

- (a) each Delivery Phase Sub-Licence; and
- (b) each Operating Phase Sub-Licence.

Licence Fee has the meaning given in the Operating Phase Sub-Licence.

Licence Fee Payment Dates means the dates the Licence Fees are payable in accordance with the Operating Phase Sub-Licence.

Lifecycle Charge has the meaning given in the Payment Schedule.

Lodgement Due Date has the meaning given in clause 36.7(b)(i).

Major Default means any of the following events:

- (a) **(late Technical Completion)**: Project Co fails to achieve Technical Completion by the Date for Technical Completion;
- (b) **(late Commercial Acceptance)**: Project Co fails to achieve Commercial Acceptance by the Date for Commercial Acceptance;
- (c) **(Finance Documents)**: any event that would restrict or cancel any Project Co Entity's ability to obtain or to have available finance in accordance with the Finance

Documents, except to the extent that immediately after that restriction or cancellation, the funding available to any Project Co Entity is greater than that required to enable Project Co to fully undertake the Project;

- (d) **(fraud)**: an Associate of any Project Co Entity (excluding the Operator) engages in fraud, collusion or dishonest conduct in performing their obligations under the Project Documents;
- (e) **(representations and warranties)**: a representation or warranty given by a Project Co Entity under a State Project Document is found to be materially incorrect or misleading or a financial audit report discloses fraudulent, false, misleading or negligent reporting by any Project Co Entity in respect of any financial statements or invoices or other books or records of any Project Co Entity;
- (f) **(subcontracting and Key People)**: Project Co breaches an obligation in clauses 12.2, 12.3 or 12.4;
- (g) **(Confidential Design Information and Personal Information)**: any failure by Project Co to comply with its obligations under clauses 62.6 or 62.7;
- (h) **(breach of State Project Document)**: any breach of any State Project Document by any Project Co Entity (other than an Unavailability, a Meal Availability Failure, a Quality Failure, any other Major Default or a Default Termination Event) which is not cured within [REDACTED] of Project Co receiving a notice of that breach from the State;
- (i) **(Change in Management)**: as a result of a Change in Management, a Project Co Entity no longer has the same or better management skills available to it as it had prior to the Change in Management;
- (j) **(Change in Control)**: a Change in Control (which is not a Permitted Change in Control) occurs in respect of any Consortium Member other than any Project Co Entity without the consent of the State in accordance with clause 58.4;
- (k) **(Probity Event)**: Project Co fails to remedy a Probity Event in accordance with clause 63;
- (l) **(Refinancing)**: a failure by any Project Co Entity to inform or obtain the prior consent of the State (as the case may be) of a Refinancing or to distribute any State Refinancing Share in accordance with clause 41;
- (m) **(breach of other Project Document)**: a Project Co Entity:
 - (i) breaches any of its obligations under any Project Document or the Interface Deed, which is not a State Project Document (other than where such breach is any other Major Default, a Default Termination Event an Unavailability, a Meal Availability Failure or a Quality Failure);
 - (ii) the breach has or will have a material adverse effect on Project Co's ability to deliver the Project; and
 - (iii) is not diligently pursuing the remedy of the breach;
- (n) **(Total Deductions)**: Project Co has incurred Total Deductions (as calculated in accordance with section 13 of the Payment Schedule) and Charge Events (as determined under the Performance Regime) with an aggregate value greater than:
 - (i) [REDACTED] of the Base Fee and Volumetric Adjustment (as calculated in accordance with the Payment Schedule) in any [REDACTED] or

- (ii) [REDACTED] of the Base Fee and Volumetric Adjustment (as calculated in accordance with the Payment Schedule) in any [REDACTED] or
- (o) **(Level 2 Performance)**: Project Co's performance falls within the Level 2 Performance Range for the same Quality Failure for [REDACTED] within a [REDACTED]
- (p) **(Charge Event)**: a Charge Event occurs;
- (q) **(Insolvency Event of Consortium Member)**: an Insolvency Event occurs in relation to a Consortium Member (excluding a Group Member);
- (r) **(Insurances)**: a breach by Project Co of any its obligations under clauses 46.1, 46.2(a), 46.3, 46.5, 46.6, 47.1 or 47.4;
- (s) **(Accreditation)**: Project Co or the Operator fails to obtain and maintain those accreditations specified in the Contract Particulars;
- (t) **(Licences)**: Project Co or the Operator fails to obtain and maintain those licences specified in the Contract Particulars;
- (u) **(Unsatisfactory professional conduct or professional misconduct)**: it is determined by a court or tribunal of competent jurisdiction, or by the applicable professional regulatory body, that any person involved in providing the Health Services has engaged in unsatisfactory professional conduct or professional misconduct (as defined in the *Health Practitioner Regulation National Law (NSW)*);
- (v) **(General Manager)**: pursuant to section 240(3) of the Corrections Act the Commissioner revokes the authority issued to the General Manager pursuant to section 240(1)(a) of the Corrections Act; or
- (w) any other event which is deemed to be a Major Default under clause 25.10(e).

Major Default Notice has the meaning given in clause 48.2(b).

Major Default Service Failure means the defaults described in paragraphs (n) and (o) of the definition of Major Default.

Margin has the meaning given in the Change Compensation Principles.

Material means tangible and intangible information, documents (including any document within the meaning of the *Evidence Act 1995 (NSW)*), reports, software (including source and object code), inventions, discoveries, designs, innovations, technology, processes, methods, techniques, know-how, data and other materials in any media whatsoever.

Material Defect means a Defect which the State considers will prevent:

- (a) the Correctional Complex from complying with the FFP Warranty; or
- (b) Project Co from delivering the Services in accordance with the Services Requirements.

Meal Availability Failure has the meaning given in the Payment Schedule.

Methodology Change means any of the following:

- (a) additional fees, charges or contributions payable by Project Co or its Associates pursuant to the Stage 2 Development Consent;
- (b) additional Temporary Equipment or works outside the Site;

- (c) changes to biodiversity requirements;
- (d) a change to working hours, noise or vibration limits at, or adjacent to, the Site or in the direct vicinity of the Site which impacts construction traffic, including haulage routes and restrictions on times of travel; or
- (e) additional requirements to carry out studies, prepare submissions, or conduct additional surveys, monitoring or testing.

Minister has the meaning given in section 15 of the *Interpretation Act 1987* (NSW) in respect of the Corrections Legislation.

Minor Modification means a Modification proposed by either Project Co or the State in accordance with clause 40.12(b):

- (a) in respect of which Project Co will not be entitled to an extension of time to the Date for Completion if it occurs during the Delivery Phase;
- (b) which is minor in respect of its scope and likely impact on the Project Activities; and
- (c) has a price not exceeding [REDACTED] (as Indexed).

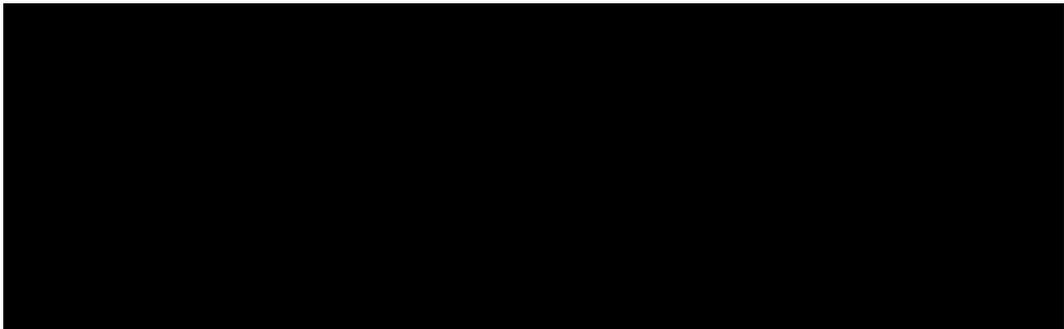
Minor Modification Proposal means a proposal provided in accordance with clause 40.12(b) in respect of a Minor Modification.

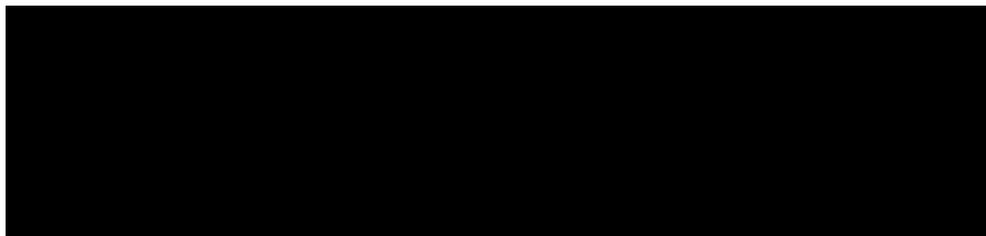
Model Output Schedule means the work sheets in the Financial Close Financial Model identified as the Model Output Schedule, as updated from time to time in accordance with clause 59.

Model Variation Event has the meaning given in clause 59.3(a).

Modification means:

- (a) in the period prior to the Operational Commencement Date, any change to the Works or the Design Requirements including any addition, decrease, omission, deletion, demolition or removal to or from the Works or the Design Requirements;
- (b) after the Date of Commercial Acceptance:
 - (i) a change to the Correctional Complex including any addition, increase, decrease, omission, deletion, demolition or removal to or from the Correctional Complex; or
 - (ii) the State requiring Project Co to accommodate more than:
 - A. 1,000 male maximum security Inmates within the Correctional Complex;
 - B. 1,400 male Inmates within the Correctional Complex; or
 - C. 300 female Inmates within the Correctional Complex;





- (c) after the date of this Deed, in respect of the Services, a change to the Services Requirements or the Services including any addition, increase, decrease, omission, deletion, or removal of any part of the Services,

but excluding:

- (d) development and refinement of the Design Deliverables in accordance with the Design Development Process;
- (e) Design Development Changes accepted by the State in accordance with clause 17.3;
- (f) any direction by the State to Project Co to undertake additional or alternative works or services in accordance with clause 42.1(b);
- (g) any change of the type referred to in paragraphs (a) to (c) which is required to ensure that the Relevant Infrastructure or the Services are otherwise in accordance with this Deed;
- (h) Minor Modifications, subject to clauses 40.12(g) and 40.12(h);
- (i) without limiting paragraphs (b)(ii) or (iii) above or any entitlement to payment pursuant to the Payment Schedule, any change in:
 - (i) the number of Inmates; or
 - (ii) the type of Inmate cohort, including changes to the proportion of:
 - A. remand and sentenced Inmates; or
 - B. male and female Inmates; and
- (j) any direction or determination given by the Commissioner in accordance with the Corrections Legislation.

Modification Order means a Change Response entitled "Modification Order" issued in accordance with clause 40.5 or 40.7 and the Change Compensation Principles, requiring Project Co to proceed with the relevant Modification or comply with the Change in Mandatory Requirements (as applicable).

Modification Request has the meaning given in clause 40.1.

Monitor means a person appointed for the purposes of section 242 of the Corrections Act in respect of each Correctional Centre.

Month means a calendar month.

Monthly Performance Report means the Operating Phase Report of that name.

Monthly Service Payment means a monthly service payment payable to Project Co calculated in accordance with the Payment Schedule.

Monthly Works Report means the Delivery Phase Report of that name.

Moral Rights has the meaning given in the *Copyright Act 1968* (Cth) and any corresponding rights granted under any other laws anywhere in the world.

Moral Rights Consent means a consent by the owner of Moral Rights substantially in the form of Schedule 10.

National Police Certificate means a certificate issued by New South Wales Police or such other organisation from time to time authorised to issue such certificates containing details of a person's criminal history.

Native Title Claim means any claim or application under any Law or future Law relating to native title, including any application under section 61 of the *Native Title Act 1993* (Cth).

Negotiated Offer has the meaning given in clause 33.4(d)(ii)A.

NGER Legislation means the *National Greenhouse and Energy Reporting Act 2007* (Cth) and the regulations and any other legislative instruments under that Act.

NSW Code has the meaning given in clause 15.2(a).

NSW Government means the Crown in right of the State of New South Wales and its agencies.

NSW Guidelines has the meaning given in clause 15.1.

NSW PPP Guidelines means the NSW Public Private Partnerships Guidelines dated August 2012, as amended or updated from time to time.

Official Visitor has the meaning given in the Corrections Act.

Operating Phase means the period beginning on the Operational Commencement Date and ending on the Expiry Date.

Operating Phase Insurances means the Insurances referred to in Part B of the Insurance Schedule.

Operating Phase Plans means each of the plans described in the Operating Phase Plans and Reports Schedule.

Operating Phase Plans and Reports Schedule means Schedule 15.

Operating Phase Quality Assurance Plan means the Operating Phase Plan of that name and prepared by Project Co in accordance with the Operating Phase Plans and Reports Schedule.

Operating Phase Reports means each of the reports described in the Operating Phase Plans and Reports Schedule.

Operating Phase Site mean the land on which the Correctional Complex is located and in respect of which the Services are undertaken, as identified in the Site Plans.

Operating Phase Sub-Licence means the sub-licence to be granted by the State to Project Co in accordance with clause 28.1.

Operating Year means:

- (a) for the first Operating Year, the period commencing on the Operational Commencement Date and ending on the next 30 June;
- (b) subject to paragraph (c), each subsequent 12 Month period during the Operating Phase commencing on 1 July and ending on 30 June; and

- (c) for the final Operating Year, the period from the end of the last full Operating Year (as defined in paragraph (b)) to the Expiry Date.

Operational Commencement Date means, subject to clause 26, the day after the Date of Commercial Acceptance.

Operational Readiness Co-ordinator means the person identified as such in the Contract Particulars, subject to replacement, termination or delegation in accordance with clauses 10.4 and 10.7.

Operational Readiness Plan means the Delivery Phase Plan of that name.

Operator means, as at the date of this Deed, the party listed as such in the Contract Particulars and any person who in addition or substitution is engaged by Project Co to carry out any of the Services or any Delivery Phase Activities not performed by the D&C Subcontractor.

Operator Consent Deed means the document entitled 'NGCC Operator Subcontract Consent Deed' between Project Co, the Security Trustee, the Operator, the Parent Guarantor of the Operator and others.

Operator Side Deed means the document entitled 'New Grafton Correctional Centre Operator Side Deed' dated on or about the date of this Deed between the State, Project Co, the Operator and the Parent Guarantor of the Operator substantially in the form set out in Schedule 28.

Operator Subcontract means each agreement between Project Co and the Operator to perform any of the Services or any Delivery Phase Activities not performed by the D&C Subcontractor.

Original Date for Commercial Acceptance means the Date for Commercial Acceptance set out in the Contract Particulars.

Original Reviewable Services Schedule means the component so named in the Model Output Schedule, which contains the information required under clause 33.1(b).

Output Specification means Schedule 3, as may be amended from time to time in accordance with this Deed.

Outstanding Matters Report has the meaning given in clause 37.5(b).

Overdue Rate means 2% per annum above the Bank Bill Rate.

Ownership Schedule means Schedule 19.

PAFA Act means the *Public Authorities (Financial Arrangements) Act 1987* (NSW).

PAFA Act Deed Poll of Guarantee means the guarantee made on or about the date of Financial Close pursuant to section 22B of the PAFA Act in respect of the State's financial obligations under the State Project Documents substantially in the form set out in Schedule 31.

Parent Guarantee means the guarantee:

- (a) given by the Parent Guarantor of the D&C Subcontractor to Project Co in connection with the obligations of the D&C Subcontractor to Project Co under the D&C Subcontract; and
- (b) given by the Parent Guarantor of the Operator to Project Co in connection with the obligations of the Operator to Project Co under the Operator Subcontract.

Parent Guarantor means each person giving a Parent Guarantee, which as at the date of this Deed, means the parties listed as Parent Guarantors in the Contract Particulars.

Parole Authority has the meaning given in the Corrections Act.

Payment Claim means a payment claim submitted by Project Co in accordance with clause 36.2(a) in the form reasonably required by the State.

Payment Directions Deed means the document entitled 'NGCC Payment Directions Deed' between the State, Finance Co, Project Co and the Agent in relation to this Project.

Payment Schedule means Schedule 16.

Payment Statement has the meaning given in clause 36.2(b).

Performance Bond means a bond or bank guarantee which:

- (a) is unconditional, irrevocable and payable on demand;
- (b) is issued by a financial institution that is the holder of a current licence issued by the Australian Prudential Regulation Authority and has the Required Rating;
- (c) specifies a location in Sydney (or any other place that the State approves) where demand is to be given and payment made, without further confirmation from the issuer, on any Business Day;
- (d) is governed by and to be construed according to the Laws applying in New South Wales;
- (e) is, where required, duly stamped; and
- (f) is otherwise on terms and in a form acceptable to the State, acting reasonably.

Performance Regime means the regime set out in Schedule 17.

Permitted Change in Control means in respect of a Change in Control of Project Co, any sale, transfer or other disposal by an Initial Equity Investor (or a Related Body Corporate of an Initial Equity Investor) after the date of this Deed of its interest (whether directly or indirectly) in:

- (a) Project Co; or
- (b) any company that holds Securities in Project Co,

to:

- (c) in the case of JLIL, a John Laing Associate;
- (d) in the case of JHG, a JHG Associate; and
- (e) in the case of Serco, a Serco Associate.

Permitted Security Interest has the meaning given in the State Security.

Personal Information means personal information, within the meaning given in the *Privacy Act 1988* (Cth), about current or former:

- (a) Inmates;
- (b) Staff;
- (c) Visitors; or
- (d) any other user of the Services, including former Inmates.

Pharmacy Costs has the meaning given in the Payment Schedule.

Pharmaceutical Related Items has the meaning given in the Payment Schedule.

Pharmaceutical Supply has the meaning given in the Payment Schedule.

Pharmaceuticals Reporting Spreadsheet means the Operating Phase Report of that name.

Pharmaceuticals has the meaning given in the Payment Schedule.

Pharmaceuticals Supplier means the entity appointed by Project Co or its Associates in accordance with clause 29.7 to supply Pharmaceuticals for issue or administration to Custodial Patients and any related Pharmaceutical Related Items, Pharmaceutical Supply or Urgent Pharmaceutical Supply.

POEO Act means the *Protection of the Environment Operations Act 1997* (NSW).

Policies means all standards, codes, specifications, policies, requirements, guidelines, procedures, protocols and plans to be complied with in accordance with, and subject to, the terms of this Deed including:

- (a) the standards, codes, specifications, policies, requirements, guidelines, procedures, protocols and plans set out in, or otherwise expressly referred to in, the Output Specification;
- (b) all Approvals (including any conditions or requirements under them);
- (c) all requirements and standards of Authorities; and
- (d) any other policy, guideline, standard, procedure or requirement, which applies in connection with the Project:
 - (i) which is notified to Project Co;
 - (ii) which is publicly available or otherwise available to Project Co; or
 - (iii) with which Project Co is expressly required by the terms of this Deed, by Law or by direction of the State to comply,

unless the State gives notice to Project Co that the policy, guideline, standard, procedure or requirement does not constitute a Policy for the purposes of this Deed.

Pollution has the same meaning as in the *Protection of the Environment Operations Act 1997* (NSW).

Post Completion Report means the Delivery Phase Report of that name.

Post Completion Test means those tests referred to in the Completion Requirements, which, by their nature, are unable to be successfully completed until such time as the Correctional Complex is operational.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Pre-Contract Close Activities has the meaning given to it in the Commitment Deed.

Privacy Legislation means the *Privacy Act 1988* (Cth) as amended by the *Privacy Amendment (Private Sector) Act 2000* (Cth), and any other applicable Commonwealth or NSW Government Legislation or guidelines relating to privacy.

Probity Event includes any event or thing which occurs before or after the date of this Deed which:

- (a) has a material adverse effect on, or on the perception of, the character, integrity or honesty of a Group Member, a Consortium Member or a Relevant Person;
- (b) relates to a Group Member, a Consortium Member or a Relevant Person and has or may have a material adverse effect on the public interest, or public confidence, in the Project; or
- (c) involves a material failure of a Group Member, Relevant Person, Consortium Member or any Subcontractor (who is not a Consortium Member) to achieve or maintain:
 - (i) reasonable standards of ethical behaviour;
 - (ii) the avoidance of conflicts of interest which will have a material adverse effect on the ability of the Group Member, Relevant Person, Consortium Member or Subcontractor (as applicable) to carry out and observe its obligations in connection with the Project; or
 - (iii) other standards of conduct that would otherwise be expected of a party involved in a State or NSW Government project.

Probity Investigation means any probity, criminal or security investigation to report on or check the character, integrity, experience or honesty of a person or Entity, including:

- (a) investigations into commercial structure, business and credit history, prior contract compliance or any criminal records or pending charges; and
- (b) interviews of any person or research into any relevant activity that is or might reasonably be expected to be the subject of criminal or other regulatory investigation.

Programming Requirements means the requirements set out in Schedule 4.

Project means:

- (a) the performance of the Project Activities including:
 - (i) financing the Project Activities;
 - (ii) carrying out the Delivery Phase Activities; and
 - (iii) performing the Services;
- (b) the handover of the Relevant Infrastructure to the State; and
- (c) the performance of all other obligations,

in accordance with, or as contemplated by, any Project Document, or incidental to any Project Document.

Project Activities means all works, things and tasks that Project Co is, or may be, required to do to comply with its obligations in connection with the State Project Documents, including the Delivery Phase Activities and the Services.

Project Co Act or Omission means:

- (a) a breach of this Deed by Project Co; or
- (b) any other act or omission of Project Co or its Associates other than an act or omission undertaken in accordance with the Project Documents and not undertaken fraudulently, recklessly, unlawfully, negligently or maliciously.

Project Co Background IP means any and all Material which is developed:

- (a) outside of the Project; or
- (b) in connection with the Project, to the extent such Material has or may have application for other projects of similar nature to the Project,

by or on behalf of Project Co or any of its Associates and brought to the Project by Project Co or any of its Associates and includes developments, modifications, improvements or additions to, or adaptations, customisations or enhancements of, or deletions or derivatives from, Project Co Background IP that are developed as part of the Project Activities (regardless of whether or not developed prior to the date of this Deed), but excludes the Proprietary Software.

Project Co Entities means:

- (a) Project Co; and
- (b) Finance Co,

or if the context requires, the relevant one of them.

Project Co Material means:

- (a) the Design Deliverables;
- (b) the Delivery Phase Plans and the Delivery Phase Reports;
- (c) the Operating Phase Plans and the Operating Phase Reports; and
- (d) all other Material which Project Co or any of its Associates, or any Related Body Corporate of Project Co or any of its Associates, prepares, uses or provides to the State or any of its Associates in connection with the Project whether before or after the date of this Deed.

Project Co Planning Risk Item means the batch plant and precast yard set out in the Proposal or any Modification to them.

Project Co Representative means the person identified in the Contract Particulars subject to replacement, termination or delegation in accordance with clauses 10.3 and 10.7.

Project Control Group means the group referred to in clause 10.8(a).

Project Documents means:

- (a) this Deed;
- (b) each Licence;
- (c) the Financiers Tripartite Deed;
- (d) the State Security;
- (e) the D&C Subcontract;
- (f) the D&C Side Deed;
- (g) the Operator Subcontract;
- (h) the Operator Side Deed;
- (i) the Design Subcontract Side Deed;

- (j) each other Key Subcontract;
- (k) each other Side Deed;
- (l) each Consent Deed;
- (m) each Parent Guarantee;
- (n) each Significant Subcontract;
- (o) the Independent Certifier Deed;
- (p) the PAFA Act Deed Poll of Guarantee;
- (q) the Equity Documents;
- (r) the Finance Documents;
- (s) the Escrow Deed;
- (t) the Receivables Purchase Deed;
- (u) the Payment Directions Deed; and
- (v) any other document the parties agree is a Project Document.

Project Information means:

- (a) the Site Data; and
- (b) all other Material provided or made available by or on behalf of the State or its Associates to Project Co or its Associates in connection with the Project (which is not incorporated into this Deed).

Project Management Plan means the Delivery Phase Plan of that name.

Project Objectives means the objectives of the Project included in the Contract Particulars.

Project-Specific Change in Law means a Change in Law which, by express reference, applies to:

- (a) the Project;
- (b) Project Co; or
- (c) the Site;

and not to other projects, Entities or sites.

Prolongation Costs has the meaning given in the Change Compensation Principles.

Proposal means the proposal submitted by Project Co in response to the Request for Proposal.

Proposed Early Completion Date means the date (if any) nominated and updated (where applicable) by Project Co in its Delivery Phase Program, by which Project Co proposes to achieve Completion, being a date that is prior to a Date for Completion.

Proposed Early Completion Notice means a notice provided by Project Co to the State in accordance with clause 26.

Proprietary Software means commercially available 'off the shelf' computer software:

- (a) the Intellectual Property Rights in which are not owned by:
 - (i) Project Co or any of its Associates; or
 - (ii) any Related Body Corporate of Project Co or any of its Associates;
- (b) which:
 - (i) is not developed for the specific purpose of the Project; but
 - (ii) is used by Project Co or any of its Associates, or provided to the State or any of its Associates, in connection with the Project; and
- (c) which is available to purchase on standard terms by any person willing to pay the relevant licence fee,

and includes the software listed in Schedule 32.

Quality Assurance Plans means the Operating Phase Quality Assurance Plan and the Delivery Phase Quality Assurance Plan.

Quality Assurance Report means the Delivery Phase Report of that name.

Quality Assurance Representative means the person nominated in the Quality Assurance Plans for each of Project Co and the Key Subcontractors.

Quality Assurance System means a quality assurance system that covers:

- (a) the carrying out of the Delivery Phase Activities;
- (b) performance of the Services; and
- (c) personnel and human resources during the Delivery Phase and the Operating Phase, including recruitment, training, and occupational health and safety management of Project Co and its Associates.

Quality Failure has the meaning given in the Payment Schedule.

Quarter means each three Month period commencing on a Quarterly Date, save that:

- (a) the first Quarter of the Delivery Phase will be the period from Financial Close until the day before the first Quarterly Date during the Delivery Phase;
- (b) the last Quarter of the Delivery Phase will be the period from the last Quarterly Date during the Delivery Phase to the Date of Commercial Acceptance;
- (c) the first Quarter of the Operating Phase will be the period from the Operational Commencement Date until the day before the first Quarterly Date during the Operating Phase; and
- (d) the last Quarter of the Operating Phase will be the period from the last Quarterly Date during the Operating Phase to the Expiry Date.

Quarterly Date means every 1 January, 1 April, 1 July and 1 October.

Ramp-Up Period means the period:

- (a) commencing on the Operational Commencement Date; and
- (b) ending 21 weeks after the Operational Commencement Date.

Ramp-Up Profile Schedule means Schedule 14.

Rates means all municipal rates, water rates, sewerage rates, drainage rates and other rates payable to any Authority in connection with the Site or the Relevant Infrastructure.

Receivables Purchase Deed means the document entitled 'NGCC Receivables Purchase Deed' between the State, Finance Co and Project Co in relation to this Project under which the State agrees to assign to Finance Co each Licence Fee under the Tenure Document.

Receivables Purchase Payment has the meaning given in the Receivables Purchase Deed.

Receivables Purchase Price has the meaning given in the Receivables Purchase Deed.

Recipient has the meaning given in clause 36.8(c)(ii).

Recipient Supply has the meaning given in clause 36.8(e)(i).

Records means comprehensive detailed records and business systems recorded in writing in books or filed in Project Co's or its Associate's computer system:

- (a) in respect of the Project Activities; and
- (b) in the form and encompassing all information required by the State from time to time.

Refinancing means:

- (a) any amendment to, novation or restatement or replacement of, any Finance Document;
- (b) the exercise of any right (including the giving of any waiver or consent) under any Finance Document; or
- (c) any other step, arrangement or new contractual or financing arrangement that has a substantially similar effect to that described in paragraph (a) or (b),

that will or is likely to change the type, amount, pricing, tenor, terms for payment or repayment or hedging of the financial accommodation in connection with the Project, but does not include:

- (d) the syndication or subscription of any debt under the Finance Documents that is contemplated at the date of Financial Close or, following a Refinancing, that is contemplated at the date of that Refinancing;
- (e) the change in control or sell down of any bonds in an arm's length transaction at market value;
- (f) disposals of investments or commitments of debt or equity in an arm's length transaction at market value;
- (g) any amendment to, novation, or restatement or replacement of, or waiver or consent under, any Finance Document which is a direct result of an amendment, novation, restatement, replacement, waiver or consent to cure any actual or potential event of default or review event under any Finance Document; or
- (h) entering into derivative transactions contemplated by the Finance Documents to be entered into on or before Financial Close or, following a Refinancing, contemplated to be entered into in connection with that Refinancing.

Refinancing Gain has the meaning given in clause 41.5.

Refinancing Loss has the meaning given in clause 41.5.

Refinancing Review Period has the meaning given in 41.3(a).

Refurbishment Works means the periodic maintenance, refurbishment or replacement of all elements comprising the Correctional Complex in accordance with the Asset Management Plan, and so that the Correctional Complex meets the FFP Warranty.

Related Body Corporate has the meaning given in the Corporations Act.

Related Trust Entity means with respect to an entity which is a trustee, manager or Responsible Entity of a trust or a managed investment scheme:

- (a) any Related Body Corporate of the trustee, manager or Responsible Entity;
- (b) any other trustee, manager or Responsible Entity of the trust or managed investment scheme (or Related Body Corporate) of such entity; or
- (c) any Controlling Unit Holder of the trust or managed investment scheme (or Related Body Corporate) of such an entity.

Relevant Infrastructure means:

- (a) during the Delivery Phase, the Works; and
- (b) during the Operating Phase, the Correctional Complex.

Relevant Person means:

- (a) a director or secretary of a Consortium Member;
- (b) a director or secretary of a Group Member;
- (c) Key People; or
- (d) an officer, agent, employee or consultant of a Consortium Member or Subcontractor who:
 - (i) has the ability to exercise influence or control over the decisions or actions of the Consortium Member or Subcontractor in relation to the Project other than solely through the exercise of voting rights at a meeting of shareholders or directors of the Consortium Member or Subcontractor;
 - (ii) works on, or at the Correctional Complex during the Operating Phase; or
 - (iii) has access to Confidential Design Information or Personal Information and any other Confidential Information which compromises the security of the Relevant Infrastructure.

Relief Event means any Extension Event, Intervening Event, Change Compensation Event, Compensable Event or other event which entitles Project Co to:

- (a) relief or suspension from performance of its obligations, or to an extension of time, under a State Project Document;
- (b) compensation from the State; or
- (c) bring any other Claim against the State,

in connection with the Project.

Remediate or Remediation means to remove, disperse, abate, destroy, dispose of, neutralise, remediate, treat, cap, contain or otherwise test, monitor or assess (as applicable).

Reputable Insurer means an insurance company having the Required Rating.

Request for Proposal means the Request for Proposal for the Project issued by the State on 24 June 2016.

Required Rating means a credit rating of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, Inc. (or such other credit rating as the State may approve in writing from time to time) or, if no rating is provided by Standard and Poor's (Australia) Pty Limited or by Moody's Investors Service, Inc., an equivalent rating with another reputable rating agency (as the State may approve in writing).

Residual Life Item means an item specified in the Residual Life Schedule.

Residual Life Schedule means Schedule 18.

Responsible Entity has the meaning given in the Corporations Act.

Retail Utility Contract means each contract entered into by Project Co for the supply and provision of each Utility for use at the Correctional Complex during the Operating Phase.

Review Period has the meaning given in the Review Procedures.

Review Procedures means Schedule 9.

Reviewable Services means all Services referred to in the Services Requirements, other than the Building Management Services (as defined in the Output Specification).

Reviewable Services Date means each of the 10th and 15th anniversary of the Date of Commercial Acceptance.

Reviewable Services Plan means the Operating Phase Plan of that name.

Reviewable Services Schedule means Original Reviewable Services Schedule updated under clause 33.1(c).

Reviewable Services Tender Expiry Date means 1 Month after the expiry of the then current Reviewable Services Term.

Reviewable Services Term means each of the following periods:

- (a) the period of ten years commencing on the Date of Commercial Acceptance and ending on the day prior to the tenth anniversary of the Date of Commercial Acceptance;
- (b) the period of five years commencing on the tenth anniversary of the Date of Commercial Acceptance and ending the day prior to the fifteenth anniversary of the Date of Commercial Acceptance; and
- (c) the period commencing on the fifteenth anniversary of the Date of Commercial Acceptance and ending on the Final Expiry Date,

unless otherwise changed by agreement between the parties and in each case subject to any earlier termination of this Deed.

Risk Management Plan means the Delivery Phase Plan of that name.

Savings has the meaning given in the Change Compensation Principles.

Second Pre Agreed Modification Works means additional resources working on Site and equipment required to accelerate the Works so as to overcome the Working Hours Restriction.

Secretary's Environmental Assessment Requirements or SEARS means the environmental assessment requirements issued by the Secretary of the Department of

Planning and Environment in accordance with Part 2 of Schedule 2 of the *Environmental Planning and Assessment Regulation 2000*.

Securities means shares, units, interests in a partnership, and any other interests, which would constitute 'securities' as defined under the Corporations Act.

Securitized Licence Structure means the securitisation structure relating to Licence Fees, as described in clause 36A, the Tenure Document, the Receivables Purchase Deed and the Payment Directions Deed.

Securitized Modification Payment means an amount equal to the corresponding Receivables Purchase Payment in respect of the Additional Receivables purchased by Finance Co from the State under the Receivables Purchase Deed resulting from a Change Compensation Event.

Security Interest means any mortgage, pledge, lien, encumbrance, assignment, charge or any security or preferential interest or arrangement of any kind and includes:

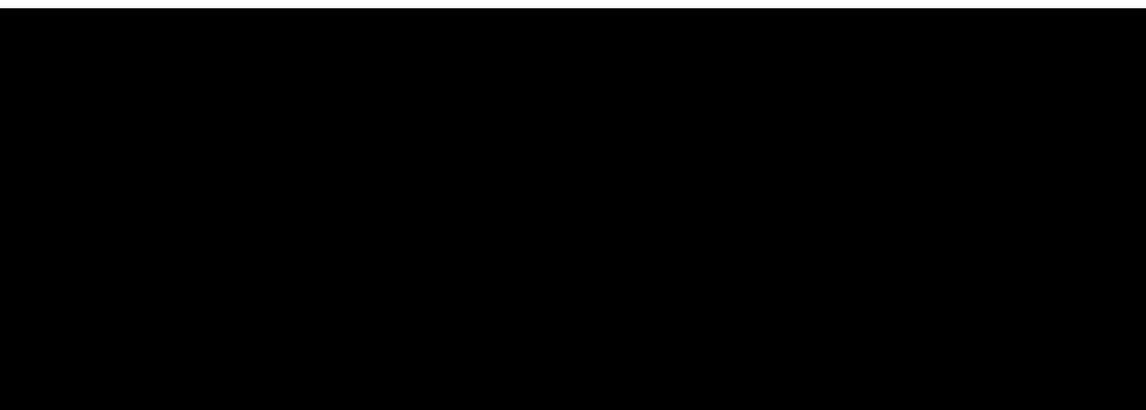
- (a) a 'security interest' as defined in section 12 of the *Personal Property Securities Act 2009* (Cth);
- (b) anything which gives a creditor priority to other creditors with respect to any asset; and
- (c) retention of title (other than in the ordinary course of day-to-day trading) and a deposit of money by way of security.

Security of Payment Act means the *Building and Construction Industry Security of Payment Act 1999* (NSW).

Security Trust Deed means the document entitled '*Security Trust Deed – NGCC PPP Project*' dated on or about the date of this Deed between, among others, Project Co, Finance Co, the Agent and the Security Trustee.

Security Trustee means at the date of this Deed, the party named as such in the Contract Particulars as replaced in accordance with the Security Trust Deed and who is from time to time party to the Financiers Tripartite Deed in that capacity.

Serco means Serco Group Pty Limited (ACN 061 889 763).



Services means:

- (a) the services referred to in the Services Requirements to be undertaken by Project Co during the Operating Phase; and
- (b) all other things Project Co is, or may be, required to provide or undertake during the Operating Phase as set out in the Services Requirements or State Project Documents,

in each case as modified in accordance with this Deed.

Service Failure Default Termination Event means the defaults described in paragraphs (i), (j) and (k) of the definition of Default Termination Event.

Services Proposal means Annexure B.

Services Requirements means the requirements for the provision of the Services as set out in:

- (a) the Output Specification;
- (b) the Services Proposal; and
- (c) the remainder of this Deed.

Side Deed means each of:

- (a) the D&C Side Deed;
- (b) the Operator Side Deed;
- (c) the Design Subcontract Side Deed; and
- (d) where the context permits, any other Subcontract Side Deed executed in accordance with clause 12.2(c).

Significant Subcontract means:

- (a) the Design Subcontract;
 - (b) in respect of the Delivery Phase, the contracts listed as such in the Contract Particulars;
 - (c) in respect of the Operating Phase, the contracts listed as such in the Contract Particulars; and
 - (d) any other Subcontract:
 - (i) the term of which exceeds 5 years; or
 - (ii) relating to the Services which are nominated by the State Representative as being critical works or services; or
 - (iii) in respect of which the total amount payable to the relevant Subcontractor, and its Related Bodies Corporate, under that Subcontract and other Subcontracts exceeds or is likely to exceed:
 - A. in respect of the Delivery Phase, [REDACTED] and
 - B. during the Operating Phase, [REDACTED]
- (each Indexed).

Significant Subcontractor means a party (other than Project Co or a Key Subcontractor) to a Significant Subcontract.

Site means the Delivery Phase Sites or the Operating Phase Site (as the case may be).

Site Access and Interface Protocols means the Delivery Phase Plan of that name.

Site Access and Tenure Schedule means Schedule 7.

Site Conditions means any physical conditions on, under, or over the surface, or in the vicinity of the Site, including:

- (a) **(water and gas)**: ground gases, ground water, ground water hydrology, surface water, water quality, salinity, the existence of any wells and the effects of any de-watering;
- (b) **(physical structures)**: physical and structural conditions above, upon and below the ground including any infrastructure, partially completed structures, Artefacts or in ground works;
- (c) **(vegetation)**: pastures, grasses or other vegetation on the Site;
- (d) **(topography)**: topography, ground surface and sub-surface conditions and geology including rock or other materials;
- (e) **(climate)**: climatic and weather conditions, rain, surface water run-off and drainage, water seepage, wind, wind-blown dust and sand seasons, mud and other effects of climatic and weather conditions;
- (f) **(Contamination)**: any Contamination;
- (g) **(Pollution)**: any Pollution;
- (h) **(physical conditions)**: all other physical conditions and characteristics of, or in the vicinity of the Site, on or below the surface which may affect Project Co's ability to carry out its obligations in accordance with this Deed; and
- (i) **(Adverse Rights)**: all Adverse Rights over or in connection with the Site.

Site Data means the data identified as such in the Contract Particulars.

Site Data Undertaking means the undertaking, in the form attached to the Contract Particulars as Attachment 1, from the author of the Site Data which may be provided to Project Co pursuant to clause 7.2(b).

Site Plans means each of the site plans, which are set out in Schedule 6.

Solvent has the meaning given in the Corporations Act.

Staff means those people engaged by Project Co or any of its Associates to perform any Services at the Correctional Complex.

Stage 1 Development Application means the state significant development application SSD 15_7413 submitted to the Development Consent Authority which seeks concept approval for the Correctional Complex.

Stage 1 Development Consent means the consent or approval granted by the Development Consent Authority under the EP&A Act in respect of the Stage 1 Development Application.

Stage 2 Development Application means the application for Stage 2 Development Consent attached as Annexure D.

Stage 2 Development Application Obligations means Project Co diligently pursuing the Stage 2 Development Consent, including by:

- (a) exercising Best Industry Practices, including by complying with Policies including planning circulars and practice notes;
- (b) diligently progressing the Stage 2 Development Application including:
 - (i) completion of the responses to submissions;

- (ii) provision to the State of the submissions within 2 weeks after receipt by Project Co of the submissions; and
- (iii) regularly assisting the State as the applicant to progress the Stage 2 Development Application;
- (c) regularly liaising with the Development Consent Authority to understand the intent of the obligations in the SEARS and to determine the key issues for assessment;
- (d) promptly responding to any requests for further submissions, documents or other information received from the State;
- (e) proactively managing issues that arise in obtaining the Stage 2 Development Consent;
- (f) ensuring all processes, peer reviews, submissions, documents or other information prepared by it or its Associates are not insufficient or incomplete and are of good quality; and
- (g) keeping the State regularly informed as to the progress of the Stage 2 Development Application.

Stage 2 Development Consent means:

- (a) the consent or approval granted or required to be granted by the Development Consent Authority under the EP&A Act in respect of the Stage 2 Development Application; and
- (b) any modification of it.

State means:

- (a) The Minister for Corrections on behalf of the Crown in right of the State of New South Wales;
- (b) Infrastructure New South Wales (ABN 85 031 302 516); and
- (c) for the purposes of this Deed and the Operator Side Deed only, the Commissioner.

State Background IP means any and all Material other than Developed IP, which is developed outside of the Project by or on behalf of the State or any of its Associates and brought to the Project by the State or any of its Associates.

State Nominee has the meaning given in clause 57.3(b).

State Project Documents means those Project Documents to which the State is a party.

State Refinancing Share has the meaning given in clause 41.6.

State Representative means the person identified as such in the Contract Particulars, subject to replacement or delegation in accordance with clause 10.2.

State Security means each of:

- (a) the document entitled '*New Grafton Correctional Centre – State Security*' between the State and Project Co; and
- (b) the document entitled '*New Grafton Correctional Centre – State Security*' between the State and Finance Co,

(or either as the context requires).

Step-In Event has the meaning given in clause 42.3.

Step-In Liability means any liability suffered or incurred by the State or any of its Associates in connection with the exercise by the State of its step-in rights.

Subcontract means an agreement which:

- (a) Project Co enters into with a Subcontractor; or
- (b) a Subcontractor enters into with another Subcontractor,

in connection with the Project Activities.

Subcontract Side Deed means a direct deed substantially in the form set out in Schedule 29.

Subcontractor means:

- (a) any person who enters into a contract in connection with the Project Activities with Project Co or any Key Subcontractor and includes the Pharmaceuticals Supplier; or
- (b) for the purposes of the definition of Relevant Person and Probity Event and clauses 12.1(d), 12.3(a), 12.3(b), 12.4 and 13.1 only, any person whose Subcontract is in connection with the Project Activities and is in a chain of contracts where the ultimate contract is with Project Co or any Key Subcontractor or Significant Subcontractor.

Sunset Date means:

- (a) in the context of an event listed in paragraph (a) or (b) of the definition of Major Default, the date that is 12 months from the Date for Technical Completion or the Date for Commercial Acceptance (as applicable);
- (b) in the context of an event listed in paragraph (c) to (p) (inclusive) of the definition of Major Default which occurs during the Delivery Phase, the last day of the period referred to in clause 48.3(d)(i) applicable to the Major Default; or
- (c) in the context of Major Default which occurs during the Operating Phase, the last day of the period referred to in clause 48.3(d)(ii) applicable to the Major Default.

Supplier has the meaning given in clause 36.8(c).

Tax or Taxes means any present or future tax, levy, impost, Duty, rate, charge, fee, deduction or withholding of any nature, imposed or levied by an Authority, the State, the NSW Government or the Commonwealth, together with any interest, penalty, charge, fee or other amount imposed or made on, or in connection with, any of the foregoing, but excluding any Rates.

Tax Invoice has the meaning given in the GST Law.

Tax Proceedings has the meaning given in clause 36.7(i)(i).

Taxable Supply has the meaning given in the GST Law, excluding section 84-5 of the GST Act.

Technical Completion means when all the Technical Completion Criteria have been met to the satisfaction of the Independent Certifier (or waived by the State).

Technical Completion Criteria means, in respect of the Works, those criteria identified as such in the Technical Completion Schedule.

Technical Completion Outstanding Item means any act, matter, state of affairs or thing that is required in accordance with this Deed to have been performed, achieved, undertaken,

provided or completed by Project Co as at Technical Completion which has not been so performed, achieved, undertaken, provided or completed by Project Co as at Technical Completion, unless the Independent Certifier has determined such act, matter, state of affairs or thing (or the cumulative impact of multiple acts, matters, state of affairs or things) is likely to prevent:

- (a) the Correctional Complex from meeting the FFP Warranty; or
- (b) Project Co from delivering the Services in accordance with the Services Requirements.

Technical Completion Plan means the Delivery Phase Plan of that name.

Technical Completion Report means the report in respect of Technical Completion required to be submitted by Project Co in accordance with clause 23.7, as amended and updated in accordance with this Deed.

Technical Completion Schedule means Schedule 12.

Technical Completion Tests means, in respect of the Works, all tests required to be carried out in accordance with this Deed to determine that Technical Completion has been achieved, including those tests set out in the Technical Completion Schedule and any Additional Technical Completion Tests.

Temporary Equipment means all plant, machinery and equipment and other items used solely for the purpose of enabling or facilitating delivery of the Works which:

- (a) does not and will not become part of the Correctional Complex; and
- (b) will not be used for performing the Services.

Tenure Document means the Operating Phase Sub-Licence.

Term means the term of this Deed:

- (a) commencing in accordance with clause 4.1; and
- (b) ending on the Expiry Date.

Termination Payment means a termination payment calculated in accordance with the Termination Payments Schedule.

Termination Payment Date means 20 Business Days after the later of:

- (a) the Expiry Date;
- (b) the date on which the amount of the relevant Termination Payment is agreed by the State and Project Co or, failing agreement, is determined by an independent expert in accordance with the Termination Payments Schedule or clause 52; and
- (c) in the case of a Default Termination Payment, the Compensation Date,

or such other date as may be specified in the Termination Payments Schedule for payment of a Termination Payment.

Termination Payments Schedule means Schedule 24.

Threshold Amount has the meaning given in clause 37.8(a).

Training and Apprenticeships Plan means the Delivery Phase Plan of that name.

Training and Apprenticeships Report means the Delivery Phase Report of that name.

Transferring Employees means all CSNSW Employees who accept an offer of employment from Project Co or its Associates.

Unavailability has the meaning given in the Payment Schedule.

Uncleared Personnel has the meaning given in clause 13.6(c).

Uninsurable Risk means a risk that is required to be insured in accordance with this Deed and is insurable at the date of this Deed, but during the Term:

- (a) insurance becomes unavailable in the recognised international insurance market in connection with that risk by Reputable Insurers; or
- (b) the insurance premium payable for insuring that risk with a Reputable Insurer or the terms and conditions of the relevant insurance are such that the risk is no longer generally being insured against by private sector providers of infrastructure similar to the Correctional Complex or activities similar to the Project Activities in Australia or in the United Kingdom,

provided that the uninsurability referred to in paragraphs (a) and (b) is not caused by:

- (c) any Project Co Act or Omission; or
- (d) an act or omission of an Inmate to the extent arising from a failure by Project Co or its Associates to perform the Services in accordance with this Deed.

Urgent Pharmaceutical Supply has the meaning given in the Payment Schedule.

Use means, in relation to any Material, the accessing, possessing, using, storing, reproducing, communicating to the public, copying, translating, adapting, modifying, customising, and enhancing of that Material, and includes the incorporation of that Material with other Material and the creation of new versions of or derivations from that Material.

Utilities Review Date means:

- (a) the anticipated Operational Commencement Date; and
- (b) each five year anniversary of the Operational Commencement Date.

Utility means any utility service, including water, electricity, gas, telephone, drainage, sewerage, stormwater, communications and data services (including telephone, facsimile and internet access).

Utility Infrastructure means any part of the supply, distribution or reticulation network owned, operated or controlled by a Utility provider, including poles, pipes, pipeline, cables, wires, conduits, tunnels, aqueduct, electrical installation, telecommunications plant, water channel, and railway and electronic communications systems, but not including any part of the Relevant Infrastructure.

Utility Interruption means any one or more Utilities not being available for use at the Site (at all or in the necessary quantity).

Visiting Magistrate has the meaning given in the Corrections Legislation.

Visitors has the meaning given in the Corrections Legislation.

Voluntary Termination means the termination of this Deed pursuant to clause 49.2.

Voluntary Termination Payment means the payment calculated in accordance with section 4 of the Termination Payments Schedule.

WHS Act means the *Work Health and Safety Act 2011* (NSW).

WHS Legislation means Legislation relating to health and safety at work including:

- (a) the WHS Act; and
- (b) the WHS Regulation,

and includes industry codes of practice, safety standards, handbooks and guidelines about work health safety and rehabilitation in place from time to time.

WHS Management Plan means the plan of that name included in the Delivery Phase Plans and Reports Schedule and the plan of that name included in the Operating Phase Plans and Reports Schedule.

WHS Management System means a documented work health and safety management system which, at a minimum, complies with Australian Standard 4801 (as amended or replaced from time to time).

WHS Regulation means the *Work Health and Safety Regulation 2011* (NSW).

Working Hours Restriction has the meaning given to that term in clause 6.8(a)(i).

Working Hours Restriction Amount has the meaning given to that term in clause 6.8(a)(iii).

Workplace Relations Management Plan means the Delivery Phase Plan of that name.

Works means, during the Delivery Phase, the physical things and works which Project Co must design, supply, construct, install, produce, commission and complete in accordance with this Deed, including any Equipment and Modifications and any rectification of Defects.

2. General rules of interpretation

2.1 Interpretation

In this Deed:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) **(Deed and Schedule references)**: a reference to:
 - (i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Deed; and
 - (ii) a section is a reference to a section of a Schedule;
- (d) **(document as amended)**: a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(Party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;

- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
- (h) **(Policies)**: a reference to a Policy means:
- (i) in the case of a Policy in existence as at the date of this Deed, the version of that Policy stated in this Deed, or if no version is stated, the current version as at the date of this Deed; or
 - (ii) in the case of new Policy which is introduced after the date of this Deed, the current version as at the date such Policy is introduced,
- in each case, as amended or updated from time to time but in all cases excluding any new Policy or amended Policy which the State notifies or directs Project Co under clause 40.10(c) that Project Co is not required to comply with;
- (i) **(definitions)**:
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
 - (ii) unless the context otherwise requires, terms which are defined in a Schedule of this Deed have the same meaning throughout this Deed (including the Schedules and Annexures to it);
- (j) **('includes')**: 'includes' and 'including' will be read as if followed by the phrase '(without limitation)';
- (k) **('or')**: the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;
- (l) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (m) **('€')**: a reference to '€', AUD or dollar is to Australian currency;
- (n) **(Business Day)**: if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;
- (o) **(day)**: except as otherwise provided in this Deed or where a reference is made to 'Business Days', day means a calendar day;
- (p) **(time)**: a reference to time is a reference to time in Sydney, Australia;
- (q) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (r) **(function)**: a function includes a power, authority or duty;
- (s) **(obligations and liabilities)**: subject to clause 5.6(a)(ii), a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;

- (t) (**'may'**): except to the extent that the State is expressly required under this Deed to act reasonably:
 - (i) in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion (and without regard to any Project Co Entity) and the State has no obligation to do so; and
 - (ii) the State may consent or grant any approval as the State (in its absolute and unfettered discretion (and without regard to any Project Co Entity)) thinks fit or may be given subject to any conditions;
- (u) (**construction**): where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (v) (**asset**): references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including Intellectual Property Rights) and any right, interest, revenue or benefit in, under or derived, from the property or asset;
- (w) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision; and
- (x) (**Delivery Phase Program**): a reference to the Delivery Phase Program is a reference to the most recent Delivery Phase Program that has been reviewed and not rejected in accordance with the Review Procedures.

2.2 Composition of this Deed and order of precedence

- (a) (**Deed composition**): This Deed comprises:
 - (i) clauses 1 to 65;
 - (ii) Schedule 1 to Schedule 32A; and
 - (iii) Annexure A to Annexure D,
 (the **Deed**).
- (b) (**Attachments**): The Attachments do not form part of this Deed.
- (c) (**Annexures**): Project Co agrees that to the extent that an Annexure seeks to impose any obligations on the State, Project Co will not be entitled to make any Claim against the State in respect of that obligation (unless that same obligation is expressly imposed on the State in a clause or Schedule).
- (d) (**Notification of ambiguity**): If either party identifies an inconsistency, ambiguity or discrepancy within this Deed, then that party must notify the other party of the inconsistency, ambiguity or discrepancy as soon as possible and, in any case not later than 5 Business Days after becoming aware of the inconsistency, ambiguity or discrepancy.

- (e) **(Resolution of ambiguity):** Within the Review Period, the State will direct Project Co as to how to resolve the inconsistency, ambiguity or discrepancy which is the subject of the notice given under clause 2.2(d) as follows:
 - (i) **(Order of precedence):** if the relevant inconsistency, ambiguity or discrepancy is within a document forming part of this Deed, and there is a process for resolving such inconsistencies, ambiguities and discrepancies contained in the relevant document, then, in accordance with that process; or
 - (ii) **(Higher standard):** if the inconsistency, ambiguity or discrepancy is between documents forming part of this Deed or is within a document that forms part of this Deed but does not have a process for resolving the inconsistency, ambiguity or discrepancy, then the State will direct Project Co to adopt the option the State requires Project Co to proceed with, which may be the greater, more onerous to Project Co, or higher requirement, standard, quality, level of service, staffing level, quantum or scope as determined by the State.
- (f) **(Inconsistency between Policies):** Without limiting the remainder of this clause 2.2, to the extent there is any inconsistency, ambiguity or discrepancy between the Policies which Project Co is required to comply with pursuant to this Deed, the standards, codes, specifications, policies and requirements set out in paragraphs (a), (b) and (c) of the definition of Policies will prevail over the standards, codes, specifications, policies and requirements referred to in paragraph (d) of that definition.
- (g) **(Inconsistency between State Project Documents):** If there is an ambiguity, discrepancy or inconsistency between this Deed and any other State Project Document, then the following order of precedence will apply:
 - (i) Financiers Tripartite Deed;
 - (ii) this Deed; and
 - (iii) the remaining State Project Documents.
- (h) **(Inconsistency with the Corrections Legislation):** Where there is an ambiguity, discrepancy or inconsistency, or a conflict of Project Co's obligations, between the Corrections Legislation and this Deed, Project Co must:
 - (i) notify the State of any such ambiguity, discrepancy, inconsistency or conflict as soon as possible and, in any case, no later than 5 Business Days after becoming aware of the ambiguity, discrepancy, inconsistency or conflict; and
 - (ii) to the extent that compliance with Project Co's obligations under this Deed will give rise to a breach of its obligations under the Corrections Legislation, comply with its obligations under the Corrections Legislation, in which case, Project Co will be deemed to have complied with this Deed to that same extent.

2.3 Plans, Reports and Procedures

A reference to any Delivery Phase Plan, Delivery Phase Report, Operating Phase Plan or Operating Phase Report is a reference to that Delivery Phase Plan, Delivery Phase Report, Operating Phase Plan or Operating Phase Report as amended or updated from time to time under this Deed.

2.4 Version of documents with which Project Co must comply

Where Project Co is required to comply with a document, and that document or any update of that document is required to be submitted for review in accordance with the Review Procedures, Project Co must comply with the version of the document that has been submitted, reviewed and amended (if applicable) in accordance with the Review Procedures.

2.5 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Deed or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands must be given in writing.

2.6 Prior approval or consent

Where Project Co is required by this Deed to obtain the State's or the State Representative's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained prior to the action, document or thing occurring or coming into effect.

2.7 Action without delay

Unless there is a provision in this Deed, which specifies a period of time in which the parties must do something, all things must be done without undue delay.

2.8 Provisions limiting or excluding Liability, rights or obligations

- (a) **(Other rights not excluded):** A right or obligation of the State or Project Co under this Deed will not limit or exclude any other right or obligation of the State or Project Co under this Deed unless expressly stated.
- (b) **(Liability only excluded to the extent permitted by Law):** Any provision of this Deed which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

2.9 Relationship of the parties

Nothing in this Deed or any other Project Document:

- (a) **(No additional relationship):** creates a partnership, joint venture or fiduciary, employment or agency relationship between the State and:
 - (i) Project Co; or
 - (ii) any of Project Co's Associates; or
- (b) **(No good faith):** imposes any duty of good faith on the State (unless otherwise expressly provided).

2.10 State's executive rights, duties and functions

- (a) **(State's own interests):** Unless otherwise expressly provided in the State Project Documents, nothing in the State Project Documents gives rise to any duty on the part of the State to consider interests other than its own interests when exercising any of its rights or carrying out any of its obligations in accordance with the State Project Documents.
- (b) **(State's rights):** Notwithstanding anything expressly provided or implied in the State Project Documents to the contrary, the parties acknowledge and agree that (and Project Co must procure Finance Co's agreement that):

- (i) the State and its Associates are not obliged to exercise any executive or statutory right or duty, or to influence, over-ride, interfere with or direct any other government party in the proper exercise and performance of any of its executive or statutory rights or duties; and
 - (ii) nothing expressly provided or implied in the State Project Documents has the effect of constraining the State or any of its Associates, placing any fetter on the State's or any of its Associates discretion to exercise or not to exercise any of its executive or statutory rights or duties.
- (c) **(No Claim)**: Subject to clause 2.10(d), Project Co will not be entitled to (and must ensure that Finance Co does not) make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise any of its executive or statutory rights or duties.
- (d) **(Liability for breach)**: Clauses 2.10(a) to 2.10(c) (inclusive) do not limit any Liability which the State would have had to any Project Co Entity under any State Project Document as a result of a breach by the State of a term of any State Project Document but for those clauses.

2.11 Reasonable endeavours and obligations to act in good faith

Any statement in a State Project Document providing that the State (or any officer or agent of the State (including the Commissioner)) will use or exercise 'reasonable endeavours', 'act reasonably' or 'act in good faith' in relation to an outcome, means that the State (or any officer or agent of the State (including the Commissioner)):

- (a) **(Relevant steps)**: will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) **(No guarantee)**: does not guarantee the relevant outcome will be brought about; and
- (c) **(No obligation)**: is not required to:
 - (i) exercise a right of any government party, or to influence, over-ride, interfere with or direct any other government party in the proper exercise and performance of its legal, statutory or executive duties and functions;
 - (ii) exercise a power or discretion or otherwise act in a manner that the State (or the officer or agent of the State (including the Commissioner)) regards as not in the public interest;
 - (iii) develop or implement new policy or a change in policy;
 - (iv) procure any new Legislation or a change in Legislation; or
 - (v) act in any way that the State (or the officer or agent of the State (including the Commissioner)) regards as not in the public interest.

The parties agree that clause 2.11(a) does not apply to any statement in a State Project Document providing that the State will 'act in good faith' in relation to an outcome.

2.12 No State liability for review

- (a) **(No obligation)**: The State does not owe any duty of care to Project Co (or any duty of care to Project Co to procure that any of the Associates of the State or the Independent Certifier) to:
 - (i) review Project Co Material submitted by Project Co (including where submitted in accordance with the Review Procedures); or

(ii) inspect or review the Project Activities or the Relevant Infrastructure, for Defects, other errors or omissions or for compliance with the State Project Documents or any Laws or Policies.

(b) **(No relief):** No:

- (i) review of, comments upon, acceptance, approval or certification of any Project Co Material by the State or its Associates or the Independent Certifier;
- (ii) inspection or review of the Project Activities or the Relevant Infrastructure by the State or its Associates or the Independent Certifier; or
- (iii) failure by (or on behalf of) the State or its Associates or the Independent Certifier, to detect any non-compliance by any Project Co Entity with its obligations in accordance with the State Project Documents or any Laws or Policies;

will:

- (iv) relieve any Project Co Entity from, or alter or affect, its Liabilities, obligations or responsibilities whether in accordance with the State Project Documents or otherwise according to Law;
- (v) evidence or constitute the grant of an extension of time, or a request or direction to accelerate, disrupt, prolong or vary any or all of the Project Activities;
- (vi) prejudice the State's rights against any Project Co Entity whether under the State Project Documents or otherwise according to Law; or
- (vii) constitute an approval by the State or the Independent Certifier of any Project Co Entity's performance of its obligations in accordance with the State Project Documents.

2.13 Indexation

- (a) **(Indexed amounts):** All amounts required to be adjusted under this Deed by an Index will be Indexed in accordance with the Payment Schedule.
- (b) **(Changes to indexes):** Any changes to Indexes will be calculated in accordance with the Payment Schedule.

2.14 Cost of carrying out obligations

- (a) Each party must carry out its obligations under this Deed at its own cost, unless expressly provided otherwise.
- (b) Except as otherwise expressly provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

2.15 Exclusion of Civil Liability Act 2002 (NSW)

- (a) **(Excluded operation of Civil Liability Act):** To the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any and all rights, obligations and Liabilities arising under or in relation to this Deed, howsoever those rights, obligations or Liabilities are sought to be enforced.

- (b) **(Subcontracts must exclude operation of Civil Liability Act):** Project Co must procure that each Subcontract includes provisions that, to the extent permitted by Law, effectively exclude the operation of Part 4 of the *Civil Liability Act 2002 (NSW)* in relation to all rights, obligations or Liabilities arising under or in relation to that Subcontract howsoever such rights, obligations or Liabilities are sought to be enforced.

2.16 Final and binding

Where a determination, decision, opinion or direction is said in this Deed on any basis to be “final and binding”, neither party is entitled to challenge that decision, opinion or direction.

2.17 Governing Law

This Deed is governed by, and must be construed according to, the Laws of New South Wales, Australia.

2.18 Entire Agreement

- (a) To the extent permitted by Law and in relation to their subject matter, this Deed and the other State Project Documents:
- (i) **(Entire understanding):** embody the entire understanding of the parties and constitute the entire terms agreed by the parties; and
 - (ii) **(Prior agreements):** supersede any prior agreement of the parties.
- (b) The parties acknowledge and agree that:
- (i) the Pre-Contract Close Activities performed by Project Co or its Associates are deemed to form part of the Delivery Phase Activities under this Deed; and
 - (ii) Project Co and its Associates is responsible for all of the risks and assumes all of the liabilities in relation to the performance of the Pre-Contract Close Activities, in accordance with the terms of this Deed,
- regardless of whether the Pre-Contract Close Activities are performed before, on or after the date of this Deed.

2.19 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this Deed.

2.20 Project Co and its Associates

Any obligation of Project Co under a State Project Document is deemed to include an obligation on Project Co to ensure that each of its Associates assume and comply with the corresponding obligation to the extent that the obligation is applicable to that Associate of Project Co under any Law or a Project Document to which that Associate is a party.

2.21 Survival of certain provisions

- (a) **(Surviving clauses):** All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:
- (i) the State's rights to set-off and recover money;

- (ii) confidentiality or privacy;
 - (iii) Intellectual Property Rights;
 - (iv) any obligation to make any Accounts and Records available to the State;
 - (v) any indemnity or financial security given in accordance with this Deed;
 - (vi) the Performance Regime to the extent required to give effect to the State's rights and entitlements under the Performance Regime in respect of any events or circumstances that occurred prior to the rescission, termination or expiration of this Deed;
 - (vii) any limitation or exclusion of Liability; and
 - (viii) any right or obligation arising on termination of this Deed.
- (b) **(Interpretation):** No provision of this Deed which is expressed to survive the termination of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination of this Deed.
- (c) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document, which implements any transaction under this Deed.

2.22 Waiver

- (a) **(Writing):** A waiver given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver):** A failure to, a delay in, or the partial exercise or enforcement of, a right provided by Law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Deed.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

2.23 Severance

If, at any time, a provision of this Deed or any other State Project Document is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Deed or any other relevant State Project Document; or
- (b) that provision under the Law of any other jurisdiction.

2.24 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

2.25 Moratorium legislation

A provision of any Law which comes into effect after the date of this Deed and operates to:

- (a) increase or improve any of Project Co's rights, powers or remedies under this Deed or otherwise; or
- (b) prejudicially affect the exercise by the State of any right, power or remedy under this Deed or otherwise,

(each matter referred to in (a) and (b), a "Specified Effect") is, to the extent only that the Law has the Specified Effect, expressly waived by Project Co to the extent it is legally able to do so. If a waiver is ineffective the parties will consult in good faith to determine how the parties can be restored to their original position under this Deed.

Part B - Project commencement

3. Conditions Precedent

3.1 Commencement

- (a) This Deed will only come into force and effect (but will do so automatically on the date) when the last of the Conditions Precedent to be satisfied, has been satisfied, (or waived in accordance with clause 3.3) except for the provisions contained in:
- (i) clause 1 (Definitions);
 - (ii) clause 2.1 (Interpretation);
 - (iii) clause 2.9 (Relationship of the parties);
 - (iv) clause 2.10 (State's executive rights, duties and functions);
 - (v) clause 2.11 (Reasonable endeavours and obligations to act in good faith);
 - (vi) clause 2.12 (No State liability for review);
 - (vii) this clause 3 (Conditions Precedent);
 - (viii) clause 4 (Term);
 - (ix) clause 5.3 (All Risks);
 - (x) clause 6.3(b) (Lodgement of Stage 2 Development Application);
 - (xi) clause 7 (Project Information);
 - (xii) clause 8.1 (Project Co to inform itself);
 - (xiii) clause 8.2 (No representations from the State);
 - (xiv) clause 8.11 (General Site undertakings);
 - (xv) clauses 10.2 and 10.3 (Parties' representatives);
 - (xvi) clause 14 (Independent Certifier);
 - (xvii) clause 43 (Relief Events);
 - (xviii) clause 45 (Indemnities and Consequential or Indirect Loss);
 - (xix) clause 46 (Insurance);
 - (xx) clauses 50 to 53 (Dispute resolution);
 - (xxi) clause 54 (Representations and warranties);
 - (xxii) clause 57 (Assignment and amendments);
 - (xxiii) clause 58 (Change in Control);
 - (xxiv) clause 59.1 (Updating the Base Case Financial Model at Financial Close);

- (xxv) clause 61 (Intellectual Property Rights);
- (xxvi) clause 62 (Confidential Information and disclosure);
- (xxvii) clause 62.8 (Privacy);
- (xxviii) clause 63 (Probity Events and Probity Investigations); and
- (xxix) clause 64 (Notices and bar to Claims),

which will commence on the date of this Deed.

3.2 Satisfaction of Conditions Precedent

- (a) **(Conditions Precedent Schedule)** The Conditions Precedent Schedule sets out which party is to satisfy each Condition Precedent.
- (b) **(State to use reasonable endeavours)** The State must use reasonable endeavours to satisfy each Condition Precedent it is obliged to satisfy in accordance with the Conditions Precedent Schedule (or procure its waiver in accordance with clause 3.3) by the Condition Precedent Deadline, and must notify Project Co as each Condition Precedent is satisfied.
- (c) **(Project Co to satisfy)** Project Co must satisfy each Condition Precedent it is obliged to satisfy in accordance with the Conditions Precedent Schedule (or procure its waiver in accordance with clause 3.3) by the Condition Precedent Deadline and must notify the State as each Condition Precedent is satisfied.
- (d) **(Notice at Financial Close)** When the last Condition Precedent to be satisfied has been satisfied or waived, the State must confirm by notice to Project Co that every Condition Precedent has been satisfied or waived, and the date upon which the last of the Conditions Precedent was satisfied or waived.

3.3 Waiver of Conditions Precedent

- (a) **(Conditions Precedent Schedule)** The Conditions Precedent Schedule sets out which party benefits from the satisfaction of each Condition Precedent.
- (b) **(Waiver)** A Condition Precedent is only waived if:
 - (i) where the Condition Precedent is included for the benefit of a particular party as set out in the Conditions Precedent Schedule, that party gives notice of the waiver of the Condition Precedent to the other party; and
 - (ii) where the Condition Precedent is included for the benefit of both parties, both parties agree to waive the Condition Precedent.

3.4 Failure to satisfy by the Condition Precedent Deadline

If any Condition Precedent is not satisfied (or waived in accordance with clause 3.3(b)) by the Condition Precedent Deadline, then:

- (a) **(Option to terminate)** the State may terminate this Deed upon giving not less than 5 Business Days' notice to Project Co;
- (b) **(State Project Documents terminated)** if the State terminates this Deed in accordance with clause 3.4(a), each of the State Project Documents will be taken to have been terminated at the time this Deed is terminated and will be of no further force or effect; and
- (c) **(No claim):** neither party will have any Claim against the other party arising out of or in connection with the Project or the Project Documents, including due to the

failure to satisfy (or procure the waiver of) a Condition Precedent, except in respect of antecedent breaches of the clauses listed in clause 3.1.

3.5 Model Output Schedule

- (a) **(Model Output Schedule):** The parties acknowledge that the Financial Close Financial Model will contain the Model Output Schedule.
- (b) **(Conformed copies):** As soon as practicable after Financial Close, the parties will prepare conformed copies of the Project Documents incorporating relevant data derived from the Model Output Schedule.

4. Term

4.1 Commencement date

Subject to clause 3.1, this Deed commences on the date of Financial Close.

4.2 Expiry Date

This Deed will terminate on the Final Expiry Date unless terminated earlier, in which case this Deed will expire on the date of such earlier termination (in each case an **Expiry Date**).

Part C - General Obligations

5. Overarching obligations

5.1 Project Co's primary obligations

- (a) **(Deliver the Project)** Project Co must:
- (i) carry out the Project Activities in accordance with:
 - A. the Project Documents;
 - B. all applicable Laws and Policies;
 - C. the Delivery Phase Plans and the Operating Phase Plans (as applicable); and
 - D. Best Industry Practices;
 - (ii) ensure that neither it nor any of its Associates cause the State or any of the State's Associates to breach any Law; and
 - (iii) ensure that it manages all risks associated with the Project Activities in accordance with Best Industry Practices.
- (b) **(Comply with directions)** Project Co must comply with:
- (i) all directions given by the State or the State Representative to comply with the terms of the State Project Documents;
 - (ii) all agreements made by the parties in accordance with this Deed;
 - (iii) all Modification Orders and Change Responses issued by the State in accordance with this Deed; and
 - (iv) all directions or determinations given:
 - A. by the State, the State Representative or the Independent Certifier in accordance with State Project Documents;
 - B. in accordance with the Corrections Legislation by the person with the power to give such directions or make such determinations; or
 - C. by the Commissioner in accordance with clause 5.1(b)(iv)B or otherwise in accordance with this Deed,

whether or not Project Co disputes that such direction is a direction or asserts that the direction is or determination is a Modification under this clause, except as required by Law.
- (c) **(Project Co not to act):** Except as otherwise required by Law, Project Co must not accept or act upon directions in connection with the Project Activities from an employee or agent of the State other than:
- (i) the State Representative or a State delegate appointed in accordance with clause 10.2;
 - (ii) the Commissioner or its delegates delegated with the relevant authority in accordance with the Corrections Act; and

- (iii) the Minister or its delegates delegated with the relevant authority in accordance with the Corrections Act.

5.2 Disputed Directions

- (a) **(Comply with direction):** Subject to clause 40, where Project Co disputes that any direction given or determination made has been given or made in accordance with clause 5.1(b) or clause 5.1(c) Project Co must, save where the direction would cause it to breach any Legislation, comply with the direction or determination, but at the same time may refer the Dispute for determination in accordance with clause 50.
- (b) **(Determination of Dispute):** An expert, arbitrator, court or tribunal with power to determine a Dispute under this Deed will have the power to open up and review the direction purported to be given or determination purported to be made under this Deed.

5.3 All Risks

- (a) **(All risks and no claim)** Except as otherwise expressly provided in the State Project Documents, as between the State and the Project Co Entities:
 - (i) Project Co accepts (and must procure Finance Co to accept) all risks (and the cost of such risks) in connection with the Project, the Site, the Site Conditions, the Correctional Complex or the Project Documents; and
 - (ii) Project Co is not entitled to make (and must procure Finance Co does not make) any Claim against the State or any of its Associates in connection with the Site, the Site Conditions, the Correctional Complex, the Project or the Project Documents, including any Claim for breach of contract, misrepresentation or negligence (other than a Claim for breach of contract where the State fails to make any payment properly due to Project Co under this Deed).
- (b) **(Liability exceptions)** Clause 5.3(a) does not:
 - (i) limit any Project Co Entity's right to raise any defence in relation to a Claim made by the State against any Project Co Entity;
 - (ii) exclude or limit any Liability the State or any of its Associates may have to Project Co or any of its Associates under this Deed or at Law in respect of any Project Co Entity's liability to a third party in respect of death, personal injury or damage to property to the extent that the Liability of Project Co or its Associates is a consequence of:
 - A. a breach by the State of a State Project Document; or
 - B. a fraudulent, reckless, unlawful, negligent or malicious act or omission of the State or a State Associate; or
 - (iii) subject to and without limiting clause 5.3(c), exclude or limit any Liability the State may have to any Project Co Entity under the State Project Documents or at Law in respect of Liability incurred by any Project Co Entity as a result of a breach by the State of any State Project Document.
- (c) **(Project Co acknowledgement):** Project Co acknowledges and agrees that its sole financial entitlement and the State's sole financial Liability:
 - (i) for delay, disruption or disturbance to the progress of any part of the Works, including by reason of an Extension Event, a Change in

Mandatory Requirements, a Compensable Event, a Contamination Compensation Event or a Modification, is limited:

- A. to the amount payable by the State to Project Co in accordance with clauses 8.6, 38.14, 38.7, 38A, 40 and 40.10 (as applicable) and the Change Compensation Principles; and
 - B. to the extent resulting from a breach by the State of clause 38.12(b), damages claimed by Project Co from the State as compensation for the costs of such delay, disruption or disturbance provided any Claim is notified to the State in accordance with clause 64 within 20 Business Days after Project Co becomes aware of the breach by the State; and
- (ii) for prevention, delay, hindrance or disruption to the performance of the Services arising out of or in connection with an Intervening Event, including any Compensable Intervening Event, is limited to the amount payable by the State to Project Co in accordance with clauses 39.6, 39.7 and 39.8 (as applicable) and the Change Compensation Principles.

5.4 Fit For Purpose Warranty

Project Co warrants that at all times on and from the Date of Commercial Acceptance until the end of the Term the Correctional Complex will:

- (a) **(Fit for Purpose)**: be Fit For Purpose, by reference to the purposes, function, uses and requirements which are current and apply as at the Date of Commercial Acceptance;
- (b) **(Handover Condition)**: meet the relevant Handover Condition; and
- (c) **(Compliance)**: comply with:
 - (i) all applicable Laws; and
 - (ii) all applicable Policies.

5.5 Minimum requirements not sufficient

Project Co acknowledges and agrees that to the extent that the Design Requirements or Services Requirements specify or prescribe a minimum requirement, the delivery of the Correctional Complex or the performance of Services (as applicable) in compliance with those minimum requirements may not of itself be sufficient for Project Co to discharge its obligations pursuant to this Deed.

5.6 Corrections Legislation

- (a) **(Status of this Deed and the Commissioner)**: The parties agree that:
 - (i) this Deed is a management agreement entered into by the Commissioner, inter alia, under section 238 of the Corrections Act; and
 - (ii) the Commissioner:
 - A. is bound by the obligations and Liabilities assumed by; and
 - B. is entitled to exercise the rights conferred on,
- the State pursuant to this Deed to the extent only of the Commissioner's delegated or Legislative functions.

- (b) **(Corrections Legislation and other Law):** Project Co must, and must ensure that its Associates, at all times comply with:
- (i) the Corrections Legislation, including:
 - A. any directions of the Commissioner or any authorised person given under the Corrections Legislation; and
 - B. any functions pursuant to the Corrections Legislation delegated to Project Co or its Associates or the subject of an authority issued by the Commissioner, including any such functions conferred or imposed on the Commissioner, a governor or a correctional officer; and
 - (ii) any other Law, so far as that Law affects the Correctional Complex or the welfare of Inmates.
- (c) **(Sufficient Staff):** Project Co must, or must ensure that the Operator, employs sufficient Staff, including custodial and paramedical Staff, to enable Project Co to discharge its obligations under this Deed.
- (d) **(Reports):** Project Co must submit to the Commissioner periodic reports (including those reports required to be submitted by Project Co in accordance with the Output Specification) and audited accounts in relation to the management of the Correctional Complex.
- (e) **(Minimum standard):** The parties agree that Parts B1 to B4 (inclusive) of the Output Specification comprises the written statement setting out minimum standards in relation to the exercise of any functions by Project Co in relation to the management of the Correctional Complex for the purpose of section 248(1) of the Corrections Act.
- (f) **(Declaration of the Correctional Complex and Correctional Centres):** No later than 30 Business Days prior to the date on which Project Co anticipates that it will achieve Technical Completion, Project Co must provide to the State a detailed survey prepared by a registered surveyor showing the boundaries of:
- (i) the Correctional Complex; and
 - (ii) each Correctional Centre,
- within the Site.
- (g) **(The Commissioner):** The Commissioner acknowledges and agrees:
- (i) that the Minister for Corrections on behalf of the Crown in the right of the State of New South Wales and Infrastructure New South Wales have together entered into the State Project Documents (other than this Deed and the Operator Side Deed) as the “State”; and
 - (ii) the exercise of its rights under this Deed and the Operator Side Deed are subject to the terms of the other State Project Documents as if it were also a party to those documents.

6. Approvals and consents

6.1 Key Planning Approvals

- (a) **(State obtained Key Planning Approvals):** Prior to the date of this Deed, the State obtained the Key Planning Approvals.

- (b) **(Compliance):** Project Co must:
 - (i) comply with; and
 - (ii) ensure that the Relevant Infrastructure complies with,
all Key Planning Approvals, including all conditions and requirements of the Key Planning Approvals.

6.2 Other Approvals

- (a) **(General):** Without limiting clauses 6.1(b) and 6.3, Project Co must:
 - (i) obtain (other than the Key Planning Approvals and the Stage 2 Development Consent), maintain and comply with; and
 - (ii) ensure that the Relevant Infrastructure satisfies and complies with,
all Approvals (including any modifications to any Approvals) necessary for the Project, including all conditions and requirements of those Approvals.
- (b) **(Copies and evidence of compliance):** Project Co must promptly provide to the State:
 - (i) copies of all Approvals when they are obtained, amended or renewed; and
 - (ii) upon request, evidence that the conditions or requirements of all Approvals have been complied with.

6.3 Stage 2 Development Consent

- (a) **(Preparation):** Project Co:
 - (i) has prepared the Stage 2 Development Application; and
 - (ii) must comply with the Stage 2 Development Application Obligations.
- (b) **(Lodgement of Stage 2 Development Application):** Subject to receipt by the State of a complete copy of the Stage 2 Development Application, the State will submit, as applicant, the Stage 2 Development Application with the Development Consent Authority.
- (c) **(State's obligations):** Notwithstanding that the State is the named applicant in respect of the Stage 2 Development Application and as such the Stage 2 Development Consent will be granted in favour of the State, Project Co acknowledges and agrees that the State's only obligations in respect of the Stage 2 Development Application are set out in clauses 6.3(b), 6.4(a) and 6.4(c).
- (d) **(Statutory discretion):** Project Co acknowledges and agrees that the terms of the Stage 2 Development Consent arise from the exercise of a statutory discretion by the Development Consent Authority in accordance with the terms of the EP&A Act.

6.4 Information and notification

- (a) **(Notification):** The State must:
 - (i) ensure that Project Co is promptly notified of and provided copies of:
 - A. the contents of any communication or notice from any Authorities (and any submission or objections by any third party) in respect of the Stage 2 Development Application; and

- B. the grant of the Stage 2 Development Consent, including details of any conditions or requirements to which the Stage 2 Development Consent is subject;
 - (ii) advise Project Co promptly of any proposed meeting with any Authority in relation to the Stage 2 Development Application so that Project Co may be present at the meeting; and
 - (iii) keep Project Co regularly informed of the progress of the Stage 2 Development Application.
- (b) **(Information to be available upon request of State Representative):** Project Co must:
- (i) ensure that the State is promptly notified of and provided with copies of the contents of any communication or notice from any Authority (and any submission or objections by any third party) in respect of the Stage 2 Development Application; and
 - (ii) make available such further information regarding the Stage 2 Development Application and its progress as the State Representative may reasonably request and in such form as the State Representative may reasonably request.
- (c) **(Information to be available upon request of Project Co):** If the Development Consent Authority requires any additional information directly from Project Co solely in relation to the Facilitation Works which Project Co is not able to provide (exercising Best Industry Practices):
- (i) Project Co must promptly request such information from the State with copies of all relevant correspondence, notice of minutes, the reasonable time period required for response (having regard to the Delivery Phase Program) and any other information; and
 - (ii) the State must make available to Project Co such further information regarding the Facilitation Works within the time specified in Project Co's request pursuant to clause 6.4(c)(i).

Upon receipt of such information from the State, Project Co must promptly provide such information to the Development Consent Authority.

6.5 Appealing the Stage 2 Development Consent

- (a) **(State Representative may notify Project Co):** Without limiting clause 6.6, where the Development Consent Authority grants, or indicates that it will grant, the Stage 2 Development Consent (and any modifications to the Stage 2 Development Consent granted by the Development Consent Authority) subject to conditions or requirements which the State wishes to challenge, the State Representative may give Project Co a written direction within 10 Business Days after the State Representative becomes aware of the grant or proposed grant of the Stage 2 Development Consent subject to the relevant condition or requirement to appeal the imposition of that condition or requirement and Project Co must appeal the imposition of that condition or requirement.
- (b) **(Project Co's right to appeal a Stage 2 Development Consent):** Where the Development Consent Authority grants, or indicates that it will grant, the Stage 2 Development Consent subject to conditions or requirements which Project Co wishes to appeal, Project Co may appeal the imposition of such conditions by exercising an appeal right available to it under the EP&A Act or any applicable Law, but only if such appeal:
- (i) is made in good faith by the commencement of appropriate proceedings;

- (ii) is made at no cost to the State and does not expose Project Co or the State to any potential Liability or Claim;
- (iii) is permitted by, and is conducted in accordance with, applicable Law;
- (iv) does not materially prejudice the conditions of the Stage 2 Development Consent; and
- (v) is conducted by and in the name of Project Co,

and provided that Project Co will have no Claim against the State in connection with the appeal or the outcome of the appeal.

- (c) **(Project Co to continuously inform)**: Project Co must keep the State informed of the progress and nature of any appeal to a condition or requirement of the Stage 2 Development Consent under this clause 6.5 and must consult in good faith with the State Representative regarding the conduct of any such appeal.
- (d) **(No relaxation or waiver)**: Except as expressly provided in this clause 6.5, Project Co must not (and will procure that any Project Co Associate does not) apply for or agree to any change, relaxation or waiver of the Stage 2 Development Consent, or of any condition or requirement of it without the prior written consent of the State Representative.

6.6 Modification to the Stage 2 Development Consent

Project Co acknowledges and agrees that nothing in clause 6.3 to 6.5 will limit the State's right to seek an amendment or modification to the Stage 2 Development Consent.

6.7 Other Approvals

Where any Approval is issued with conditions which would or could have a material adverse effect on the ability of Project Co to carry out the Project Activities under this Deed, or otherwise affects Project Co's ability to meet its obligations under this Deed, Project Co must:

- (a) **(notification)**: notify the State that those conditions would or could have such an effect; and
- (b) **(State's right to review)**: provide to the State for review in accordance with the Review Procedures, a copy of the relevant Approvals issued with conditions, together with Project Co's detailed proposal for satisfying those Approvals in a manner that would not have a material adverse effect.

For the avoidance of doubt, this clause 6.7 does not apply to the Stage 2 Development Consent to the extent that clause 6.5 applies.

6.8 Working Hours Restriction

- (a) The parties:
 - (i) acknowledge condition C1.b in Schedule 3, Part C of the Stage 1 Development Consent which restricts the working hours on the Site on Saturdays during the Delivery Phase to between 8am and 1pm **(Working Hours Restriction)**;
 - (ii) agree that, after Financial Close, they will use reasonable endeavours to apply to modify the Working Hours Restriction so that the restriction is deleted from the condition or modified so as to permit working hours between 8am and 3pm on Saturdays; and
 - (iii) acknowledge that Project Co will incur costs of [REDACTED] prior to any opportunity to modify the Working Hours Restriction in

accordance with clause 6.8(a)(ii) (**Working Hours Restriction Amount**).

- (b) If the parties are unable to modify or remove the Working Hours Restriction in the manner proposed by clause 6.8(a)(ii) by:
 - (i) Financial Close, then Project Co may, by notice in writing to the State within 20 Business Days after Financial Close elect to exercise its rights under clause 6.8(c); and
 - (ii) 2 January 2018, then Project Co may, by notice in writing to the State within 20 Business Days after 2 January 2018 elect to exercise its rights under clause 6.8(d).
- (c) If Project Co gives a notice in accordance with clause 6.8(b)(i) then:
 - (i) Project Co may elect to perform the First Pre Agreed Modification Works; and
 - (ii) if Project Co elects to perform the First Pre Agreed Modification Works, the State will pay Project Co the Working Hours Restriction Amount within 45 Business Days of Project Co giving notice in accordance with clause 6.8(b)(i).
- (d) If Project Co gives a notice in accordance with clause 6.8(b)(ii) then:
 - (i) Project Co may elect to perform the Second Pre Agreed Modification Works; and
 - (ii) if Project Co elects to perform the Second Pre Agreed Modification Works, the State will pay Project Co the amount calculated in accordance with the Change Compensation Principles up to a maximum of [REDACTED]
- (e) Project Co acknowledges and agrees that:
 - (i) its only claim for additional costs arising out of or in connection with the Working Hours Restriction is in accordance with this clause 6.8; and
 - (ii) it has no right to bring any other Claim (including a claim for an extension of time) arising out of or in connection with the Working Hours Restriction.

7. Project Information

7.1 No representations from the State

Subject to clause 8.2(b), Project Co acknowledges and agrees that the State, its Associates and the author of any report provided in the Project Information have not made and make no representations (express or implied), and give no warranties or guarantees (express or implied), and owe no duty of care (express or implied), in respect of:

- (a) (**Project information**): the accuracy, suitability, adequacy, completeness of, or any omissions from, the Project Information; or
- (b) (**Proposal**): the feasibility or fitness for purpose of the Proposal (or any part of it).

7.2 Site Data

The State will either:

- (a) **(Assignment)**: assign to Project Co the benefit of any warranties provided to the State in respect of the Site Data by the author of the Site Data; or
- (b) **(Site Data Undertaking)**: procure that the author of the Site Data provide Project Co with the Site Data Undertaking on or about the date of this Deed.

7.3 Project Information under this Deed

Nothing in this Deed limits or excludes the State's liability to Project Co under any State Project Document or for breach of any State Project Document for any failure of the State to give any notice or direction that the State is required to give to Project Co or its Associates, in accordance with that State Project Document.

7.4 Project Information representations and warranties by Project Co

Without limiting clauses 7.1 or 8.1, Project Co acknowledges and agrees that:

- (a) **(Entry into Deed)**: it enters into this Deed based on its own investigations, interpretations, deductions, information and determination;
- (b) **(Opportunity to investigate)**: it was given the opportunity to itself undertake, and to request others to undertake, tests, enquiries and investigations:
 - (i) relating to the subject matter of any Project Information; and
 - (ii) of the Site and its surroundings;
- (c) **(Project Information)**: the Project Information does not form part of this Deed and was provided by the State, its Associates and the author of the Site Data for the information only of Project Co;
- (d) **(Adequacy of Output Specification etc)**: it has satisfied itself that there is nothing in the Design Requirements or the Services Requirements which would prevent:
 - (i) the Correctional Complex from being Fit For Purpose; or
 - (ii) the Services being carried out in accordance with this Deed;
- (e) **(No reliance)**: it did not rely upon any Project Information or the accuracy, adequacy, suitability or completeness of the Project Information for the purposes of entering into this Deed or delivering the Project;
- (f) **(State entry into Deed)**: the State has entered into this Deed relying upon the warranties, acknowledgements, representations and agreements of Project Co as set out in this Deed; and
- (g) **(Intellectual Property Rights)**: all Intellectual Property Rights in the Project Information remain the property of the State, any of its Associates or the author of the Site Data (as the case may be).

8. The Site

8.1 Project Co to inform itself

Without limiting clause 7 or this clause 8, Project Co warrants that it has, and will be deemed to have, done everything (including all assessments, tests or studies of the Site and its surroundings and enquiries of Authorities) that would be expected of a prudent, competent and experienced contractor in the position of Project Co exercising Best Industry Practices:

- (a) in assessing the risks regarding Site Conditions;

- (b) in ensuring that this Deed contains allowances to protect it against any of these risks eventuating; and
- (c) in order to determine the suitability of the Site and its surroundings for the Project.

8.2 No representations from the State

- (a) Project Co acknowledges and agrees that, except as expressly provided by this Deed, the State, its Associates and the author of the Site Data have not made and make no representation, and give no warranty or guarantee and owe no duty of care or other responsibility in respect of:
 - (i) **(Site)**: the Site Conditions, title to the Site or adequacy of or access to the Site and its surroundings for the Project;
 - (ii) **(Utility Infrastructure and External Infrastructure)**: the existence, location, condition or availability of any Utility Infrastructure or External Infrastructure; or
 - (iii) **(Adverse Rights etc)**: any Adverse Rights or rights of way.
- (b) **(Site Data)**: Clauses 7.1, 7.4(c) or 8.2(a) do not:
 - (i) exclude any liability that the author of the Site Data may have to Project Co in respect of the Site Data under the Site Data Undertaking; or
 - (ii) reduce any warranty that the author of the Site Data may give to Project Co in respect of Site Data.

8.3 Environmental issues

Project Co must:

- (a) **(Obligation)**: not and must procure that its Associates do not:
 - (i) cause, contribute to or exacerbate any Contamination;
 - (ii) except where it is authorised pursuant to any Approval, cause any Pollution on, in, under or emanating from the Site;
 - (iii) abandon or dump any Hazardous Substance at the Site; or
 - (iv) except as authorised by Law or an Approval, handle, disturb, discharge or release any Hazardous Substance at the Site or cause any Hazardous Substance to migrate from the Site in a manner which is likely to cause or contribute to an Environmental Hazard;
- (b) **(Environmental responsibility)**: and must procure that its Associates, at all times carry out the Project Activities in accordance with the Environmental Requirements, in an environmentally responsible manner and in accordance with the Environmental Management Plan and Best Industry Practices and so as to protect the Environment;
- (c) **(Notification)**: immediately notify the State of any non-compliance or alleged or potential non-compliance with the conditions or requirements of any Environmental Requirements or the Environmental Management Plan;
- (d) **(Manage waste disposal)**: manage, remove and dispose of all waste, rubbish, debris, redundant materials, spoil and Hazardous Substances produced by the Project Activities in accordance with Best Industry Practices, any Environmental Requirements and this Deed; and

- (e) **(Assist the State):** assist the State to comply with its obligations under all Environmental Requirements and the requirements of any Authority in relation to matters relating to the Environment at the Site or in connection with the Project.

8.4 Contamination

- (a) **(Prevent or minimise Contamination):** Without limiting clause 8.3(a), Project Co must prevent or minimise any Contamination occurring on, or emanating from, the Site, in accordance with Best Industry Practices and any Environmental Requirements.
- (b) **(Monitoring and testing):** Project Co must conduct any monitoring, testing or investigations of any Contamination in, on, over or under the Site, or which has emanated or is emanating from the Site, in accordance with:
 - (i) the Environmental Requirements;
 - (ii) the Environmental Management Plan; and
 - (iii) Best Industry Practices.
- (c) **(Contamination Remediation Notice):** Each party must promptly provide the other with a copy of any Contamination Remediation Notice served on it, and of all related correspondence which precedes or follows the issue of the Contamination Remediation Notice.
- (d) **(Notification):** If Project Co discovers any Contamination in, on, over, under or emanating from the Site (whether or not Project Co has caused or contributed to that Contamination), it must notify the State as soon as practicable, and in any event within 5 Business Days after it discovers the Contamination.
- (e) **(Notification Requirements):** Project Co's notice under clause 8.4(d) must contain all relevant details in relation to the Contamination, including:
 - (i) the type of Contamination;
 - (ii) the location of the Contamination;
 - (iii) the nature and extent of the Contamination; and
 - (iv) whether it considers the Remediation of the Contamination will give rise to a Contamination Compensation Event,to the extent such details are known at the time the notice is provided.
- (f) **(Remediation):** Project Co must:
 - (i) Remediate:
 - A. any Contamination in, on, over or under the Site; or
 - B. any Contamination that is emanating, or has emanated, from the Site, or that is migrating, or has migrated, onto the Site,where such Remediation is necessary to:
 - C. comply with any Environmental Requirements or any Contamination Remediation Notice, regardless of whether:
 - 1) the Contamination Remediation Notice is addressed to the State, Project Co or any other person; or

- 2) the Contamination occurred before or after Project Co or any other person was given access to the Site;
- D. ensure that there is no unacceptable risk of harm to human health or the Environment as a consequence of the Contamination, having regard to Best Industry Practice;
- E. render the Site suitable for the Project; or
- F. prevent the migration of Contamination from the Site to Adjoining Properties or other sites; and
- (ii) comply with all requirements of any Authority in connection with any Contamination referred to in clause 8.4(f)(i) or the Remediation of that Contamination.
- (g) **(Disputing a Contamination Remediation Notice):** Nothing in this clause 8.4 prevents Project Co from disputing the issue of a Contamination Remediation Notice with any Authority or taking an action against a third party with respect to the Contamination.

8.5 Contamination Remediation Plan

- (a) **(Discovery of Contamination):** Promptly on discovering, or becoming aware of, any Contamination in, on, over, under or emanating from the Site which Project Co is required to Remediate in accordance with clause 8.4(f), Project Co must submit to the State a plan for the Remediation of that Contamination (**Contamination Remediation Plan**) for review in accordance with the Review Procedures.
- (b) **(Contamination Remediation Plan details):** A Contamination Remediation Plan submitted in accordance with clause 8.5(a) must include details of:
 - (i) all investigations carried out, or to be carried out, in relation to the Contamination;
 - (ii) to the extent that any details were not known at the time of the notice given under clause 8.4(d), the details required under clause 8.4(e);
 - (iii) any proposed works to effect the Remediation;
 - (iv) the proposed timeframe for executing the proposed Remediation works; and
 - (v) the estimated cost of executing the Contamination Remediation Plan.
- (c) **(Remediate any contamination):** Project Co must Remediate any Contamination it is required to Remediate under clause 8.4 in accordance with the relevant Contamination Remediation Plan that has been reviewed in accordance with the Review Procedures and the Environmental Requirements.

8.6 Project Co's entitlement to compensation for Remediation

- (a) **(Contamination Compensation Event):** If the requirement to Remediate Contamination under clause 8.4 is a Contamination Compensation Event then to claim an extension of time, relief from performance or compensation Project Co must issue a Change Notice within 20 Business Days after discovering, or becoming aware of, the Contamination and, subject to clause 8.6(b), the Change Compensation Principles will apply.
- (b) **(Change Notice):** If Project Co considers it is entitled to:

- (i) an extension to a Date for Completion or other relief from performance of the Delivery Phase Activities as a result of a Contamination Compensation Event, Project Co must include in its Change Notice its claim for an extension of time, and clause 38 will apply in respect of the relief or extension of time claim (unless the State and Project Co can agree on an extension of time within 20 Business Days after the State receives the relevant Change Notice, in which case the agreed extension of time will apply); or
 - (ii) relief from performance of the Services as a result of a Contamination Compensation Event, Project Co must include in its Change Notice its claim for relief and clause 39 will apply in respect of the relief from performance of the Services claim.
- (c) **(Change Responses):** The parties acknowledge and agree that the State may issue separate Change Responses for the non-time related aspects of the relevant Contamination Compensation Event.

8.7 Liability under the NGER Legislation

Project Co acknowledges and agrees that if:

- (a) the Services constitute a "facility" within the meaning of the NGER Legislation, then for the purposes of the NGER Legislation, it has operational control of that facility or facilities and will comply with any obligations arising in respect of the Services under the NGER Legislation; or
- (b) Project Co is part of a group (as defined in the NGER Legislation), the controlling corporation (as defined in the NGER Legislation) of which is registered under the NGER Legislation, Project Co will use reasonable endeavours to procure that the relevant controlling corporation complies with the NGER Legislation in relation to the Services.

8.8 Reporting Emissions and Energy Data

- (a) **(Application of this clause):** This clause 8.8 only applies if, despite the operation of clause 8.7(a), the State incurs a Liability under or in connection with the NGER Legislation as a result of or in connection with the Services.
- (b) **(Transfer of Liability):** If the State incurs, or but for this clause would incur, a Liability under or in connection with the NGER Legislation as a result of or in connection with the Services, and the NGER Legislation provides that such Liability can be transferred by the State to Project Co, Project Co must, upon the written request of the State, do all things reasonably necessary to transfer the Liability to Project Co.
- (c) **(Compliance):** Project Co must assist the State to comply with the NGER Legislation in relation to any aspect of the Services.
- (d) **(Provision of Emissions and Energy Data to the State):** Project Co must:
 - (i) provide Project Co's Emissions and Energy Data to the State in the same manner, form and level of detail, based on the same methods and at the same times:
 - A. as if Project Co were obliged under the NGER Legislation or any other applicable law to provide the Emissions and Energy Data to an Authority and the State was that Authority;
 - B. in accordance with the requirements or approvals of any Authority and any directions given by the State; and

- C. without limiting clauses 8.8(d)(i)A or 8.8(d)(i)B, as may be required to enable the State:
- 1) to discharge, as and when they fall due, any obligations that it may have to provide Project Co's Emissions and Energy Data to any Authority; and
 - 2) to provide to any Authority any of Project Co's Emissions and Energy Data concerning any greenhouse gas project;
- (ii) keep all such Project Co's Emissions and Energy Data as may be required to enable it to discharge its obligations under clause 8.8(d)(i);
- (iii) retain records of its activities that are the basis of Project Co's Emissions and Energy Data for any financial year, for a period of not less than 7 years from the end of the year in which the relevant activities take place; and
- (iv) permit Project Co's Emissions and Energy Data to be examined, monitored, measured, copied, audited and verified by any persons appointed or authorised for that purpose by the State or any Authority, and co-operate with and provide all reasonable assistance to any such persons, including giving access to premises, plant and equipment, producing and giving access to documents (including any records kept and retained under clauses 8.8(d)(ii) and 8.8(d)(iii)) and answering questions.
- (e) **(Acknowledgement):** Project Co acknowledges and agrees that Project Co's Emissions and Energy Data is provided to the State:
- (i) to discharge any obligations that the State may have to provide such Emissions and Energy Data to an Authority; and
 - (ii) so that the State may provide to any Authority any of Project Co's Emissions and Energy Data concerning any greenhouse gas project.

8.9 Provision of Emissions and Energy Data to the State

- (a) **(Project Co to provide):** Project Co must provide Project Co's Emissions and Energy Data to the State Representative:
- (i) at such times as may be agreed by the State and Project Co or, if no such agreement is reached, within 10 Business Days of receiving written notice from the State indicating that it requires Project Co's Emissions and Energy Data to be provided; and
 - (ii) on each occasion that Project Co is required to provide Project Co's Emissions and Energy Data to an Authority under the NGER Legislation or any other applicable Law.
- (b) **(Use of Emissions and Energy Data):** Project Co acknowledges and agrees that the State may use Project Co's Emissions and Energy Data for any purpose as it sees fit, including providing or otherwise disclosing Project Co's Emissions and Energy Data to any Authority.

8.10 Native Title Claims, Heritage Claims and Artefacts

- (a) **(Native Title Claims):** As between the State and Project Co, the State is responsible for:

- (i) dealing with any Native Title Claim in connection with any part of the Site; and
 - (ii) the payment of any compensation or other moneys required to be paid to the native title holders of any part of the Site as a consequence of a successful Native Title Claim.
- (b) **(Artefacts):** If an Artefact is discovered on or under the surface of the Site:
- (i) as between the State and Project Co, it will be the absolute property of the State; and
 - (ii) Project Co must:
 - A. immediately notify the State of the discovery;
 - B. permit the State to watch or examine any excavation on the Site; and
 - C. take every reasonable precaution in carrying out the Project Activities so as to prevent Artefacts being damaged, removed, disturbed or destroyed until appropriate arrangements for dealing with, or removing, the Artefacts have been made.
- (c) **(Project Co must continue to perform):** If there is a:
- (i) Native Title Claim or Heritage Claim in connection with; or
 - (ii) discovery of Artefacts on, under or over,
- any part of the Site, Project Co must:
- (iii) continue to carry out its obligations under this Deed, except to the extent otherwise:
 - A. directed by the State;
 - B. ordered by an Authority; or
 - C. required by Law; and
 - (iv) provide all reasonable assistance to the State in connection with dealing with the Native Title Claim, Heritage Claim or Artefact.

8.11 General Site undertakings

- (a) **(Make good):** Except to the extent expressly provided otherwise in this Deed but without limiting this clause 8, Project Co must make good, if applicable, in accordance with this Deed, any disturbance or damage caused to any part of the Site or the Relevant Infrastructure in connection with Project Co or its Associates entry, occupation or use of the Site or the Relevant Infrastructure.
- (b) **(Other undertakings):** Except to the extent expressly provided otherwise in this Deed but without limiting this clause 8, Project Co:
 - (i) must take all measures necessary to protect and ensure the safety of people and property at the Site or in connection with the Project in accordance with Best Industry Practices;
 - (ii) except to the extent required for public health or safety purposes, must avoid or minimise:

- A. unreasonable interference with the passage of people and vehicles;
 - B. obstruction to any property; and
 - C. the operations or activities carried out on, or adjacent to, the Site;
- (iii) must prevent nuisance including any nuisance caused by unreasonable Pollution, noise, dust, light emission, vibration or disturbance, air pollution, odour on or adjacent to the Site or Adjoining Property above the levels specified in the Project Management Plan, Environmental Management Plan or such lower levels as may be required by Law or an Approval;
 - (iv) must ensure the safety of people and property in connection with the Project or Site in accordance with Best Industry Practice;
 - (v) must promptly deliver to the State a copy of every notice received by Project Co or any of its Associates which affects the Site or any Adjoining Property;
 - (vi) is solely responsible for any person who enters the Site or the Correctional Complex;
 - (vii) must not do or permit to be done on any part of the Site anything which may:
 - A. interfere with the State's or any of the State's Associate's access to the Site; or
 - B. cause the State to breach any of its obligations in connection with any Adverse Rights to which the Delivery Phase Sub-Licence or the Operating Phase Sub-Licence is subject;
 - (viii) must not without the prior written consent of the State, exhibit on any part of the exterior of any part of the Site or the Correctional Complex any notice, sign, signboard or advertisement;
 - (ix) must not enter into or grant or agree to enter into or grant any rights or other arrangements with any person or persons relating to all or any part of the Site or the Relevant Infrastructure except as permitted by this Deed; and
 - (x) on completion of any Delivery Phase Activities, must remove all temporary protection or other structures or equipment erected in connection with those Delivery Phase Activities as soon as practicable, and in accordance with Best Delivery Practices.
- (c) **(Remedy of nuisance and interference):** If, in the reasonable opinion of the State or the Independent Certifier, Project Co has failed to meet its obligations under clause 8.11(b)(ii), 8.11(b)(iii) or 8.11(b)(iv), Project Co must comply with any reasonable direction of the State or the Independent Certifier to:
- (i) stop or change the manner of carrying out the Project Activities; and
 - (ii) amend any applicable Delivery Phase Plan or Operating Phase Plan to remedy the nuisance or interference and submit to the State and the Independent Certifier for review in accordance with the Review Procedures.

9. Facilitation Works, Utilities Infrastructure and Utilities

9.1 Facilitation Works

- (a) **(Execution of Facilitation Works):** The parties acknowledge and agree that the State will be executing the Facilitation Works on the Site and land adjacent to the Delivery Phase Site at the same time as Project Co is carrying out the Works.
- (b) **(Project Co acknowledgements):** Project Co acknowledges and agrees that:
- (i) delays in carrying out the Works or a failure to comply with Project Co's other obligations under this Deed may impact on, interfere with or delay the execution of the Facilitation Works; and
 - (ii) it has taken the Facilitation Works into account in preparing the Delivery Phase Program.
- (c) **(Project Co obligations):** Project Co must:
- (i) without limiting clause 20, permit the State and its Associates to access the Delivery Phase Sites to the extent necessary to perform the Facilitation Works;
 - (ii) cooperate with the State and its Associates in relation to the performance of the Facilitation Works;
 - (iii) coordinate the performance of the Works with the State's performance of the Facilitation Works; and
 - (iv) not do anything that will cause or contribute to the Facilitation Works being delayed or damaged.
- (d) **(Facilitation Works (Power) Modification):** The parties acknowledge and agree that:
- (i) the final Facilitation Works (Power) Location has not been determined as at the date of this Deed; and
 - (ii) to the extent that, after the date of this Deed, the location changes from the Facilitation Works (Power) Location (other than following a request from Project Co), the State will issue a written notice to Project Co specifying the new location and if such notice is given:
 - A. [REDACTED] the State will pay Project Co the amount calculated in accordance with the Change Compensation Principles; or
 - B. [REDACTED] the State will issue a Modification in accordance with this Deed.

9.2 Utilities Infrastructure and Utilities

- (a) **(No representations):** Without limiting Project Co's entitlement to Claim under clause 38 in respect of limbs (a) – (c) (inclusive) of the definition of Compensable Event and limb (j) of the definition of Compensable Extension Event, Project Co is not entitled to make any Claim, and the State makes no warranty or representation, and gives no advice as to the availability, adequacy, location or completeness of any existing Utility Infrastructure above or below the surface of the Site.

- (b) **(Project Co assumes risk):** Project Co assumes the risk of the existence, location, condition and availability of Utility Infrastructure and the continuous supply of Utilities in connection with the Project Activities.
- (c) **(Project Co obligations):** Project Co must:
- (i) **(Enquiries):** make enquiries as to the location of existing Utility Infrastructure and liaise with the owner of that Utility Infrastructure and the relevant Utility provider as to the need for any potential relocation, protection or decommissioning of the Utility Infrastructure (as applicable);
 - (ii) **(External Infrastructure):** ensure that all External Infrastructure is provided to the boundary of the Site and is designed and constructed in accordance with Best Delivery Practices and in a manner and in a condition which ensures that:
 - A. Technical Completion will occur by the Date for Technical Completion;
 - B. Commercial Acceptance will occur by the Date for Commercial Acceptance; and
 - C. the Correctional Complex meets the FFP Warranty;
 - (iii) **(Utility works):** undertake, or procure that a Utility provider undertakes, all work in connection with Utility Infrastructure within the Delivery Phase Sites which is required to deliver the Works and ensure a continuous supply of Utilities to the Correctional Complex;
 - (iv) **(Decommissioning):** decommission, in consultation with the relevant Utility provider, any Utility Infrastructure located above or below the surface of the Site which is redundant or will be redundant at Commercial Acceptance, or is otherwise required to be decommissioned in accordance with this Deed;
 - (v) **(Notice):** notify the State at least 10 Business Days before any planned connection, disconnection or interference with existing Utility Infrastructure and liaise with the State as to how best to manage the disconnection or interference taking into account the nature and requirements of the Site;
 - (vi) **(Supply):** ensure the continuous supply of Utilities to the Correctional Complex;
 - (vii) **(Agreements):** enter into all agreements for the supply of Utilities to the Site and the Correctional Complex;
 - (viii) **(Access):** give all Utility providers reasonable access to any part of the Site to undertake any work or provide any service in respect of the Utilities;
 - (ix) **(No damage):** not damage or destroy Utility Infrastructure;
 - (x) **(No disruption):** not unreasonably disrupt or interfere with any Utility Infrastructure or the supply of Utilities;
 - (xi) **(Payment):** arrange and pay for all Utilities consumed or used at the Site or the Correctional Complex in accordance with the agreements entered into with the Utility providers; and
 - (xii) **(Efficiency):** use the Utilities provided to the Site or the Correctional Complex;

- A. efficiently; and
- B. solely for the provision of the Project Activities.

10. Parties, personnel and community

10.1 Authorities

Project Co acknowledges and agrees that:

- (a) **(Jurisdiction)**: there are Authorities with jurisdiction over aspects of the Project Activities and the Site;
- (b) **(Authorities)**: those Authorities may, from time to time and at any time, exercise their statutory functions and powers in a way which disrupts, interferes with or otherwise affects the Project Activities; and
- (c) **(Co-operation)**: it will co-operate with and co-ordinate its Project Activities with those Authorities as is required by them.

10.2 State Representative

- (a) **(Natural person)**: The State will ensure that at all times throughout the Term there is a natural person appointed by it as the State Representative for the Project.
- (b) **(Identity)**: As at the date of this Deed, the State Representative is the party nominated as such in the Contract Particulars.
- (c) **(Agent of the State)**: The State Representative will administer this Deed on behalf of the State and will exercise all rights, powers, authority and functions of the State under this Deed as the State's agent.
- (d) **(Oral directions)**: The State Representative may give a direction orally but will as soon as practicable confirm that direction in writing.
- (e) **(Replacement)**: The State may at any time replace the State Representative, in which event the State will appoint another person as the State Representative and notify Project Co of that appointment.
- (f) **(Delegation)**: The State may at any time delegate the exercise of any power or authority of the State Representative to a person other than the then appointed State Representative and may terminate or vary that delegation.
- (g) **(Notification of delegation)**: The State will promptly notify Project Co of the identity of each delegate, the powers and authority delegated (including any conditions applying to the delegated power).
- (h) **(Vary or terminate delegation)**: The State may vary or terminate any delegated power or authority of the State Representative but must promptly notify Project Co of any such variation or termination.

10.3 Project Co Representative

- (a) **(Natural person)**: Project Co must ensure that at all times throughout the Term there is a natural person appointed by it as Project Co Representative in respect of the Project.
- (b) **(Identity)**: As at the date of this Deed, the Project Co Representative is the party nominated as such in the Contract Particulars.

- (c) **(Employee):** The Project Co Representative must be an officer or employee of Project Co or a Related Body Corporate of Project Co and must be employed full time on the Project.
- (d) **(Replacement):** The Project Co Representative is one of the Key People and can accordingly only be replaced in accordance with clause 10.7.
- (e) **(Contact):** The Project Co Representative must act as the principal point of contact between Project Co and the State in respect of the administration of this Deed, and be available to the State as and when required.
- (f) **(Directions):** A direction is given to Project Co if it is given to the Project Co Representative.
- (g) **(Authority and skills):** Project Co must ensure that at all times during his or her appointment, Project Co Representative has:
 - (i) the authority to perform its role and duties and discharge its obligations under this Deed; and
 - (ii) a detailed knowledge of the Project and sufficient experience and skills to undertake the role of Project Co Representative.
- (h) **(Duties during the Term):** The Project Co Representative must perform the duties of the Project Co Representative under this Deed, including to:
 - (i) **(spokesperson):** act as the spokesperson for Project Co;
 - (ii) **(partnership):** ensure the ongoing implementation of a partnership with the State;
 - (iii) **(liaison):** liaise and generally deal with stakeholders;
 - (iv) **(manage):** represent the views of Project Co and manage and co-ordinate issues with any Project Co Associate prior to presentation to the State;
 - (v) **(presence):** ensure a strong presence and consistent project management role for Project Co in the implementation of the Project; and
 - (vi) **(appoint temporary replacement):** appoint a person with the equivalent qualification, experience, ability and expertise to temporarily act as Project Co Representative before taking any annual or other leave.

10.4 Operational Readiness Co-ordinator

- (a) **(Natural person):** Project Co must ensure that from Financial Close until at least 12 Months after the Date of Commercial Acceptance, there is a natural person appointed by it as the Operational Readiness Co-ordinator in respect of the Project.
- (b) **(Replacement):** The Operational Readiness Co-ordinator is one of the Key People and can accordingly only be replaced in accordance with clause 10.7.
- (c) **(Contact):** The Operational Readiness Co-ordinator must be available to the State as and when required.
- (d) **(Presence):** Project Co must ensure that the Operational Readiness Co-ordinator is present at the Site at such times as are necessary to ensure that Project Co is complying with its obligations under this Deed and upon reasonable request by the State.

- (e) **(Reporting):** The Operational Readiness Co-ordinator must report directly to the Project Co Representative.
- (f) **(Authority and skills):** Project Co will ensure that at all times during his or her appointment, the Operational Readiness Co-ordinator has:
 - (i) the authority to perform its role and duties and discharge its obligations in accordance with 10.4(g) and elsewhere in this Deed; and
 - (ii) a detailed knowledge of the Project and sufficient experience and skills to undertake the role of Operational Readiness Co-ordinator.
- (g) **(Role of the Operational Readiness Co-ordinator):** The role of the Operational Readiness Co-ordinator under this Deed includes the following functions:
 - (i) **(Co-ordinate Works):** ensure that operational requirements are appropriately considered for the purposes of designing and constructing the Correctional Complex;
 - (ii) **(Manage transition process):** manage and be heavily engaged in the process of preparing for the Correctional Complex to become operational and for commencement of the Services;
 - (iii) **(Co-ordinate Subcontractors):** co-ordinate and liaise with the Subcontractors and oversee the performance by the Operator and other Subcontractors of their Subcontracts during the term of the Operational Readiness Co-ordinator's appointment;
 - (iv) **(Certification):** certify, in respect of all Operating Phase Plans prior to submission to the State, that it is not aware of any non-compliance with the relevant requirements in the Operating Phase Plans and Reports Schedule;
 - (v) **(Meetings with State):** convene and attend regular co-ordination meetings with the State in relation to the transition from the Delivery Phase to the Operating Phase;
 - (vi) **(Liaison):** attend on and liaise with the persons performing the testing (including the Completion Tests) and commissioning of the Works;
 - (vii) **(Co-ordinate transition):** co-ordinate the execution of the Operational Readiness Plan in order to facilitate achievement of Completion by the Date for Completion and delivery of the Services; and
 - (viii) **(appoint temporary replacement):** appoint a person with the equivalent qualification, experience, ability and expertise to temporarily act as the Operational Readiness Co-ordinator before taking any annual or other leave.

10.5 General Manager

- (a) **(General Manager competent):** The General Manager must be competent to exercise the functions and to perform the duties of the General Manager of the Correctional Complex.
- (b) **(Appointment under Corrections Act):** Project Co acknowledges that the appointment or engagement by Project Co of a General Manager is subject to the authorisation of the Commissioner under section 240 of the Corrections Act.
- (c) **(Restrictions on replacement):** The General Manager will be one of the Key People and accordingly can only be replaced in accordance with clause 10.7 and the Corrections Legislation.

- (d) **(Duties):** The General Manager will carry out all powers, functions and duties he or she is required to carry out in accordance with the Corrections Legislation and as otherwise delegated to him or her by Commissioner.
- (e) **(Corrections Legislation):** Project Co must ensure the proper performance by the General Manager of any powers, authorities, duties and functions imposed or conferred on the General Manager by the Corrections Legislation or this Deed.
- (f) **(Termination):** Project Co must, if directed by the Commissioner, terminate the appointment of the General Manager.

10.6 Operations Manager

Project Co must ensure that at all times during the Operating Phase, Project Co has a competent and appropriate person holding the position of "Operations Manager" who is available to the person from time to time holding the position of "General Manager - Operational Performance Review Branch Corrective Services - NSW Department of Justice" (or equivalent thereof from time to time) to discuss the operation and management of the Correctional Complex and the Inmates.

10.7 Key People

Project Co must:

- (a) **(Requirement to employ or engage):** ensure that the Key People are employed or engaged in the roles specified in the Contract Particulars;
- (b) **(Restrictions on replacement):** subject to clause 10.7(c), not replace the Key People or delegate the functions of the Key People without the State's prior written approval (which will not be unreasonably withheld);
- (c) **(Replacement in certain circumstances):** if any of the Key People die, become seriously ill or resign from the employment of Project Co or any of its Associates or receive a promotion, replace the relevant Key People with persons approved by the State (such approval not to be unreasonably withheld) of at least equivalent qualification, experience, ability and expertise; and
- (d) **(Corrections Legislation):** in relation to the General Manager, only replace the General Manager in accordance with the Corrections Legislation.

10.8 Project Control Group

- (a) **(Establishment):** The parties will establish a group consisting of the following members (together the **Project Control Group**):
 - (i) the State Representative;
 - (ii) the Project Co Representative;
 - (iii) until the end of the Ramp-Up Period, the Operational Readiness Co-ordinator;
 - (iv) the General Manager (or a delegate of the General Manager), or if the General Manager is not yet appointed, a representative of the Operator;
 - (v) two other representatives that the State nominates from time to time; and
 - (vi) two other representatives that Project Co nominates from time to time.
- (b) **(Chairperson):** The State Representative will be the chairperson of the Project Control Group.

- (c) **(Functions):** The functions of the Project Control Group will be to:
- (i) monitor the overall progress of the Project Activities and compliance with this Deed;
 - (ii) assist in the resolution of any matters referred to the Project Control Group by a party including Disputes in accordance with clause 50;
 - (iii) review all reports and plans provided by Project Co, its Subcontractors and the Independent Certifier during the Term;
 - (iv) discuss stakeholder and community engagement; and
 - (v) discuss and address such other matters as the members of the Project Control Group may agree from time to time in connection with the Project.
- (d) **(Meetings):** The Project Control Group must:
- (i) meet:
 - A. during the Delivery Phase and until the first anniversary of the Operational Commencement Date, monthly (not later than 15 Business Days after the end of each Month);
 - B. following the first anniversary of the Operational Commencement Date, quarterly (not later than 15 Business Days after the end of each Quarter); and
 - C. when otherwise called to meet on 10 Business Days' notice by the State or Project Co. Without limiting this clause 10.8(d)(i)C, Project Co acknowledges and agrees that the State may call a meeting if the State is dissatisfied with Project Co's performance,unless agreed otherwise by the State and Project Co; and
 - (ii) conduct its meetings in the manner agreed from time to time between the State and Project Co.
- (e) **(Reports):** Project Co must, no later than 5 Business Days before each meeting of the Project Control Group convened in accordance with clause 10.8(d), give each member of the Project Control Group and the Independent Certifier (for the duration only of the Independent Certifier's term in accordance with the Independent Certifier Deed):
- (i) prior to the Operational Commencement Date, the Monthly Works Report for the previous Month and the latest Delivery Phase Program; and
 - (ii) thereafter, the Monthly Performance Report.
- (f) **(Independent Certifier):** The State or Project Co may require the Independent Certifier attend any meeting of the Project Control Group.
- (g) **(Subcontractors):** The State may direct Project Co to procure the attendance of senior representatives of any of the Subcontractors (not forming part of the Project Control Group), Financiers or any of their respective Associates at any meeting of the Project Control Group.

10.9 General requirements for meetings

- (a) **(Meeting agendas):** The State will determine the agenda for each meeting of the Project Control Group, and in determining each agenda:
 - (i) will seek input from Project Co; and
 - (ii) include any items notified to it by any other member received no later than 10 Business Days prior to the date of the meeting.
- (b) **(Minutes):** The State will take minutes of each Project Control Group meeting and distribute such minutes prior to the next relevant meeting.
- (c) **(Continuity of membership):** The parties acknowledge the importance of the Project Control Group having a continuity of membership in order to successfully carry out its functions.
- (d) **(Changes to membership):** The people who are required to attend the Project Control Group meetings under this Deed may, where strictly necessary, be changed by the party they are representing, from time to time on notice to the other parties, together with details of the reason for the change.
- (e) **(Liability of Project Control Group):** The Project Control Group:
 - (i) is advisory only and its decisions or recommendations are not binding on the parties; and
 - (ii) does not have any legal responsibilities, Liability or right to require any of the parties to act or refrain from acting in any way.
- (f) **(No limitation):** The parties' involvement in the Project Control Group does not affect their respective rights and obligations under this Deed.
- (g) **(Further information):** The State may require Project Co to provide information on matters discussed at any Project Control Group meeting and Project Co must provide that information in a timely manner.
- (h) **(No reliance or Claim):** Neither the State nor Project Co will be entitled to:
 - (i) rely on any statement, opinion, advice, representation, warranty, promise or undertaking made or given by or on behalf of or any member of the Project Control Group (in its capacity as a member); or
 - (ii) make any Claim against any such group or committee or any member of the Project Control Group (in its capacity as a member),arising in connection with anything, which any such member does or fails to do in its capacity as a member of the Project Control Group.
- (i) **(Conduct at meetings):** The parties must to the greatest extent possible, freely and openly discuss the Project Activities at all meetings (including the meetings of the Project Control Group), and Project Co must procure that its Associates fully respond to any questions which the State may ask Project Co at any meetings conducted under this Deed within 5 Business Days.

10.10 Communications and Community Relations

- (a) **(Project Co acknowledgement):** Project Co acknowledges that the areas where Project Activities are being carried out are of great importance to many people, including local residents and businesses.

- (b) **(Community relations):** Project Co must manage and participate in all community relations programs and activities as:
 - (i) required by the Design Requirements and the Services Requirements;
 - (ii) required by any Approvals;
 - (iii) contained in the Communications and Community Relations Plan;
 - (iv) reasonably requested by the State from time to time.
- (c) **(Communications approach):** Without limiting the generality of clause 10.10(a), Project Co must:
 - (i) prepare and comply with, implement (in conjunction with the State) and fund the preparation of, consultations on and implementation of the Communications and Community Relations Plan; and
 - (ii) not, and must procure that its Associates do not, communicate with the media or communicate any information publicly with regard to the Project without the prior written consent of the State Representative.
- (d) **(Community obligations):** Project Co must (to the extent not otherwise addressed in the Communications and Community Relations Plan):
 - (i) unless otherwise advised by the State Representative, organise and chair all stakeholder group and community meetings, workshops and other stakeholder and community involvement events relating to the Project Activities;
 - (ii) promptly notify the State Representative of any protests, requests, problems and complaints in connection with the Project and not liaise directly with members of the community in relation to protests, requests, problems and complaints without the prior written consent of the State Representative;
 - (iii) consult with the State Representative with a view to agreeing a plan to manage community and political protests, requests, problems and complaints; and
 - (iv) engage directly with Clarence Valley Council in relation to matters in connection with traffic management, staff recruitment and economic opportunities in the area.

10.11 Conflicts of Interest

Project Co must:

- (a) **(Avoid conflict):** avoid any conflicts of interest that might arise in relation to the exercise or performance by Project Co or any of its Associates of any power, duty or function conferred or imposed by or under this Deed or by or under any Law; and
- (b) **(Notify State):** must notify the State immediately of any conflict of interest which does arise, and act in accordance with any direction given by the State to the extent that it is able to do so in accordance with Law and this Deed.

10.12 Aboriginal participation (construction)

- (a) Project Co must:
 - (i) **(NSW Government Aboriginal Participation Plan):** comply with the NSW Government Policy on Aboriginal Participation in Construction as

amended from time to time, as at the date of this Deed, the edition dated 1 May 2015, as updated on 1 August 2016 (**NSW Government Aboriginal Participation Plan**); and

- (ii) **(Submission of Aboriginal Participation Plan)**: prepare and submit to the State Representative and the NSW Procurement Board (nswbuy@finance.nsw.gov.au) its Aboriginal Participation Plan (Construction) in accordance with section 2.1 of the Delivery Phase Plans and Reports Schedule, showing how Project Co intends to direct the target project spend to appropriate Aboriginal education and employment opportunities during the Delivery Phase, which must, as a minimum, meet the standards set out in the Contract Particulars.
- (b) **(Management of Aboriginal Participation Plan)**: Project Co must systematically manage its Aboriginal participation processes and implement its Aboriginal Participation Plan (Construction) in accordance with the NSW Government Aboriginal Participation Plan.
- (c) Project Co must:
 - (i) **(Preliminary Aboriginal Participation Report)**: when the Works reach a stage which is 90% complete and as a condition precedent to Technical Completion, provide to the State Representative and the NSW Procurement Board (nswbuy@finance.nsw.gov.au), its Aboriginal Participation Report (Construction) which explains how the Aboriginal Participation Plan (Construction) has been implemented and what outcomes have been achieved; and
 - (ii) **(Final Aboriginal Participation Report)**: at the end of the 12 Month period after the Date of Technical Completion, provide to the State Representative its final Aboriginal Participation Report (Construction) which includes the details of actual expenses incurred from the date of this Deed up to 12 Months after the Date of Technical Completion. Details included in the final Aboriginal Participation Report (Construction) must explain how the Aboriginal Participation Plan (Construction) has been implemented within the specified period and what actual outcomes have been achieved.
- (d) **(Format of plan and report)**: The Aboriginal Participation Plan (Construction) and the Aboriginal Participation Reports (Construction) must be prepared in accordance with the NSW Government Aboriginal Participation Plan and in the format prescribed by the NSW Procurement Board (<https://www.procurepoint.nsw.gov.au/aboriginal-participation-construction-information-contractors>)
- (e) **(Compliance)**: Project Co must demonstrate to the State, whenever requested, that it has met and is meeting at all times its obligations under clauses 10.12(a) to 10.12(d).

10.13 Aboriginal participation (operations)

- (a) **(Submission of Aboriginal Participation Plan (Operations))**: Project Co must prepare and submit to the State Representative its Aboriginal Participation Plan (Operations) in accordance with section 2.1 of the Operating Phase Plans and Reports Schedule, showing how Project Co intends to direct the planned project spend to appropriate Aboriginal education and employment opportunities during the Operating Phase, which will target the standards set out in the Contract Particulars.
- (b) **(Management of Aboriginal Participation Plan (Operations))**: Project Co must systematically manage its Aboriginal participation processes and implement its Aboriginal Participation Plan (Operations) in accordance with the Aboriginal Participation Plan (Operations).

- (c) **(Reporting):** Project Co must on an annual basis, provide to the State Representative, its Aboriginal Participation Report (Operations) which explains how the Aboriginal Participation Plan (Operations) has been implemented and what outcomes have been achieved.
- (d) **(Compliance):** Project Co must demonstrate to the State, whenever requested, that it has implemented and is continuing to manage and implement its Aboriginal participation processes in accordance with the Aboriginal Participation Plan (Operations).

10.14 Training and apprenticeships

- (a) **(Submission of Training and Apprenticeships Plan):** Project Co must prepare and submit to the State Representative, its Training and Apprenticeships Plan, in accordance with section 2.1 of the Delivery Phase Plans and Reports Schedule showing how Project Co intends to engage trainees and apprentices in respect of the Works which must, as a minimum, meet the standards set out in the Contract Particulars.
- (b) **(Management of trainees and apprenticeships):** Project Co must systematically manage its trainees and apprentices in accordance with the Training and Apprenticeships Plan.
- (c) **(Reporting):** Project Co must, in accordance with section 1 of the Delivery Phase Plans and Reports Schedule, provide to the State Representative, its Training and Apprenticeships Report which explains how the Training and Apprenticeships Plan has been implemented and what outcomes have been achieved.
- (d) Project Co must:
 - (i) **(Preliminary Training and Apprenticeships Report):** when the Works reach a stage which is 90% complete and as a condition precedent to Technical Completion, provide to the State Representative, its Training and Apprenticeships Report which explains how the Training and Apprenticeships Plan has been implemented and what outcomes have been achieved; and
 - (ii) **(Final Training and Apprenticeships Report):** at the end of the 12 Month period after the Date of Technical Completion, provide to the State Representative its final Training and Apprenticeships Report which includes the details of actual expenses incurred from the date of this Deed up to 12 Months after the Date of Technical Completion. Details included in the final Training and Apprenticeships Report and must explain how the Training and Apprenticeships Plan has been implemented within the specified period and what actual outcomes have been achieved.
- (e) **(Compliance):** Project Co must demonstrate to the State, whenever requested, that it has met and is meeting at all times its obligations under clauses 10.14(a) to 10.14(d).

11. Quality Assurance

11.1 General Obligations

- (a) **(Quality Assurance System – Project Co):** As soon as practicable after Financial Close, Project Co must develop, maintain and comply with a Quality Assurance System.
- (b) **(Quality Assurance System – Key Subcontractors):** Project Co must procure that:

- (i) as soon as practicable after Financial Close, the D&C Subcontractor develop, implement, maintain and comply with a Quality Assurance System which covers all Delivery Phase Activities which it carries out;
 - (ii) to the extent that the Operator is carrying out Delivery Phase Activities, the Operator acts consistently with a Quality Assurance System; and
 - (iii) as soon as practicable after the Operator commences the provision of the Services, the Operator develop, implement, maintain and comply with a Quality Assurance System.
- (c) **(Minimum standard):** Project Co's, and the Key Subcontractors', Quality Assurance System must:
- (i) be at least to the standard set out in Australian/New Zealand Standards AS/NZS ISO 9001 'Quality systems - model for quality assurance in design, development, production, installation and servicing' or an accepted international equivalent; and
 - (ii) have been certified by a JASANZ accredited certifying body, as complying with the requirements of AS/NZS ISO 9001 must remain current from when the Quality Assurance System is first certified until the end of the Term.
- (d) **(Subcontractors to have Quality Assurance Representative):** Project Co must have or must ensure that the Key Subcontractors have a suitably qualified Quality Assurance Representative to ensure that its Quality Assurance System is developed, implemented and maintained in accordance with this Deed.
- (e) **(Details of authority):** Details of the Quality Assurance Representative's authority to oversee and resolve quality related issues (including in respect of Subcontracts) must be included in Project Co's Quality Assurance System.

11.2 Audits and Rectification of non-conformance

- (a) **(Audit of performance):** The State may, as part of the audits it conducts under this Deed, audit the performance of the relevant Project Activities against the relevant Quality Assurance Plans and Quality Assurance Systems, including those of the Key Subcontractors.
- (b) **(Rectification of non-conformance):** Project Co and each Key Subcontractor must immediately rectify any non-conformance with its Quality Assurance Plan or Quality Assurance System as soon as it is notified of any such non-conformance.

11.3 Audits for compliance with this Deed

- (a) **(State may procure Associate):** The State may undertake or procure an Associate to undertake at any time up to 6 Months after the last day of the Term, audits of the Project Activities or the Relevant Infrastructure to verify Project Co's compliance with the State Project Documents, including the WHS Management Plan (as applicable).
- (b) **(Notice of audit):** Where it is reasonably able to do so, the State will provide Project Co with no less than 10 Business Days' notice of any audit under this clause 11.3.
- (c) **(Minimisation of disruption):** Where the State carries out or procures the carrying out of an audit under this clause 11.3, the State will use reasonable endeavours to minimise any disruption caused to the Project Activities.
- (d) **(Audit obligations):** Without limiting clause 28.2, Project Co must:

- (i) provide all Project Co Material requested by the State or any Associates of the State undertaking the audit that is relevant to the conduct of the audit; and
 - (ii) arrange for those undertaking the audit on behalf of the State to meet with any of Project Co's Associates and have access to users of the Relevant Infrastructure, including Inmates.
- (e) **(Audit scope):** An audit may include examination of:
- (i) any part of the Relevant Infrastructure;
 - (ii) the carrying out of any Project Activities;
 - (iii) the Accounts and Records;
 - (iv) Project Co Material; and
 - (v) any Project Co Entities' and its Associates' processes and methodologies.
- (f) **(State may provide report and request meeting):** The State may provide a copy of any report prepared as a consequence of the audit to Project Co and its Associates and may require Project Co and its Associates to attend a meeting to discuss the audit report.
- (g) **(Discussion of audit):** The Project Control Group must discuss the contents of any audit when required by the State and seek to agree:
- (i) any action Project Co must undertake to ensure that it addresses any failure by any Project Co Entity to comply with the requirements of the State Project Documents; and
 - (ii) the time in which any such action must be undertaken.
- (h) **(Implementation of actions):** To the extent that:
- (i) the parties reach agreement in accordance with clause 11.3(g), Project Co must, at its own cost, implement the actions as agreed between the parties; or
 - (ii) the parties are unable to reach an agreement in accordance with clause 11.3(g), the State may (acting reasonably but without limiting the State's rights under this Deed) direct Project Co as to:
 - A. any action Project Co must (or which Project Co must procure Finance Co to) undertake to meet the requirements referred to in clause 11.3(g)(i); and
 - B. the time in which any such action must be undertaken by a Project Co Entity,

and Project Co must (and must procure Finance Co to), at its own cost, implement such actions.
- (i) **(Liability for cost of audit):** Project Co will not be liable for any costs incurred by the State performing audits under this clause 11.3, unless an audit establishes that any Project Co Entity is in material breach of a State Project Document, or has acted negligently or fraudulently in the carrying out of the Works or the performance of any of the Services, in which case the State's reasonable costs of performing the audit are to be paid by Project Co as a debt due and payable by Project Co to the State.

- (j) **(Audit during Delivery Phase):** If the State conducts an audit in accordance with this clause 11.3 during the Delivery Phase, the State will, and will procure that its Associates, comply with the Site Access and Interface Protocols and do not otherwise unreasonably delay Project Co in achieving Completion.
- (k) **(Expert determination of Dispute):** Any Dispute by Project Co as to the accuracy of any audit report may be referred by either party for expert determination in accordance with clause 52.
- (l) **(Auditor-General not limited):** Without limiting this clause 11.3, the parties acknowledge and agree that, notwithstanding any provision of this Deed to the contrary:
 - (i) the powers and responsibilities of the Auditor-General for the State of New South Wales under the *Public Finance and Audit Act 1983* (NSW) (or any substituted legislation) are not limited or affected by the terms of this Deed and each party submits to those powers and responsibilities;
 - (ii) the State or any Project Co Entity may be the subject of an audit by the Auditor-General pursuant to the *Public Finance and Audit Act 1983* (NSW); and
 - (iii) without limiting clause 11.3(l)(i), Project Co undertakes to the State that it will (and will procure Finance Co to), at its own cost, cooperate and fully comply with the directions of the Auditor-General and the State in relation to any audit referred to in clause 11.3(l)(ii).

12. Subcontracting and third party arrangements

12.1 Subcontracting

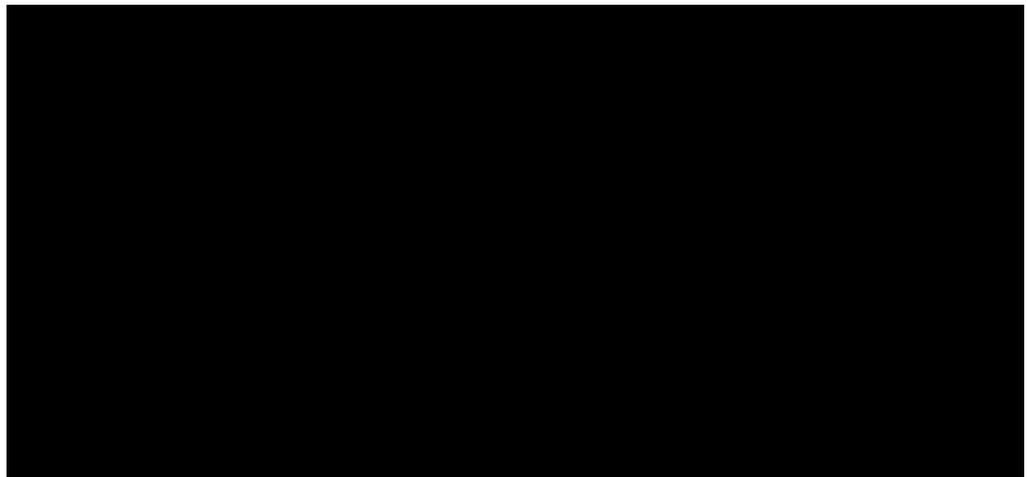
Project Co:

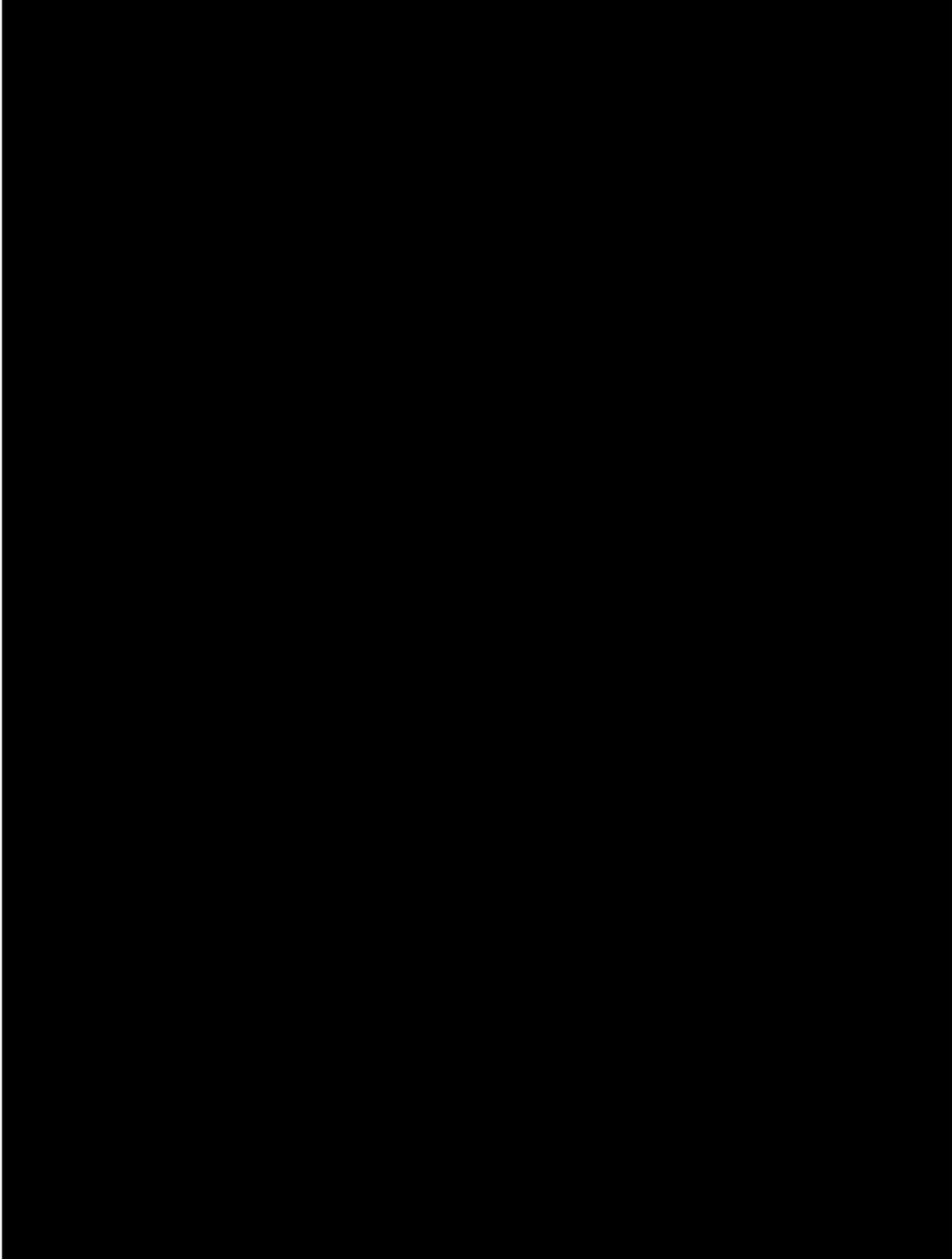
- (a) **(Notification):** must notify the State of all Subcontractors it intends to engage to undertake the Project Activities;
- (b) **(Project Activities):** must not subcontract the performance of the Project Activities or any part of them except:
 - (i) in accordance with this clause 12; and
 - (ii) in respect of any Subcontract in respect of the management of the Correctional Complex or a Correctional Centre only (including the Operator Subcontract or any subcontractor to the Operator), with the prior written approval of the Commissioner under the Corrections Act and on such conditions at the Commissioner thinks fit;
- (c) **(State Project Documents):** is not relieved from any or all of its obligations or Liabilities under the State Project Documents as a result of subcontracting any of those obligations or Liabilities;
- (d) **(Responsible for subcontractors):** will be responsible for the acts and omissions of any Subcontractor and their respective Associates in carrying out the Project Activities as if such acts or omissions were Project Co Acts or Omissions; and
- (e) **(Provide copies of subcontracts):** must promptly provide to the State a copy of:
 - (i) each Significant Subcontract; and
 - (ii) any other Subcontract requested by the State,

entered into or proposed to be entered into involving any of the Project Activities (regardless of whether Project Co is a party to that contract) and, where requested, all plans, specifications and drawings related to those Subcontracts.

12.2 Key Subcontracts and Significant Subcontracts

- (a) **(Employment):** Project Co must employ the Key Subcontractors and Significant Subcontractors as specified in the Contract Particulars in the relevant roles specified in the Contract Particulars.
- (b) **(Restrictions):** Project Co must not, and must ensure none of its Associates:
- (i) amend or agree to amend, grant an indulgence, waive or accept any waiver, release or adjustment of any rights to or under any Key Subcontract, any Significant Subcontract or the Interface Deed in a way that would:
 - A. have a material adverse effect on the ability of Project Co to perform and observe its obligations under any Project Document; or
 - B. have a material adverse effect on the rights, or increase the Liabilities or obligations of, the State under any Project Document or the ability or capacity of the State to exercise its rights or perform its obligations under a State Project Document; or
 - (ii) terminate, rescind, novate or assign, or agree to any termination, rescission, novation or assignment of any of the Key Subcontracts, any Significant Subcontract or the Interface Deed,
- without the prior consent of the State (which will not be unreasonably withheld).
- (c) **(Side Deed):** Project Co must procure from:
- (i) each Key Subcontractor; and
 - (ii) any Significant Subcontractor (if required by the State),
- an executed deed substantially in the form of the Side Deed applicable to that Subcontractor or, if none is applicable, in accordance with the form of the Subcontract Side Deed.
- (d) **(Prescribed terms):** Project Co must ensure that each Key Subcontract and Significant Subcontract includes a clause which provides that, if this Deed is terminated in accordance with clause 49:





12.3 Requirements for subcontracting

- (a) **(Engagement of subcontractors):** Without limiting clause 12.2, Project Co must not engage any Subcontractor, or allow any Subcontractor to be engaged, in connection with the Project, unless:
 - (i) if the State requires Probity Investigations to be carried out in respect of that Subcontractor, the State's probity requirements as described in clause 63 are satisfied;
 - (ii) the proposed Subcontractor has the financial capacity, applicable registrations and certifications, experience and capability to perform the

subcontracted obligations to at least the standards required by this Deed; and

- (iii) in respect of a Key Subcontract or Significant Subcontract, the Key Subcontract or Significant Subcontract contains further provisions expressly recognising and permitting the exercise by the State of its rights under and contains all relevant provisions prescribed by (if applicable) clauses 12.1, 17.2, 20.1, 28.2, 42, 48, 57, 58, 61, 62 and 63.

(b) **(Occurrence of Probity Event):** If, following a Probity Investigation in respect of a proposed Subcontractor, the State:

- (i) determines that a Probity Event has occurred in respect of a Subcontractor or a Relevant Person engaged by that Subcontractor; and
- (ii) is of the opinion that it is consequently not desirable for that Relevant Person to take part in the management or performance of the Subcontract, or for the Subcontractor to be engaged in connection with the Project,

the State may (as the case may be):

- (iii) direct Project Co that the Subcontractor must not be engaged in connection with the Project; or
- (iv) approve the Subcontract on condition that the Relevant Person:
 - A. not take part in the management or performance of the Subcontract;
 - B. not be allowed to access the Site; or
 - C. not be given Confidential Design Information or Personal Information,

or such other conditions as the State Representative considers necessary to quarantine that Relevant Person from the Project and on conditions that the Subcontractor provides its written undertaking to the State Representative to comply with such conditions.

(c) **(Compliance with Subcontractor obligations):** Project Co must, and must procure that all Key Subcontractors and Significant Subcontractors, comply with their respective obligations under each Subcontract they enter into.

12.4 Payment of amounts owed to Subcontractors

(a) **(Copies of notices under Security of Payment Act):** Project Co must ensure that, within:

- (i) 5 Business Days after any notice or document under the Security of Payment Act (excluding any 'payment claim' or 'payment schedule' as those terms are defined under the Security of Payment Act) is given to, or received by, Project Co or any Subcontractor; or
- (ii) 2 Business Days after notice of a Subcontractor's intention to suspend work under a Subcontract in accordance with the Security of Payment Act is given to, or received by, Project Co or any Subcontractor,

a copy of that notice is given to the State.

(b) **(Suspension under Security of Payment Act):** If a Subcontractor has become entitled to suspend work under a Subcontract in accordance with the Security of

Payment Act because of a failure by Project Co or any Subcontractor to pay moneys due and payable to that Subcontractor, the State may pay to the Subcontractor the amount owing to the Subcontractor in connection with that work, and any amount so paid by the State will be a debt due and payable by Project Co to the State. Where practicable, the State will provide prior written notice to Project Co prior to paying the relevant Subcontractor.

(c) **(State may pay Subcontractors)**: Notwithstanding clause 12.4(b), if any amount is:

- (i) certified as payable; or
- (ii) otherwise due and payable,

to a Subcontractor under a Subcontract, and Project Co or the relevant Subcontractor does not pay such amount to that Subcontractor in accordance with that Subcontract, then, without limiting any provision of the Financiers Tripartite Deed, the State may pay such amount to that Subcontractor provided it has given Project Co 10 Business Days' notice of its intention to do so, and any amount so paid by the State to that Subcontractor will be a debt due and payable by Project Co to the State.

12.5 Obligations as to Claims made on pass-through basis

Project Co must, in circumstances where it makes any Claim against the State as a consequence of a Claim that has been made by a Subcontractor against Project Co, take reasonable steps to ensure that any such Claim made by the Subcontractor is bona fide, prior to making any related Claim against the State, and must notify the State of the steps it has taken prior to, or at the same time as, it makes the Claim against the State.

12.6 Industrial issues

Project Co:

- (a) **(Solely responsible)**: has sole responsibility for, and must manage, all aspects of industrial relations in connection with the Project; and
- (b) **(To inform State)**: must keep the State fully and immediately informed of industrial relations issues or action which affect or are likely to affect the carrying out of the Project Activities and what action or measures (including settlements) Project Co has taken or proposes to take to overcome the effects of such industrial relations issues or action.

12.7 Competence

- (a) **(Project Co to ensure competence)**: Project Co must ensure that all persons employed or engaged on the Project Activities hold appropriate qualifications and have received appropriate training for their intended duties, and provide evidence of such qualifications and training to the State as reasonably requested.
- (b) **(Incompetence)**: If the State notifies Project Co of any person employed or engaged to carry out the Project Activities who, in the State's reasonable opinion, is incompetent, does not meet the standard required by clause 12.7(a), or is negligent, dishonest or guilty of misconduct, then Project Co must promptly:
 - (i) remove the person or ensure that such person is promptly removed from carrying out the Project Activities;
 - (ii) replace the person or ensure that such person is promptly replaced; and
 - (iii) ensure that the person is not again employed or engaged to carry out the Project Activities.

13. Workforce

13.1 Employee Requirements

- (a) **(Training and checks):** Project Co must ensure that each employee of Project Co and each Subcontractor engaged to provide any Project Activities:
- (i) completes the training detailed in the Employee Requirements for those particular types of employee; and
 - (ii) prior to being engaged to provide the Project Activities, passes the relevant Employee Checks.
- (b) **(Availability of results):** Project Co must:
- (i) promptly make the results of:
 - A. any Employee Checks; or
 - B. any Probity Investigation that Project Co is required to undertake in accordance with clause 63.2,available to the State.
- (c) **(Denial of employment):** Without prejudice to clause 63.2(d), the State may require Project Co to deny or procure that the Subcontractors deny employment to a prospective employee and refuse to engage any person or discontinue the employment or engagement of any person if the:
- (i) Probity Investigation reveals information indicating that that person does not comply with the requirements of this Deed;
 - (ii) Employee Requirements are not met at all times by that person;
 - (iii) employee fails an Employee Check; or
 - (iv) State considers that that person is unsuitable or unqualified to provide the Project Activities assigned to that person.

13.2 Principal contractor

- (a) **(Definitions):** In this clause 13.2 and 13.3, the terms 'construction project', 'construction work', 'principal contractor', 'workplace' and 'WHS management plan' have the same meanings given to those terms under the WHS Act and WHS Regulations. For the purposes of the WHS Act and WHS Regulations and this Deed, the work under this Deed and the work under any Subcontract are taken to be part of the same 'construction project'.
- (b) **(Side Deeds):** The parties acknowledge and agree that under the Side Deeds, from the date on which any Side Deed is entered into, the State:
- (i) engages the Appointed Principal Contractor as the principal contractor for any construction project forming that part of the Project Activities for which the relevant Appointed Principal Contractor will be engaged; and
 - (ii) authorises the Appointed Principal Contractor to have management or control of that part of the workplace to which any construction project for which they are engaged relates and to discharge the duties of a principal contractor under the WHS Regulation in relation to the construction project forming that part of the Project Activities for which they are engaged.

- (c) **(D&C Subcontractor's engagement and appointment):** The D&C Subcontractor's engagement and appointment as principal contractor by the State in respect of any construction project in relation to the Delivery Phase Sites will continue until the earlier of:
- (i) the Date of Technical Completion;
 - (ii) the termination of the D&C Side Deed in relation to that D&C Subcontractor; and
 - (iii) the termination of this Deed.
- (d) **(Operator's engagement and appointment):** The Operator's engagement and appointment as principal contractor by the State in respect of any construction project in relation to the Project Activities during the period after the Date of Technical Completion will continue until the earlier of:
- (i) that relevant construction project being complete;
 - (ii) the termination of the Operator Side Deed in relation to that Operator;
 - (iii) the termination of this Deed; and
 - (iv) the Expiry Date.
- (e) **(Appointed Principal Contractor):** Project Co:
- (i) must procure and ensure that each Appointed Principal Contractor accepts the engagement in clause 13.2(b) and agrees to discharge the duties imposed on a principal contractor under the WHS Legislation, the Side Deeds and the State Project Documents (as applicable) and the Appointed Principal Contractor's WHS management plan for the construction project;
 - (ii) must not do anything which would result in either Appointed Principal Contractor being in breach of its obligations as principal contractor under the WHS Regulation; and
 - (iii) agrees to comply, and to ensure that its personnel comply, with all lawful directions relating to health and safety given by each Appointed Principal Contractor and if it believes that it is unable to do so, agree to notify and provide details to the Appointed Principal Contractor immediately.
- (f) **(Ineffective or no appointment of Appointed Principal Contractor):** If the State's appointment of the Appointed Principal Contractor as principal contractor is not effective for any reason, or, for any period, the State has not appointed a principal contractor for any Project Activities:
- (i) Project Co agrees that Project Co is appointed by the State as principal contractor in respect of the Project Activities for which the Appointed Principal Contractor was engaged to perform as principal contractor (albeit that the appointment as principal contractor is not effective) or for which the State has not appointed a principal contractor;
 - (ii) the State authorises Project Co to have management or control of that part of the workplace to which the construction project for which the Appointed Principal Contractor was engaged as principal contractor (albeit, ineffectively) relates or for which the State has not appointed a principal contractor and to discharge the duties of a principal contractor under the WHS Regulation in relation to the construction project forming the whole or part of the applicable Project Activities; and

- (iii) without limiting clauses 13.2(f)(i) and 13.2(f)(ii), if Project Co is being appointed principal contractor under this clause 13.2(f) because the appointment of the Appointed Principal Contractor by the State has been ineffective, Project Co agrees that it will ensure that the Appointed Principal Contractor exercises and fulfils the functions and obligations of the principal contractor under the WHS Regulation, the WHS management plan for the construction project and this Deed and the Side Deeds and State Project Documents (as applicable) as if the Appointed Principal Contractor had been validly engaged and authorised as principal contractor for the construction project under the WHS Regulation.

- (g) **(Failure to comply):** If an Appointed Principal Contractor or Project Co (if appointed principal contractor) fails to comply with any of its obligations as principal contractor under the WHS Regulation, this Deed, the Side Deed and any State Project Document (as applicable) and the WHS management plan for the construction project, the State may:
 - (i) direct Project Co (if the Appointed Principal Contractor is the principal contractor) to carry out the obligations of principal contractor and the cost incurred in carrying out these obligations will be the responsibility of Project Co; or
 - (ii) if Project Co is appointed the principal contractor for the construction project, carry out the obligations of principal contractor itself or have them carried out by a third party, and the cost incurred by the State in having those obligations carried out will be a debt due and payable by Project Co to the State.

- (h) **(Documents to be provided):** Without limiting Project Co's reporting or other obligations elsewhere under this Deed, Project Co must procure that each Appointed Principal Contractor will:
 - (i) as soon as reasonably practicable, provide Project Co with access to any registers, records and documents relating to work health safety and rehabilitation, including their WHS management plan, subcontractors' safe work method statements, records of persons carrying out construction work, and any register of hazardous substances that each Appointed Principal Contractor is required to prepare and maintain in connection with its obligations as principal contractor; and
 - (ii) at all reasonable times and at the request of Project Co, provide Project Co with access to such documents or records as may be necessary to establish the compliance by each Appointed Principal Contractor with its obligations under the Side Deeds and State Project Documents (as applicable), the WHS Legislation and its WHS management plan,

and allow Project Co to make copies of such documents or records.

Where Project Co is appointed the principal contractor under clause 13.2(f), the obligations of the principal contractor in this clause 13.2(h) will apply to Project Co and information will be provided to the State or such other third party nominated by the State.

13.3 Work Health and Safety

- (a) **(Performance of Services and Project Activities):** Project Co must perform the Services and carry out the other Project Activities:
 - (i) safely and in a manner that, so far as it is reasonably practicable, does not put at risk the health and safety of persons; and

(ii) in a manner that protects property.

(b) Project Co must:

(i) **(Compliance with WHS obligations):** in carrying out the Project Activities:

- A. ensure that it complies with all Laws and other requirements of this Deed, the Side Deeds and State Project Documents (as applicable) and the WHS Management Plan, in respect of work health, safety and rehabilitation management; and
- B. require all Subcontractors to comply with their obligations referred to in this Deed, the Side Deeds and State Project Documents (as applicable), the WHS Legislation and the WHS management plan applicable to the Project Activities they are undertaking;

(ii) **(WHS Management System and Plan):** have in place, and comply with a WHS Management System and WHS Management Plan. Project Co must prepare and provide a WHS Management Plan to the State:

- A. before commencement of the Works, in relation to the Delivery Phase; and
- B. prior to the Operational Commencement Date, in relation to the Operating Phase,

and, if the State has any comments about the WHS Management Plan, Project Co must take those into account and prepare an amended WHS Management Plan. Project Co must ensure the WHS Management Plan is fit for purpose, including that the content of the WHS Management Plan is accurate, appropriate and up to date (taking into account changes in the Project Activities) at all times;

(iii) **(Notification of matters and incidents):** notify the State immediately (and in any event within 12 hours of such matter arising) of:

- A. all work health, safety and rehabilitation matters in connection with the performance of the Project Activities that are required to be notified to an Authority under the WHS Legislation (whether required to be notified by a Subcontractor or other party performing the Project Activities); and
- B. all major injury incidents sustained at the Site;

(iv) **(Notices issued by Authorities):** notify the State within 1 Business Day of receipt of any safety related prohibition notice, improvement notice, correspondence or other notice issued by an Authority or other person in connection with the Project Activities (whether issued to a Subcontractor or other party performing the Project Activities);

(v) **(Written assurances from Subcontractors):** institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with WHS Legislation, their obligations under the Side Deeds and State Project Documents (as applicable) in relation to work health safety and rehabilitation matters, and the WHS management plan applicable to the Project Activities they are undertaking;

(vi) **(Provision of written assurances to the State):** provide the written assurances referred to in clause 13.3(b)(v), together with written assurances from Project Co about Project Co's ongoing compliance with

the WHS Legislation their obligations under this Deed, the Side Deeds and the State Project Documents (as applicable) in relation to work health safety and rehabilitation matters, and its WHS Management Plan to the State. Project Co's assurance must be based on auditing and monitoring conducted under clause 13.3(c);

- (vii) **(Directions)**: comply with any direction about work health safety and rehabilitation matters from an Authority or the State (which may include a direction to issue a direction to a Subcontractor);
 - (viii) **(Not to breach WHS Legislation)**: ensure that it does not do anything or fail to do anything that would cause the State or any of its Associates to be in breach of the WHS Legislation;
 - (ix) **(Cooperate in discharge of obligations)**: cooperate with the State in respect of the discharge of any work health and safety obligations of the State in connection with the Project under the WHS Act and WHS Regulations and:
 - A. comply with all reasonable requests of the State to assist it to discharge its obligations; and
 - B. refrain from doing anything that may impede the State in discharging its obligations; and
 - (x) **(Equivalent Subcontract clause)**: procure that each Subcontract includes provisions equivalent to clauses 13.3(a) to 13.3(c).
- (c) **(Auditing and monitoring)**: Project Co must:
- (i) regularly audit and monitor its compliance with the WHS Legislation, the WHS Management Plan and its obligations under this Deed, the Side Deeds and the State Project Documents (as applicable) in relation to work health safety and rehabilitation matters;
 - (ii) immediately undertake any corrective work or action identified in the audit as a departure from the WHS Legislation, the WHS Management Plan and its obligations under this Deed, the Side Deeds and the State Project Documents (as applicable) in relation to work health safety and rehabilitation matters, at its expense; and
 - (iii) report to the State about the outcome of any auditing and monitoring under this clause 13.3(c), as required by the State.
- Project Co must, at the State's direction, conduct auditing or monitoring as provided for in this sub-clause. Any such auditing or monitoring must be conducted within the time specified by the State.
- (d) **(Project Co Responsible)**: Except in relation to the obligations of any principal contractor under the WHS Legislation appointed in accordance with this clause 13, Project Co accepts that it is:
- (i) **(Health and Safety)**: responsible for all aspects of health and safety relating to the Relevant Infrastructure, the Site and the Project Activities from Financial Close until the Expiry Date and it cannot delegate or assign this responsibility to a third party without the prior approval of the State; and
 - (ii) **(Employment and conditions)**: entirely responsible for the employment and conditions of service of Project Co's employees and must procure that each Subcontractor is likewise responsible for its employees, and

that each Subcontractor complies with the same obligations and requirements as required of Project Co under this clause 13.

13.4 State may act if Project Co fails to comply

To the extent that Project Co fails to comply with any obligation under this clause 13, the State may, in addition to any other remedies under this Deed or at Law, on reasonable prior notice to Project Co, do all things, or engage a third party to do all things, necessary to rectify the failure and the reasonable costs of doing so will be a debt due and payable by Project Co to the State.

13.5 Long service leave levy

Before commencing construction of the Works, Project Co must:

- (a) **(Payment of long service levy):** pay (or procure payment) to the Building and Construction Industry Long Service Payments Corporation, or its agent, the amount of the long service levy payable in respect of the building or construction work under the *Building and Construction Industry Long Service Payments Act 1986* (NSW) **(Levy)**; and
- (b) **(Evidence of payment):** produce to the State Representative the document evidencing payment of the Levy.

13.6 Security clearances

- (a) **(National Police Certificate):** Project Co:
 - (i) must obtain a National Police Certificate for all Relevant Persons who carry out Project Activities at the Correctional Complex prior to them commencing such Project Activities or will otherwise have access to Confidential Design Information or Personal Information;
 - (ii) is not obliged to obtain a National Police Certificate for a Relevant Person pursuant to clause 13.6(a)(i) if Project Co can provide to the State a National Police Certificate in relation to that Relevant Person which is dated no more than 12 months before the date on which the Relevant Person will commence the Project Activities;
 - (iii) without limiting clause 13.6(a)(iv), must obtain an updated National Police Certificate for any Relevant Person to which clause 13.6(a)(i) or 13.6(a)(ii) apply every 5 years throughout the Term for so long as any such Relevant Person continues to carry out any Project Activities or otherwise continues to have access to any Confidential Design Information or Personal Information; and
 - (iv) if requested by the State, must obtain a further National Police Certificate for any Relevant Person to which clause 13.6(a)(i) or 13.6(a)(ii) apply from time to time throughout the Term.
- (b) **(Further security clearances):** If the State, acting reasonably, decides that a further security clearance is required in relation to any Relevant Persons referred to in 13.6(a), then Project Co must ensure that any such Relevant Person, as may be requested by the State from time to time throughout the Term, undergoes such security clearance, as reasonably required by the State.
- (c) **(Uncleared Personnel):** If:
 - (i) Project Co does not obtain a National Police Certificate for a Relevant Person in accordance with clause 13.6(a), or the State, acting reasonably, has concerns in relation to the results of a National Police Certificate obtained for a Relevant Person; or

- (ii) if any Relevant Person referred to in clause 13.6(a) is required by the State to undergo a security clearance pursuant to clause 13.6(b) and does not undergo the requested security clearance, or does not meet the relevant clearance requirements,

then Project Co must not, except to the extent expressly authorised by the State, permit the Relevant Person (**Uncleared Personnel**) to undertake any Project Activities or have access to any Confidential Design Information or Personal Information.

- (d) (**Ongoing notification**): Without limiting Project Co's obligations under clause 63.1(a), it is Project Co's responsibility to notify the State of any behaviour by any Relevant Person, or of any other circumstances, which come to Project Co's attention that may cast doubt on that Relevant Person's fitness to be involved in any way with the Project.
- (e) (**State rights**): If the State, in its absolute discretion, considers that any Relevant Person:
 - (i) has misconducted him or herself;
 - (ii) is or becomes incapable of efficiently performing his or her duties;
 - (iii) is or becomes a person whom it would not be in the public interest for Project Co to engage or be associated with;
 - (iv) has, or becomes likely to have, a criminal history; or
 - (v) is not, or becomes a person who is not, in the State's opinion, suitable to be involved in providing any of the Project Activities,

the State may give to Project Co notice and Project Co must without delay remove such person from the performance of any of the Project Activities. The State has no obligation to disclose to Project Co the reasons for a decision made under this clause 13.6(e).

13.7 Employment of CSNSW Employees

- (a) Project Co, Project Co's Associates and the State will cooperate in the identification of any CSNSW Employee that Project Co or any of its Associates wishes to make an offer employment to in connection with the provision of the Services.
- (b) Any offer of employment by Project Co or any of its Associates to a CSNSW Employee must include the following terms:
 - (i) the CSNSW Employee's employment cannot be terminated for one year from the date of commencement except:
 - A. for serious misconduct;
 - B. pursuant to the proper application of reasonable disciplinary procedures;
 - C. if the employee is no longer able to perform the inherent requirements of the position; or
 - D. by agreement with the employee;
 - (ii) any annual leave and extended leave that is accrued and untaken as at the date the CSNSW Employee ceased employment with the State that is not 'cashed out' by the employee at that time will be recognised by Project Co or its Associate; and

- (iii) the CSNSW Employee can continue to contribute to the superannuation fund that he or she contributed to immediately prior to ceasing employment with the State.

13.8 Compensation for transfer of accrued annual leave and extended leave

The State will pay Project Co an amount in consideration for the assumption by Project Co or an Associate of the accrued and untaken leave entitlements of any Transferring Employee, as referred to in clause 13.7(b)(ii). The amount will be calculated in accordance with any applicable industrial instrument or legislation, and will not include any amount for any annual leave or extended leave the Transferring Employee cashes out on the termination of their employment with the State.

13A Superannuation for Transferring Employees

13A.1 Definitions

In this clause 13A:

Acceptable Credit Rating means a credit rating of at least BBB minus by Standard and Poor's (Australia) Pty Limited or, if no rating is provided by Standard and Poor's (Australia) Pty Limited, an equivalent rating with another reputable rating agency (as the State may approve in writing), provided that if the relevant rating agency changes the manner in which its credit ratings are calculated or derived, then the Acceptable Credit Rating will be deemed to be the credit rating recognised by that rating agency which most closely corresponds to an Standard and Poor's (Australia) Pty Limited credit rating of at least BBB minus as at the date of this Deed.

DB Contribution means, in respect of a DB Employee, the contributions that the STC Actuary determines are payable in respect of the DB Employee on and from the Transfer Date, having regard to the New Employers' Employer Reserve in the Defined Benefit Scheme at the time.

DB Employee means a Transferring Employee who is a member of a Defined Benefit Scheme.

Defined Benefit Scheme means each of:

- (a) the State Superannuation Scheme or SSS, as constituted pursuant to the *Superannuation Act 1916* (NSW);
- (b) the State Authorities Superannuation Scheme or SASS, as constituted pursuant to the *State Authorities Superannuation Act 1987* (NSW); and
- (c) the State Authorities Non-Contributory Superannuation Scheme or SANCS, as constituted pursuant to the *State Authorities Non-Contributory Superannuation Act 1987* (NSW).

Employer has the meaning given to that term in the governing rules of a Defined Benefit Scheme.

Employer Admission Date has the meaning given to it in clause 13A.7(a).

Employer Reserve has the meaning given to that term in the governing rules of the Defined Benefit Scheme.

Minimum Superannuation Contribution means the 'charge percentage' of an employee's 'ordinary time earnings' (as those expressions are defined in the Superannuation Guarantee Legislation) or such other amount as is required to:

- (a) avoid the imposition of the superannuation guarantee charge under the Superannuation Guarantee Legislation; or

- (b) comply with any other legal obligation pertaining to employee superannuation contributions (including, but not limited to, under a contract of employment, an industrial instrument such as an award or agreement or any other Law).

New Employer means the Entity nominated by Project Co pursuant to clause 13A.2(c)(i) who will be the employer of any Transferring Employee.

New Employers' Employer Reserve has the meaning given to it in clause 13A.4(a)(ii)(A).

Past Service Assets has the meaning given to it in clause 13A.4(a)(ii)(B)2).

Past Service Liabilities has the meaning given to it in clause 13A.4(a)(ii)(B)1).

Post-transfer DB Amount has the meaning given to it in clause 13A.7(b).

Post-transfer DB Statement has the meaning given to it in clause 13A.7(b).

Post-transfer Transferring DB Employees has the meaning given to it in clause 13A.9.

STC means the SAS Trustee Corporation, the trustee of each Defined Benefit Scheme.

STC Actuary means the actuary or firm of actuaries as may be appointed as the actuary for the Defined Benefit Scheme by STC from time to time.

Superannuation Guarantee Legislation means:

- (a) the *Superannuation Guarantee Charge Act 1992* (Cth); and
- (b) the *Superannuation Guarantee (Administration) Act 1992* (Cth).

Transfer Date means the date on a Transferring Employee commences employment with the New Employer.

Transfer of Work means transferring work in connection with a transfer of business, as those terms are defined by the *Fair Work Act 2009* (Cth).

Transferring Employee's Superannuation Scheme has the meaning given to it in clause 13A.2(a)(i).

Treasurer means the treasurer of the State of New South Wales.

13A.2 Objectives

- (a) The parties acknowledge and agree that from the Transfer Date:
- (i) under the terms of this Deed, a Transferring Employee will be entitled to continue as a contributor, member or employee for the purposes of any superannuation scheme in respect of which the Transferring Employee was a contributor, member or employee immediately before the Transfer Date (**Transferring Employee's Superannuation Scheme**) and will remain so entitled subject to any variation to that entitlement made by agreement or otherwise in accordance with Law; and
- (ii) the continuity of the Transferring Employee's contract of employment is taken not to have been broken by the transfer of the Transferring Employee's employment, and service of the Transferring Employee with the State (including any deemed service with the State) that is continuous service up to the Transfer Date is taken for all purposes to be service with the New Employer.

- (b) The parties intend that in respect of a Transferring Employee, subject to the prior occurrence of the matters set out in clause 13A.4(a)(i), with effect on and from the Transfer Date:
- (i) the State will cease to contribute to the Transferring Employee's Superannuation Scheme;
 - (ii) the New Employer will contribute to the Transferring Employee's Superannuation Scheme, and be responsible for fully funding all benefits provided by that scheme in relation to each Transferring Employee in that scheme on and after the Transfer Date in place of the State; and
 - (iii) the State will cease to be responsible for funding any superannuation benefits accruing to the Transferring Employee in respect of periods of service, on and after the Transfer Date.
- (c) Project Co must:
- (i) notify the State, in writing, of the New Employer not less than 20 Business Days prior to the Operational Commencement Date;
 - (ii) procure that the New Employer comply with its obligations pursuant to this clause 13A.

13A.3 Continuation of membership

With effect on and from the Transfer Date, each Transferring Employee will remain a member of the Transferring Employee's Superannuation Scheme of which the Transferring Employee was a member immediately before the Transfer Date, except as otherwise required by Law (such as, for example, where the Transferring Employee chooses another fund in accordance with the Superannuation Guarantee Legislation or any applicable industrial award).

13A.4 New Employer to become a participating employer or contributor of the Transferring Employee's Superannuation Scheme

- (a) The State must use reasonable endeavours to:
- (i) enable the New Employer to become, with effect on and from the Transfer Date, a participating employer or contributor of each Transferring Employee's Superannuation Scheme (including applying for an appropriate order to schedule the New Employer as an Employer under the relevant Legislation governing each Defined Benefit Scheme);
 - (ii) procure that:
 - A. STC establish a new Employer Reserve in each Defined Benefit Scheme attributable to the New Employer which relates to the Transferring Employees who are members of that Defined Benefit Scheme (each such account to be known as the **New Employer's Employer Reserve**);
 - B. the STC Actuary calculates:
 - 1) the aggregate of the past service liabilities of the State attributable to the Transferring Employees as at the Transfer Date (**Past Service Liabilities**); and
 - 2) an asset amount equal to the amount calculated in clause 13A.4(a)(ii)(B)1 (**Past Service Assets**); and

- C. STC transfers from the State's Employer Reserve to the New Employer's Employer Reserve in each Defined Benefit Scheme, the Past Service Liabilities and the Past Service Assets in accordance with the relevant Legislation governing the Defined Benefit Scheme.
- (b) Subject to the prior occurrence of the matters set out in clause 13A.4(a)(i), Project Co must do all things necessary to ensure that, with effect on and from the Transfer Date:
 - (i) the New Employer becomes a participating employer or contributor of each Transferring Employee's Superannuation Scheme (including becoming an Employer of a Defined Benefit Scheme unless the State fails to discharge its obligations under clause 13A.4(a)(i)); and
 - (ii) each Transferring Employee is able to continue as a contributor, member or employee of the Transferring Employee's Superannuation Scheme as contemplated by clause 13A.3.
 - (c) Upon admission by the New Employer as a participating employer or contributor of a Transferring Employee's Superannuation Scheme, the New Employer will be bound by the governing rules of the Transferring Employee's Superannuation Scheme for as long as the New Employer is a participating employer or contributor of the Transferring Employee's Superannuation Scheme for the purposes of those rules.
 - (d) Subject to clause 13A.7, with effect on and from the Transfer Date, the New Employer will contribute to the Transferring Employee's Superannuation Scheme, and be responsible for fully funding all benefits provided by that scheme in relation to each Transferring Employee in that scheme on and after the Transfer Date in place of the State.
 - (e) The State shall request the Treasurer to make any orders as are necessary to give effect to the transactions contemplated by this clause 13A.4.
 - (f) The New Employer will not be responsible for the Past Service Liability attributable to a DB Employee unless the Past Service Assets attributable to that DB Employee as at the Transfer Date have been transferred to the New Employer's Employer Reserve in that scheme.

13A.5 State responsible for superannuation benefits for service up to the Transfer Date

The State must, up to the Transfer Date:

- (a) make Minimum Superannuation Contributions on behalf of each Transferring Employee (other than in relation to a DB Employee);
- (b) comply with the obligations with respect to superannuation under any contract or award in relation to any Transferring Employee covered by that contract or award; and
- (c) in respect of a DB Employee, contribute at a rate required by the governing rules of the Defined Benefit Scheme to fund the benefits provided by that scheme in respect of any period of service up to the Transfer Date; and
- (d) meet the costs associated with making the contributions referred to in clause 13A.5(a) or 13A.5(c).

13A.6 New Employer to fund superannuation benefits for service from the Transfer Date

- (a) Subject to clause 13A.7, the New Employer will be responsible for funding, and will fund, any superannuation benefits accruing to Transferring Employees in place of the State on and from the Transfer Date. For the avoidance of doubt, the New Employer must:
- (i) make Minimum Superannuation Contributions on behalf of each Transferring Employee (other than in relation to a DB Employee);
 - (ii) comply with the obligations with respect to superannuation under any contract or award in relation to any Transferring Employee covered by that contract or award; and
 - (iii) at any time that a DB Employee is a member of a Defined Benefit Scheme (including as a recipient of a pension payable under the Defined Benefit Scheme), that any surviving spouse or other beneficiary of the DB Employee is entitled to a benefit from the Defined Benefit Scheme, or that any other benefit otherwise remains payable from the Defined Benefit Scheme in respect of the DB Employee's membership of the Defined Benefit Scheme:
 - A. contribute at a rate required by the governing rules of the Defined Benefit Scheme to fund the benefits provided by the Defined Benefit Scheme in relation to the DB Employee on and from the Transfer Date; and
 - B. meet the costs associated with making the contributions referred to in clause 13A.6(a)(iii)(A).
- (b) Subject to clause 13A.7, the State will cease to be responsible for funding any superannuation benefits accruing to the Transferring Employee in respect of periods of service, on and after the Transfer Date.

13A.7 Delayed scheduling of the New Employer

If, despite Project Co discharging its obligations under clause 13A.4(b)(i), the New Employer does not become a participating employer or contributor of a Transferring Employee's Superannuation Scheme that is a Defined Benefit Scheme by the Transfer Date:

- (a) the State will, in respect of each Transferring Employee who is a member of the Defined Benefit Scheme, contribute at a rate required by the governing rules of the Defined Benefit Scheme to fund the benefits provided by that scheme during the period between the Transfer Date and the date the New Employer becomes a participating employer or contributor of that scheme (**Employer Admission Date**) and meet the costs associated with making those contributions;
- (b) the State may provide to the New Employer one or more statements (each a **Post-transfer DB Statement**) showing the amount of any contributions and costs paid by the State pursuant to clause 13A.7(a) (**Post-transfer DB Amount**); and
- (c) the New Employer will, within five Business Days after receiving a Post-transfer DB Statement from the State, pay to the State an amount equal to the Post-transfer DB Amount shown in the statement.

13A.8 No interest in the State's Employer Reserve in a Defined Benefit Scheme

- (a) Project Co:

- (i) acknowledges that none of Project Co or its Associates (including the New Employer) have any interest in the State's Employer Reserve in a Defined Benefit Scheme;
 - (ii) must not, and must procure that its Associates (including the New Employer) do not, make a claim on any part of the State's Employer Reserve in a Defined Benefit Scheme;
 - (iii) and its Associates (including the New Employer) release the State and STC from any claim on the State's Employer Reserve in a Defined Benefit Scheme that Project Co or its Associates (including the New Employer) may have;
 - (iv) indemnifies the State and STC against any claim that Project Co or its Associates (including the New Employer) may make on the State's Employer Reserve in a Defined Benefit Scheme; and
 - (v) acknowledges that the State's Employer Reserve in a Defined Benefit Scheme remains available for the sole use and benefit of the State subject to the governing rules of the Defined Benefit Scheme.
- (b) If at any time after the Transfer Date, the STC Actuary determines that the State's Employer Reserve in a Defined Benefit Scheme is in surplus:
- (i) the State may procure that STC allocates such surplus as agreed between the State and STC, including to the State's Employer Reserve or to the Employer Reserve of any other Employer within the Defined Benefit Scheme; and
 - (ii) the New Employer must nonetheless continue to contribute to the Defined Benefit Scheme in accordance with clause 13A.6.

13A.9 If the New Employer ceases to be the employer - DB Employees

The New Employer must not enter into an arrangement with another entity under which there is a Transfer of Work in respect of any DB Employee who is an employee of the New Employer at the relevant time (**Post-transfer Transferring DB Employees**) to that entity, unless:

- (a) the Transferring Employee's contract of employment is taken not to have been broken by the transfer of the Transferring Employee's employment, and service of the Transferring Employee with the State (including any deemed service with the State) and the New Employer that is continuous service up to the time of transfer is taken for all purposes to be service with the new employer;
- (b) the new employer of that DB Employee agrees to be responsible for funding, and to fund, the Defined Benefit Schemes at the rate required by the governing rules of the Defined Benefit Scheme to fund the benefits provided by the Defined Benefit Scheme in relation to the Post-transfer Transferring DB Employees, and otherwise as required to be assumed and funded by the New Employer under this clause 13A.9;
- (c) subject to receiving the reasonable assistance of the State, does all things necessary to:
 - (i) become a participating employer or contributor in respect of the Defined Benefit Scheme of each Post-transfer Transferring DB Employee; and
 - (ii) ensures that each Post-transfer Transferring DB Employees is entitled to continue as a contributor, member or employee in respect of such Defined Benefit Schemes; and

- (d) has an Acceptable Credit Rating or provides the State with a guarantee in a form acceptable to the Treasurer in respect of the new employer's obligations under this clause 13A.9 by a person having an Acceptable Credit Rating.

13A.10 Transferring Employees who are not DB Employees

The New Employer must not enter into an arrangement with another entity under which there is a Transfer of Work in respect of any Transferring Employee (who is not a DB Employee), unless the new employer takes whatever steps are necessary to make contributions to the relevant employee's superannuation fund on the same basis that the New Employer was making contributions when it was the employer, except as otherwise required by Law.

14. Independent Certifier

14.1 Appointment of Independent Certifier

- (a) **(Appointment):** The State will appoint, and the State and Project Co must jointly engage, the Independent Certifier to act as Independent Certifier:
 - (i) in accordance with the terms of this Deed and the Independent Certifier Deed; and
 - (ii) independently and not as agent of either party.
- (b) **(Costs):**
 - (i) The costs and expenses of the Independent Certifier (including the Independent Certifier's professional fees and costs incurred in exercising or purporting to perform its obligations under the Independent Certifier Deed but not including any payment due to the Independent Certifier in respect of any functions not associated with this Deed) will be paid by the State to the Independent Certifier.
 - (ii) Subject to clause 14.1(b)(iii), Project Co must pay to the State, on demand, from time to time, 50% of the costs and expenses of the Independent Certifier paid by the State under clause 14.1(b)(i).
 - (iii) To the extent that the Independent Certifier considers that the parties (as a result of their respective conduct) have a proportionate responsibility for the costs and expenses of the Independent Certifier paid by the State under clause 14.1(b)(i) that would result in each party bearing a proportion other than 50% of the costs and expenses of the Independent Certifier, Project Co must pay to the State, on demand, the relevant proportion of the costs and expenses of the Independent Certifier paid by the State under clause 14.1(b)(i) that the Independent Certifier determines Project Co is responsible for, as stated in a notice from the Independent Certifier to the parties.
- (c) **(Role):** The role, functions, rights and liabilities of the Independent Certifier and the parties' rights and obligations in connection with the Independent Certifier are set out in the Independent Certifier Deed.

14.2 Other Project roles of Independent Certifier

- (a) **(No ability to act for Financiers):** Project Co must ensure that no Financier, nor the Financiers together, appoints the Independent Certifier to act in any role in connection with the Finance Documents or Subcontracts (as applicable), without the prior consent of the State and on such terms approved by the State.
- (b) **(Independent certifier role):** The State consents to the Independent Certifier acting as the sub independent certifier under the D&C Subcontract, subject to

Project Co notifying the State of this and ensuring that any agreement pursuant to which Project Co and the D&C Subcontractor engage the Independent Certifier as independent certifier for the purposes of the D&C Subcontract:

- (i) includes an acknowledgment and agreement by the parties to the paramountcy of the role of the Independent Certifier under this Deed; and
 - (ii) does not contain terms which otherwise prejudice or compromise the paramountcy of the Independent Certifier role under this Deed.
- (c) **(Copy to be provided):** Project Co must promptly provide the State with a copy of any agreement which appoints the Independent Certifier as the independent certifier under the D&C Subcontract in relation to the Project.
- (d) **(No cross-subsidisation):** Project Co must at all times ensure that the amounts being paid by the State to the Independent Certifier under the Independent Certifier Deed are not cross-subsidising any other services which the Independent Certifier is performing in relation to the Project and must provide evidence to that effect to the State Representative.
- (e) **(Separation of roles):** Subject to clause 14.2(b), if the Independent Certifier is appointed to act as the sub independent certifier under the D&C Subcontract, Project Co must put in place and ensure the Independent Certifier puts in place appropriate arrangements to provide for the separation of the Independent Certifier's roles under this Deed and the D&C Subcontract.
- (f) **(No compromise):** Project Co must not, and must ensure that its Associates do not, do anything which would prejudice or compromise the paramountcy of the Independent Certifier's role under this Deed.
- (g) **(No other roles):** Save as expressly stated in this Deed, neither party may engage the Independent Certifier in respect of any other role in connection with the Project without the prior consent of the other party.

14.3 Determinations of Independent Certifier

Determinations of the Independent Certifier will be final and binding on the State and Project Co except:

- (a) **(Manifest error or fraud):** in the case of manifest error or fraud; or
- (b) **(Express provision):** if there is an express provision in this Deed to the contrary; or
- (c) **(Expert determination):** where the Independent Certifier is acting as an expert under clause 52, in which case the parties' rights in respect of the determination of the Independent Certifier will be as set out in that clause.

14.4 Replacement of Independent Certifier

- (a) **(Replacement):** If:
 - (i) the Independent Certifier Deed is terminated in accordance with its terms; or
 - (ii) the Independent Certifier is, for any reason, not appointed or ceases to act as the Independent Certifier in accordance with the State Project Documents,

the State will appoint and the State and Project Co will jointly engage another person to act as Independent Certifier on substantially the same terms as the

Independent Certifier Deed, provided that the Independent Certifier to be engaged must:

- (iii) be reasonably acceptable to the State and Project Co;
 - (iv) have appropriate qualifications and experience; and
 - (v) have no interest or duty which conflicts or may conflict with its functions as the Independent Certifier.
- (b) **(New Independent Certifier bound):** The new Independent Certifier appointed in accordance with clause 14.4(a) is bound by the exercise of any functions exercised or decisions made by the State and Project Co where such functions were exercised or decisions were made under this Deed or the Independent Certifier Deed.

15. NSW Code and Guidelines

15.1 Reference

In addition to terms defined in this Deed, terms used in this clause 15 have the same meaning as is attributed to them in the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (**NSW Guidelines**) (as published by the NSW Treasury in July 2013 and as amended or updated from time to time). The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

15.2 Primary obligation

- (a) **(NSW Code):** In carrying out the Project Activities, Project Co must at all times comply with, and meet any obligations imposed by, the NSW Government's Code of Practice for Procurement (**NSW Code**) and the NSW Guidelines.
- (b) **(Notification of Construction Compliance Unit):** Project Co must notify the Construction Compliance Unit (**CCU**) and the State of any possible non-compliance with the NSW Code and the NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) **(Subcontractors bound by NSW Code):** Where Project Co engages a Subcontractor or consultant, Project Co must ensure that Subcontract or consultancy contract imposes on the Subcontractor or consultant equivalent obligations to those in this clause 15 (under the heading 'NSW Code and Guidelines'), including that the Subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (d) **(Engagement of other parties):** Project Co must not appoint or engage another party in relation to the Project where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or the NSW Guidelines.

15.3 Access and information

- (a) **(Maintenance of records):** Project Co must maintain adequate records of compliance with the NSW Code and the NSW Guidelines by it, its subcontractors, consultants and related entities.
- (b) **(Facilitation of authorised personnel):** Project Co must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:

- (i) enter and have access to sites and premises (or part thereof) controlled by Project Co, including but not limited to the Site and the Correctional Complex;
- (ii) inspect any work, material, machinery, appliance, article or facility;
- (iii) access information and documents;
- (iv) inspect and copy any record relevant to the Project;
- (v) have access to personnel; and
- (vi) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and the NSW Guidelines, by Project Co, its subcontractors, consultants, and related entities.

- (c) **(Production of documents):** Project Co, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

15.4 Sanctions

- (a) **(Project Co not subject to a sanction):** Project Co warrants that at the time of entering into this Deed, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or the NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and the NSW Guidelines apply.
- (b) **(Sanctions may be imposed):** If Project Co does not comply with, or fails to meet any obligation imposed by, the NSW Code or the NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or the NSW Guidelines.
- (c) **(Disclosure of sanctions):** Where a sanction is imposed on Project Co or its Associates:
 - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the NSW Government (through its agencies, ministers and the CCU) is entitled to:
 - A. record and disclose details of non-compliance with the NSW Code or the NSW Guidelines and the sanction; and
 - B. take them into account in the evaluation of future procurement processes and responses that may be submitted by Project Co, or its related entities, in respect of work to which the NSW Code and the NSW Guidelines apply.

15.5 Compliance

- (a) **(Cost of compliance):** Project Co bears the cost of ensuring its compliance with the NSW Code and the NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Code and the NSW Guidelines. Project Co is not entitled to make any Claim against the State or the NSW Government for such costs.
- (b) **(Responsibility to perform):** Compliance with the NSW Code and the NSW Guidelines does not relieve Project Co from responsibility to perform the Project

Activities and any other obligation under this Deed, or from Liability for any Defect in the Works or from any other legal liability, whether or not arising from its compliance with the NSW Code and the NSW Guidelines.

(c) **(Proposed Modification):** Where a Modification is proposed, and that Modification may, or may be likely to, affect compliance with the NSW Code or the NSW Guidelines, Project Co must immediately notify the State of the Modification:

- (i) the extent to which compliance with the NSW Code or the NSW Guidelines will be, or is likely to be, affected by the Modification; and
- (ii) what steps Project Co proposes to take to mitigate any adverse impact of the Modification (including any amendments it proposes to the WHS Management Plan),

and the State will direct Project Co as to the course it must adopt within 10 Business Days of receiving notice.

Part D - Delivery Phase obligations

16. Delivery Phase Plans and Reports and Delivery Phase Program

16.1 Delivery Phase Plans and Reports

- (a) **(Initial Delivery Phase Plans):** The parties acknowledge that the Initial Delivery Phase Plans are included as Attachment 2.
- (b) **(Preparation):** Project Co must prepare (where there are no relevant Initial Delivery Phase Plans), and otherwise update each Delivery Phase Plan:
 - (i) in accordance with the Delivery Phase Plans and Reports Schedule and the other requirements of this Deed relevant to that Delivery Phase Plan; and
 - (ii) to ensure each Delivery Phase Plan contains complete and accurate information in respect of the relevant aspects of the Project.
- (c) **(Submission):** Project Co must submit each Delivery Phase Plan to the State (and, where required under the Delivery Phase Plans and Reports Schedule, the Independent Certifier) for review in accordance with the Review Procedures.
- (d) **(Delivery):** Unless otherwise agreed by the State, Project Co must carry out the Delivery Phase Activities in accordance with the Delivery Phase Plans.
- (e) **(Authority Approval):** If a Delivery Phase Plan is required to be approved by an Authority, Project Co must ensure that it has obtained that Approval prior to submitting the relevant Delivery Phase Plan to the State for review.
- (f) **(Delivery Phase Reports):** Project Co must prepare and submit the Delivery Phase Reports to the State in accordance with the Delivery Phase Plans and Reports Schedule.
- (g) **(Additional information):** Project Co must promptly provide to the State and, where applicable, the Independent Certifier, any additional information in connection with the Delivery Phase Plans and the Delivery Phase Reports reasonably requested by the State or, where applicable, the Independent Certifier.
- (h) **(Warranty):** Project Co warrants that:
 - (i) each Delivery Phase Plan and each Delivery Phase Report is complete and correct, and not false or misleading in any material respect, at the time it is provided to the State; and
 - (ii) each Delivery Phase Plan will, at all times during the Delivery Phase, be fit for purpose.

16.2 Delivery Phase Program

- (a) **(Initial Delivery Phase Program):** The Initial Delivery Phase Program is included in Attachment 3 and does not form part of this Deed.
- (b) **(Update):** Project Co must update the Delivery Phase Program:
 - (i) within 20 Business Days after Financial Close to reflect the date of Financial Close, the Date for Technical Completion (as at Financial Close) and the Original Date for Commercial Acceptance;

- (ii) at least Monthly (and no later than 10 Business Days prior to each meeting of the Project Control Group) to accurately reflect:
 - A. the actual status and progress of the Delivery Phase Activities; and
 - B. any other changes to the activities, times, durations or other information contained in the Delivery Phase Program and any sub-programs;
- (iii) within 5 Business Days of Project Co being:
 - A. granted an extension to any Date for Completion; or
 - B. instructed to accelerate the Delivery Phase Activities, in accordance with this Deed; and
- (iv) otherwise, within 5 Business Days of:
 - A. deciding to depart in a material way from the then current Delivery Phase Program; or
 - B. any request by the State or Independent Certifier at any time,

and the updates must comply with the Programming Requirements and must not adjust any Date for Completion (unless an extension of time has been granted in accordance with this Deed).

(c) **(Departure):** Project Co:

- (i) acknowledges and agrees that the Delivery Phase Program does not form part of this Deed;
- (ii) must not depart from the Delivery Phase Program without reasonable cause and must give notice to the State and the Independent Certifier promptly upon becoming aware of any proposed or likely departure from the critical path in the Delivery Phase Program, together with the reasons why it is necessary to do so to comply with this Deed; and
- (iii) acknowledges and agrees that any such departure does not relieve Project Co from its obligations under this Deed, including under clause 19.2(e) or to achieve Completion by the relevant Date for Completion.

(d) **(Assessing Claims):** Neither:

- (i) the State; nor
- (ii) without limiting the Independent Certifier's obligation pursuant to clause 5.1 of the Independent Certifier Deed, the Independent Certifier,

is required to use the Delivery Phase Program for any purpose, including for the purpose of assessing:

- (iii) the impact of any delay event or any extension of time; or
- (iv) any Claim made by Project Co,

but may do so in their sole and absolute discretion.

17. Design

17.1 Design warranties

In addition to its obligations under clause 5, Project Co must design the Correctional Complex and develop the Design Deliverables in accordance with the Design Requirements and so that the Correctional Complex, when constructed in accordance with the For Construction Documentation, satisfies the FFP Warranty.

17.2 Purpose of Design Development Process

- (a) **(Design Development Process):** Project Co agrees that:
- (i) it must comply with the Design Development Process in developing the Design Deliverables;
 - (ii) the purpose of the Design Development Process is to develop, refine and finalise the Design Deliverables through to For Construction Documentation in accordance with the Design Development Schedule and this Deed so as to meet the requirements of this Deed; and
 - (iii) the Design Development Process itself does not constitute a Modification or otherwise entitle Project Co to make any Claim against the State or its Associates for any Liabilities incurred by Project Co in connection with the conduct of the Design Development Process.
- (b) **(Design Development Process):** Project Co must conduct and manage all aspects of the Design Development Process in accordance with clause 5.1(a), the Design Development Schedule and as otherwise required under this Deed.
- (c) **(Submission):** Project Co must submit the Design Deliverables to the State and the Independent Certifier for review in accordance with the Design Development Schedule and the Review Procedures.

17.3 Design Development Changes

- (a) **(Full details):** When submitting any Design Deliverable for review under this Deed, Project Co must clearly identify, and give full details of, any proposed Design Development Changes, including:
- (i) designs and detailed explanations of all consequential changes to the Design Requirements and Project Co's obligations and warranties under this Deed; and
 - (ii) any Savings as a consequence of the proposed Design Development Change.
- (b) **(State discretion):** The State may accept or reject any proposed Design Development Change in its absolute discretion.
- (c) **(Consequence of acceptance):** If the State accepts a proposed Design Development Change and the Design Development Change results in a Saving, Project Co must pay to the State the State's share of the Saving (calculated in accordance with the Change Compensation Principles).
- (d) **(Consequence of rejection):** If the State rejects the proposed Design Development Change, Project Co must amend the relevant Design Deliverable to comply with the relevant Design Requirements.
- (e) **(Deemed variation):** To the extent that the State accepts a proposed Design Development Change in accordance with clause 17.3(b), the Design Requirements

and the Design Deliverables are deemed to be varied to reflect the Design Development Change, so that Project Co's obligations and warranties under this Deed will not be breached by implementation of that Design Development Change.

18. Equipment during Delivery Phase

18.1 Equipment Schedule

The parties acknowledge and agree that:

- (a) **(Equipment List prepared in advance)**: the Initial Equipment List has been prepared prior to the completion of the design of the Correctional Complex and significantly in advance of when Project Co is required to select and procure Equipment in accordance with this clause 18;
- (b) **(Equipment List indicative)**: given clause 18.1(a), the Initial Equipment List is indicative only and must be updated by Project Co to meet the requirements of this clause 18; and
- (c) **(Change to Equipment List not a Modification)**: any change to the Equipment List to meet the requirements of this clause 18, will not give rise to a Modification or entitle Project Co or its Associates to make any Claim against the State.

18.2 Equipment selection

During the Delivery Phase:

- (a) **(Selection and purchase)**: Project Co must select Equipment for the Correctional Complex:
 - (i) which:
 - A. is necessary to ensure the Correctional Complex meets the FFP Warranty;
 - B. is set out in the Equipment List or which has at least the equivalent standard, quantity, quality and functionality as the corresponding items of equipment listed in the Equipment List;
 - C. is referred to or required by the Design Requirements; and
 - D. where none of A, B or C above apply, in such quantities and of such standard, quality and functionality to meet Best Industry Practices and as is necessary for the Correctional Complex to satisfy the FFP Warranty; and
 - (ii) so that the Correctional Complex at Commercial Acceptance will meet the FFP Warranty; and
- (b) **(Review Procedures)**: Project Co must update the Equipment List to reflect the Equipment selected by Project Co in accordance with clause 18.2(a) and submit it to the State for review in accordance with the Review Procedures.

18.3 Equipment procurement and installation

- (a) **(Equipment procurement)**: Project Co must not procure Equipment until such time as the Equipment List that includes that Equipment has been reviewed by the State in accordance with the Review Procedures.

- (b) **(Equipment Installation):** Project Co must procure, connect, install or locate (as applicable depending on whether the item of Equipment is loose or fixed) and commission all items of Equipment:
 - (i) in accordance with the Completion Requirements and to the satisfaction of the Independent Certifier;
 - (ii) in the locations designated in the For Construction Documentation or, if not designated in the For Construction Documentation, as otherwise required by Project Co so that the Correctional Complex meets the FFP Warranty; and
 - (iii) as otherwise required under this Deed.

19. Construction

19.1 Delivery Phase Sub-Licence

- (a) **(Sub-Licence for Delivery Phase Activities):** The State grants to Project Co a non-exclusive sub-licence to allow Project Co and its Associates to enter upon and occupy the Delivery Phase Sites to the extent necessary to carry out the Delivery Phase Activities:
 - (i) commencing on Financial Close; and
 - (ii) terminating on the grant of the Operating Phase Sub-Licence in accordance with clause 28.1, or on earlier termination of this Deed.
- (b) **(Terms of Delivery Phase Sub-Licence):** The Delivery Phase Sub-Licence granted under clause 19.1(a):
 - (i) is a personal right in contract, does not create any estate or interest in the Delivery Phase Sites, does not confer exclusive possession on Project Co or its Associates and does not create the relationship of tenant and landlord between any of them and the State; and
 - (ii) is given subject to the Adverse Rights and the rights of the State, any of its Associates and any other person authorised by it (including the Independent Certifier), to access and occupy the Delivery Phase Sites, in accordance with this Deed or any other State Project Document.
- (c) **(Other access):** Except as set out in clause 19.1(a), Project Co is solely responsible for obtaining access to and from the Delivery Phase Site, and to and from any land outside the Delivery Phase Sites to which access is required to carry out the Delivery Phase Activities.
- (d) **(Coordination):** Project Co bears the risk of coordinating its access to the Delivery Phase Site with any other person that uses the access ways to the Delivery Phase Site.

19.2 Construction

In addition to the obligations set out in clause 5, Project Co must:

- (a) **(Delivery Phase Activities):** perform the Delivery Phase Activities:
 - (i) in accordance with the Design Requirements; and
 - (ii) so that the Correctional Complex satisfies the FFP Warranty;

- (b) **(For Construction Documentation)**: construct the Works in accordance with the For Construction Documentation;
- (c) **(Delivery Phase Sites)**: meet the obligations set out in clause 8.11 in respect of the Delivery Phase Sites and otherwise keep the Delivery Phase Sites:
 - (i) safe, clean and tidy at all times; and
 - (ii) secure and free from all unauthorised access;
- (d) **(Use of Delivery Phase Activities)**: not use the Delivery Phase Sites for any purpose other than the Project Activities; and
- (e) **(Progress of Delivery Phase Activities)**: regularly, expeditiously and diligently carry out and progress the Delivery Phase Activities to achieve Completion by the Date for Completion.

19.3 Proceed at risk

- (a) **(Right to proceed)**: Project Co is only entitled to proceed:
 - (i) from one Design Stage (**First Design Stage**) to the next Design Stage without the Design Deliverables for the First Design Stage having been reviewed by the State in accordance with the Design Development Schedule and the Review Procedures; or
 - (ii) with the construction of any part of the Works prior to the review of the For Construction Documentation for that part of the Works in accordance with the Design Development Schedule and the Review Procedures,

where it is expressly entitled to do so in accordance with the Review Procedures.
- (b) **(Risk)**: If Project Co proceeds with the design or construction of the Works in accordance with clause 19.3(a):
 - (i) this will not:
 - A. prejudice the State's rights against Project Co whether under the State Project Documents or otherwise according to Law; or
 - B. relieve Project Co from, or alter or affect, its Liabilities, obligations or responsibilities whether in accordance with the State Project Documents or otherwise according to Law; and
 - (ii) Project Co will not be entitled to make any Claim against the State arising out of or in connection with such design or construction; and
 - (iii) the State may, in addition to its rights under clause 17, the Design Development Schedule and the Review Procedures, direct Project Co to amend, rectify, change or modify any Design Deliverables or partially constructed Works to resolve any issues identified by the State or the Independent Certifier as part of its review under clause 17 and the Review Procedures.

19.4 Corrective Action Plan

- (a) **(Review by Independent Certifier)**: Project Co acknowledges and agrees that the Independent Certifier will (including where directed to by the State) continually review the design and construction of the Works to ensure that Project Co is complying with its obligations in clauses 19.2(e), 23.1 and 25.1.

- (b) **(Notice of non-compliance):** If the Independent Certifier forms the view that Project Co is not complying with its obligation in clause 19.2(e) the Independent Certifier must give notice to the State and Project Co of its opinion, together with its reasons for forming that opinion.
- (c) **(Corrective action plan):** If the Independent Certifier issues a notice pursuant to clause 19.4(b), Project Co must, promptly, and in any event within 20 Business Days, issue a corrective action plan to the State and the Independent Certifier which complies with the requirements of clauses 19.4(d) to 19.4(g).
- (d) **(Requirements for corrective action plan):** Each corrective action plan which Project Co must provide pursuant to clause 19.4(c) must show how Project Co proposes to avoid, mitigate or minimise the consequences of the delay consistent with its obligation under clause 19.2(e) and contain a proposed updated Delivery Phase Program.
- (e) **(Comments):** The Independent Certifier may, within 20 Business Days of receipt of a corrective action plan, give Project Co any comments on the corrective action plan (which may include comments provided to the Independent Certifier by the State) provided that such comments are consistent with the requirements of clause 19.4(d).
- (f) **(Response):** If the Independent Certifier gives Project Co any comments under clause 19.4(e), Project Co must amend and, within 10 Business Days of receipt of the Independent Certifier's comments, resubmit the corrective action plan to the Independent Certifier and the State to address the Independent Certifier's comments, after which clause 19.4(e) and this clause 19.4(f) will re-apply until the Independent Certifier does not issue any further comments.
- (g) **(Compliance):** Project Co must comply with a corrective action plan for which the Independent Certifier does not issue any comments under clause 19.4(e).
- (h) **(Liability):** Project Co will not be relieved of any Liability or responsibility under this Deed or otherwise at Law arising out of or in connection with:
 - (i) any comments given by the Independent Certifier under clause 19.4(e);
or
 - (ii) the implementation of any corrective action plan in respect of which the Independent Certifier has or has not given comments under clause 19.4(e).
- (i) **(No claim):** Project Co will not be entitled to make any Claim against the State or the Independent Certifier arising out of or in connection with any comments by the State or the Independent Certifier under clause 19.4(e) or any Liability suffered or incurred by Project Co in preparing, or complying with, a corrective action plan.

20. State access during the Delivery Phase

20.1 State's right to enter, inspect and test

The State, any of its Associates and any other person authorised by it (including the Independent Certifier) may, during the Delivery Phase:

- (a) **(Site Access):** access the Delivery Phase Sites, and any other site where the Delivery Phase Activities are being carried out, in accordance with the Site Access and Interface Protocols to exercise their rights, powers and functions and to perform their obligations under any State Project Document and to discharge their statutory duties, powers, rights and obligations (including pursuant to the Corrections Legislation);

- (b) **(Inspection of Works)**: inspect, observe or test any part of the Works or the Delivery Phase Activities (whether or not such inspections, observations or tests are otherwise required under any State Project Document); or
- (c) **(Examine and copy)**: examine and make copies of, and retain copies of, any Project Co Material.

20.2 Site Access and Interface Protocols

- (a) **(Access to sites)**: Project Co must allow the State, any of the State's Associates and any other person authorised by the State (including the Independent Certifier) access to the Delivery Phase Sites, any other site where the Delivery Phase Activities are being carried out, and any Project Co Material in accordance with clause 20.1.
- (b) **(Compliance with protocols)**: The State will, and will procure that its Associates, comply with the Site Access and Interface Protocols during the Delivery Phase when the State or its Associates access the Delivery Phase Sites or any other site where the Delivery Phase Activities are being carried out.

20.3 Project Co to assist

If requested by the State, Project Co must assist the State in connection with any inspection or testing in accordance with clause 20.1 and under the Corrections Legislation, including by:

- (a) **(Access to Works)**: providing access to any part of the Works and Project Co Materials that the State requires;
- (b) **(Preparation of samples)**: preparing samples of materials used in connection with the Works as required by the State;
- (c) **(Forwarding samples)**: forwarding the samples prepared in accordance with clause 20.3(b) to the State or such other place or person notified by the State; and
- (d) **(Carrying out tests)**: if requested by the State, carrying out any tests (including tests not otherwise required by this Deed) and providing the results of those tests to the State.

20.4 Costs of inspection or testing

The State will bear the reasonable costs incurred by Project Co in connection with any inspection or test conducted at the State's direction in accordance with this clause 20, unless:

- (a) **(Defect)**: the inspection or test reveals any Defect or failure to comply with this Deed, save where the Defect or failure is minor in nature and will not prevent:
 - (i) the Correctional Complex from being lawfully used in accordance with its intended purpose or from otherwise meeting the FFP Warranty; or
 - (ii) Project Co from delivering the Services in accordance with the Services Requirements;
- (b) **(Inaccessible)**: the test is in connection with Works covered up or made inaccessible without the State's prior approval where that approval was required; or
- (c) **(Required tests)**: the inspection or test was otherwise required by this Deed to be carried out by Project Co, or should have been carried out by Project Co in accordance with Best Industry Practices,

in which case Project Co must pay its own costs and all reasonable costs incurred by the State, as a debt due and payable by Project Co to the State.

21. Testing and comments

21.1 Testing

During the Delivery Phase:

- (a) **(Notice):** Project Co must give the State and the Independent Certifier not less than 10 Business Days prior written notice of the date, time and place for the conduct of every test to be undertaken by Project Co in respect of the Delivery Phase Activities;
- (b) **(Postponement of test):** Project Co may postpone a test in respect of which it has given the State and the Independent Certifier notice in accordance with clause 21.1(a);
- (c) **(Rescheduled date):** if Project Co postpones a test in accordance with clause 21.1(b), Project Co must give the State and the Independent Certifier at least 5 Business Days' notice of the rescheduled date, time and place for the conduct of that test;
- (d) **(Attendance):** the State (and its nominees) and the Independent Certifier may, but are not obliged to, attend and witness the conduct of all tests; and
- (e) **(Submission of report):** irrespective of the outcome of the test, Project Co must, within 10 Business Days of carrying out a test in respect of the Delivery Phase Activities, submit a report to the State and the Independent Certifier setting out the outcome of the test.

21.2 Right to comment

- (a) **(Right to give comments):** Based on the information provided to the State in accordance with this Deed or any inspection carried out in accordance with clause 20.1, the State may give the Independent Certifier written comments regarding the Works, provided that such comments are limited to matters impacting upon the compliance of the Works with the requirements of this Deed.
- (b) **(Meeting):** If the State gives the Independent Certifier written comments pursuant to clause 21.2(a), the State, the Independent Certifier and Project Co must meet to discuss and establish the rectifications or changes required to the Works.
- (c) **(Disputes):** If the State, the Independent Certifier and Project Co are unable to agree to appropriate rectifications or changes pursuant to clause 21.2(b), such Dispute will be dealt with in accordance with clause 50.

22. Quality Assurance during the Delivery Phase

- (a) **(Certification of Subcontractor):** In addition to the obligations in clause 11.1, Project Co must ensure that the:
 - (i) D&C Subcontractor is certified to AS/NZS ISO 9001 and AS/NZS ISO 14001 at all times during the Delivery Phase; and
 - (ii) Operator complies with a Quality Assurance System which is certified to AS/NZS ISO 9001 and AS/NZS ISO 14001 when carrying out any Delivery Phase Activities.
- (b) **(Quality Assurance Plan):** Project Co must provide the State with the Quality Assurance Plan for the Delivery Phase in accordance with the Delivery Phase Plans and Reports Schedule.

- (c) **(Proof of accreditations):** At the same time it submits its Quality Assurance Plan under clause 22(b), Project Co must submit proof of the D&C Subcontractor's quality assurance accreditations required by this Deed.

23. Technical Completion

23.1 Requirement

Project Co must achieve Technical Completion of the Works by the Date for Technical Completion.

23.2 Notice before Technical Completion

- (a) **(Notice timeline):** Project Co must give the State and the Independent Certifier separate notices:
- (i) 12 Months;
 - (ii) 6 Months;
 - (iii) 3 Months;
 - (iv) 30 Business Days; and
 - (v) 15 Business Days,
- prior to the date upon which it reasonably expects to achieve Technical Completion.
- (b) **(Notice of revised date):** If, after Project Co gives the State and the Independent Certifier a notice in accordance with clause 23.2(a), the expected Date of Technical Completion changes, Project Co must notify the State and the Independent Certifier promptly of the revised date.

23.3 Notice of Technical Completion Tests

- (a) **(Submission of Technical Completion Plan):** Project Co must submit the Technical Completion Plan to the State and the Independent Certifier in accordance with the Delivery Phase Plans and Reports Schedule and for review in accordance with the Review Procedures.
- (b) **(Update and submit for review):** At the same time as Project Co submits the Technical Completion Plan under clause 23.3(a), Project Co must:
- (i) update the Technical Completion Schedule and the Delivery Phase Program to include the Technical Completion Tests necessary to demonstrate that each of the Technical Completion Criteria have been met; and
 - (ii) submit these to the State and the Independent Certifier for review in accordance with the Review Procedures.

23.4 Additional Technical Completion Tests

- (a) **(Notification):** At any time up to the date that is 30 Business Days before the anticipated Date of Technical Completion, the Independent Certifier or the State may notify Project Co of additional tests that are necessary to demonstrate that the Correctional Complex satisfies the Technical Completion Criteria (**Additional Technical Completion Tests**).

- (b) **(Completion of tests):** The Independent Certifier or the State (as applicable) must direct whether the Additional Technical Completion Tests are required to be completed:
- (i) prior to Technical Completion;
 - (ii) prior to Commercial Acceptance; or
 - (iii) as a Post Completion Test.
- (c) **(Review):** Project Co must update the Technical Completion Plan and the Technical Completion Schedule to include the Additional Technical Completion Tests and submit these to the Independent Certifier and the State for review in accordance with the Review Procedures.
- (d) **(Costs):** The State will bear the reasonable costs incurred by Project Co in connection with any Additional Technical Completion Tests conducted at the State's direction in accordance with this clause 23.4, unless:
- (i) the Additional Technical Completion Test reveals any Defect or failure to comply with this Deed, save where the Defect or failure is minor in nature and will not prevent:
 - A. the Correctional Complex from being lawfully used in accordance with its intended purpose or from otherwise meeting the FFP Warranty; or
 - B. Project Co from delivering the Services in accordance with the Services Requirements;
 - (ii) the Additional Technical Completion Test is undertaken to correct a Defect, save where the Defect or failure is minor in nature and will not prevent:
 - A. the Correctional Complex from being lawfully used in accordance with its intended purpose or from otherwise meeting the FFP Warranty; or
 - B. Project Co from delivering the Services in accordance with the Services Requirements;
 - (iii) the Additional Technical Completion Test is in the nature of a test otherwise required by this Deed to be carried out by Project Co, or should have been carried out by Project Co in accordance with Best Industry Practices; or
 - (iv) the Additional Technical Completion Test is:
 - A. in respect of a matter where Project Co has failed a Technical Completion Test; or
 - B. required as a result of a Technical Completion Test not carried out in accordance with Best Industry Practice or the Output Specification,

in which case Project Co must pay its own costs and all reasonable costs incurred by the State, as a debt due and payable by Project Co to the State.

23.5 Technical Completion Testing

- (a) **(Testing requirements):** Project Co must carry out all Technical Completion Tests in accordance with the Technical Completion Plan.

- (b) **(Notice):** In addition to updating the Delivery Phase Program in accordance with clause 23.3(b), Project Co must give the State and the Independent Certifier not less than 20 Business Days prior notice of each Technical Completion Test.
- (c) **(Obligations):** Project Co must:
 - (i) allow the Independent Certifier and the State to attend, take samples, make measurements and otherwise carry out whatever tests, checks and investigations they may reasonably require in order to ensure that any Technical Completion Test has been successfully carried out;
 - (ii) conduct the Technical Completion Tests to the satisfaction of the Independent Certifier; and
 - (iii) comply with all reasonable directions of the Independent Certifier in relation to the conduct of any Technical Completion Tests.
- (d) **(Test failure):** If a test fails, Project Co must immediately inform the Independent Certifier and the State Representative and carry out rectification works to enable retesting to occur as soon as possible.

23.6 Unsuccessful Technical Completion Test

- (a) **(Powers of Independent Certifier):** If Project Co fails to successfully complete any Technical Completion Tests (which must be successfully completed prior to Technical Completion), the Independent Certifier may:
 - (i) refuse to issue the Certificate of Technical Completion in accordance with clause 23.9; or
 - (ii) provided the other Technical Completion Criteria have been satisfied, issue a Certificate of Technical Completion, in accordance with clause 23.9 identifying the unsuccessful Technical Completion Tests as Technical Completion Outstanding Items in accordance with clause 23.10.
- (b) **(State may waive requirement):** The State may waive the requirement for Project Co to satisfy a Technical Completion Test or require the Technical Completion Test to be satisfied as a Commercial Acceptance Test or as a Post Completion Test.

23.7 Technical Completion Report

- (a) **(Draft report):** Project Co must submit to the Independent Certifier for review in accordance with the Review Procedures (and provide a copy to the State), a draft Technical Completion Report, not earlier than 30 Business Days, and not later than 20 Business Days, prior to the date on which Project Co expects to achieve Technical Completion, which draft Technical Completion Report must contain all information necessary to demonstrate that Project Co has met the Completion Requirements relevant to Technical Completion.
- (b) **(Further draft report):** Project Co must submit to the Independent Certifier (for review in accordance with the Review Procedures) and provide a copy to the State, a further draft Technical Completion Report not later than 10 Business Days prior to the date on which Project Co expects to achieve Technical Completion. The further draft Technical Completion Report must reflect all Technical Completion Tests undertaken to the date of that further draft report.
- (c) **(Compliance with directions):** Project Co must take into account and comply with any directions given by the Independent Certifier (acting reasonably) in connection with preparing for Technical Completion.

23.8 Notice of Technical Completion

- (a) **(Notice by Project Co):** When Project Co is of the reasonable opinion that it has achieved Technical Completion, Project Co must provide to the State and the Independent Certifier:
- (i) notice of its opinion;
 - (ii) a detailed list of the work (including minor Defect correction) remaining to be undertaken in its opinion to achieve Commercial Acceptance; and
 - (iii) the final Technical Completion Report.
- (b) **(Notice by the State):** Notwithstanding that Project Co may not have issued a notice under clause 23.8(a), when the State considers that Project Co has achieved Technical Completion, the State may:
- (i) notify Project Co and the Independent Certifier of its opinion; and
 - (ii) request the Independent Certifier determine whether Technical Completion has been achieved.

23.9 Determination of Technical Completion

- (a) If, in the opinion of the Independent Certifier:
- (i) **(Issuing of certificate):** Technical Completion has been achieved, the Independent Certifier must issue the certificate of Technical Completion to the State and Project Co within 5 Business Days after receipt of a notice under clause 23.8, which certificate must:
 - A. state the Date of Technical Completion;
 - B. list any Defects which must be rectified prior to Commercial Acceptance; and
 - C. set out details of the Independent Certifier's opinion of the work remaining to be undertaken to achieve Commercial Acceptance,**(Certificate of Technical Completion); or**
 - (ii) **(Issuing of notice):** Technical Completion has not been achieved, the Independent Certifier must, by not later than 5 Business Days after receipt of the notice issued in accordance with clause 23.8, issue to Project Co and the State a notice either:
 - A. containing details of the outstanding Technical Completion Criteria that must be satisfied by Project Co as a condition precedent to achieving Technical Completion; or
 - B. stating that Technical Completion is so far from being achieved that it is not practicable to provide details of the type referred to in clause 23.9(a)(ii)A,after which Project Co must continue to expeditiously and diligently progress the Delivery Phase Activities to achieve Technical Completion.
- (b) **(Consequence of issuing notice):** If the Independent Certifier issues a notice under clause 23.9(a)(ii), the process in clauses 23.2 to 23.9(a) will commence again in respect of those outstanding Technical Completion Criteria set out in the Independent Certifier's notice.

- (c) **(No restriction on Independent Certifier):** The Independent Certifier, in making its determination as to whether Technical Completion has been achieved:
 - (i) will not be restricted by any notice, list or opinion which it previously provided to Project Co under clause 23.9(a)(ii); and
 - (ii) is entitled to raise any other items of work as a ground for determining that Technical Completion has not been achieved.
- (d) **(Consequence of issuing certificate):** The issue of a Certificate of Technical Completion in accordance with this clause 23.9 does not constitute:
 - (i) evidence that Project Co has satisfied the FFP Warranty;
 - (ii) an approval by the State of the completion or acceptance of the Works under this Deed; or
 - (iii) evidence that all or any other obligations under this Deed have been satisfied.
- (e) **(Binding determination by Independent Certifier):** Subject to resolution of any Dispute in relation to an Additional Technical Completion Test in accordance with clause 23.4, a determination made by the Independent Certifier as to whether or not the Works have reached Technical Completion is final and binding.

23.10 Technical Completion Outstanding Items

- (a) **(Outstanding items):** The Independent Certifier may issue a Certificate of Technical Completion with:
 - (i) an attached list of Technical Completion Outstanding Items; and
 - (ii) a timeframe within which each Technical Completion Outstanding Item must be rectified,

as determined by the Independent Certifier.
- (b) **(Program):** Within 5 Business Days after the issue of a Certificate of Technical Completion, Project Co must submit to the State and the Independent Certifier (for review in accordance with the Review Procedures) a program for the completion of the Technical Completion Outstanding Items that complies with the timeframe determined in accordance with clause 23.10(a).
- (c) **(Outstanding items to be completed):** Project Co must complete or remedy any Technical Completion Outstanding Items within the timeframe determined in accordance with clause 23.10(a) to the satisfaction of the Independent Certifier.
- (d) **(Commercial Acceptance Report):** Project Co must ensure that the Technical Completion Outstanding Items and, where they are required to be rectified prior to Commercial Acceptance, details of their rectification, form part of the Commercial Acceptance Report.
- (e) **(Commercial Acceptance Outstanding Item):** If a Technical Completion Outstanding Item is not required to be completed prior to Commercial Acceptance and is not completed prior to Commercial Acceptance, it will be deemed to be a Commercial Acceptance Outstanding Item.
- (f) **(State may agree):** If a Technical Completion Outstanding Item that is due to be completed prior to Commercial Acceptance is not capable of being completed prior to Commercial Acceptance, the State (acting reasonably and in consultation with the Independent Certifier), may agree that the Technical Completion Outstanding Item will be a Commercial Acceptance Outstanding Item.

24. Commissioning Period

During the period between Technical Completion and Commercial Acceptance, Project Co must:

- (a) **(Operational Readiness Plan)**: comply with its obligations under the Operational Readiness Plan;
- (b) **(Commissioning Requirements)**: carry out all Commissioning Requirements in accordance with the Commercial Acceptance Schedule; and
- (c) **(Commercial Acceptance Criteria)**: allow the Independent Certifier and the State to attend, take samples, take measurements and otherwise carry out whatever tests, checks and investigations they may require in order to ensure that any Commissioning Activities, the Commercial Acceptance Criteria and any other obligations Project Co is required to meet during the Commissioning Period have been complied with and Project Co is ready and able to commence providing the Services in accordance with this Deed.

25. Commercial Acceptance

25.1 Requirement

Project Co must achieve Commercial Acceptance of the Works by the Date for Commercial Acceptance.

25.2 Notice before Commercial Acceptance

- (a) **(Notice timeline)**: Project Co must give the State Representative and the Independent Certifier separate notices:
 - (i) 9 Months;
 - (ii) 6 Months;
 - (iii) 3 Months;
 - (iv) 30 Business Days; and
 - (v) 15 Business Days,prior to the date upon which it reasonably expects to achieve Commercial Acceptance.
- (b) **(Notice of revised date)**: If, after Project Co gives the State and the Independent Certifier a notice in accordance with clause 25.2(a), the expected Date of Commercial Acceptance changes, Project Co must notify the State and the Independent Certifier promptly of the revised date.

25.3 Notice of Commercial Acceptance Tests

- (a) **(Submission of Commercial Acceptance Plan)**: Project Co must submit the Commercial Acceptance Plan to the State and the Independent Certifier in accordance with the Delivery Phase Plans and Reports Schedule and for review in accordance with the Review Procedures.
- (b) **(Update for submission and review)**: At the same time as Project Co submits the Commercial Acceptance Plan under clause 25.3(a), Project Co must:
 - (i) update the Commercial Acceptance Schedule and the Delivery Phase Program to include the Commercial Acceptance Tests necessary to

demonstrate that each of the Commercial Acceptance Criteria have been met; and

- (ii) submit these to the State and the Independent Certifier for review in accordance with the Review Procedures.

25.4 Additional Commercial Acceptance Tests

- (a) **(Notification)**: At any time up to the date that is 30 Business Days before the anticipated Date of Commercial Acceptance, the State or Independent Certifier may notify Project Co of additional tests that are necessary to demonstrate that the Correctional Complex satisfies the Commercial Acceptance Criteria (**Additional Commercial Acceptance Tests**).
- (b) **(State to direct test timeframe)**: The State must direct whether the Additional Commercial Acceptance Tests are required to be completed:
 - (i) prior to Commercial Acceptance; or
 - (ii) as a Post Completion Test.
- (c) **(Review Procedures)**: Project Co must update the Commercial Acceptance Plan and the Commercial Acceptance Schedule to include the Additional Commercial Acceptance Tests and submit these to the State and the Independent Certifier for review in accordance with the Review Procedures.
- (d) **(State to bear costs)**: The State will bear the reasonable costs incurred by Project Co in connection with any Additional Commercial Acceptance Tests conducted at the State's direction in accordance with this clause 25.4, unless:
 - (i) the Additional Commercial Acceptance Test reveals any Defect or failure to comply with this Deed, save where the Defect or failure is minor in nature and will not prevent:
 - A. the Correctional Complex from being lawfully used in accordance with its intended purpose or from otherwise meeting the FFP Warranty; or
 - B. Project Co from delivering the Services in accordance with the Services Requirements;
 - (ii) the Additional Commercial Acceptance Test is undertaken to correct a Defect, save where the Defect or failure is minor in nature and will not prevent:
 - A. the Correctional Complex from being lawfully used in accordance with its intended purpose or from otherwise meeting the FFP Warranty; or
 - B. Project Co from delivering the Services in accordance with the Services Requirements;
 - (iii) the Additional Commercial Acceptance Test is in the nature of a test otherwise required by this Deed to be carried out by Project Co, or should have been carried out by Project Co in accordance with Best Industry Practices; or
 - (iv) the Additional Commercial Acceptance Test is:
 - A. in respect of a matter where Project Co has failed a Commercial Acceptance Test; or

- B. required as a result of a Commercial Acceptance Test not carried out in accordance with Best Industry Practice or the Output Specification,

in which case Project Co must pay its own costs and all reasonable costs incurred by the State, as a debt due and payable by Project Co to the State.

25.5 Commercial Acceptance Testing

- (a) **(Test requirements):** Project Co must carry out all Commercial Acceptance Tests in accordance with the Commercial Acceptance Plan.
- (b) **(Test notice):** In addition to updating the Delivery Phase Program in accordance with clause 25.3(b), Project Co must give the State and the Independent Certifier not less than 10 Business Days prior notice of each Commercial Acceptance Test.
- (c) **(Obligations):** Project Co must:
 - (i) allow the Independent Certifier and the State to attend, take samples, make measurements and otherwise carry out whatever tests, checks and investigations they may reasonably require in order to ensure that any Commercial Acceptance Test has been successfully carried out;
 - (ii) conduct the Commercial Acceptance Tests to the satisfaction of the Independent Certifier and the State (acting reasonably); and
 - (iii) comply with all reasonable directions of the Independent Certifier and the State in relation to the conduct of any Commercial Acceptance Tests.
- (d) **(Test failure):** If a test fails, Project Co must immediately inform the Independent Certifier and the State and carry out rectification works to enable retesting to occur as soon as possible.

25.6 Unsuccessful Commercial Acceptance Test

If Project Co fails to successfully complete any Commercial Acceptance Tests (which must be successfully completed prior to Commercial Acceptance), the State may:

- (a) **(Refuse to issue certificate):** refuse to issue the Certificate of Commercial Acceptance in accordance with clause 25.9; or
- (b) **(Commercial Acceptance Outstanding Item):** issue a Certificate of Commercial Acceptance in accordance with clause 25.9 and identify any unsuccessful Commercial Acceptance Tests as Commercial Acceptance Outstanding Items in accordance with clause 25.10 and require the Commercial Acceptance Tests to be satisfied as a Post Completion Test.

25.7 Commercial Acceptance Report

- (a) **(Draft report):** Project Co must submit to the Independent Certifier and the State (for review in accordance with the Review Procedures) a draft Commercial Acceptance Report not earlier than 30 Business Days, and not later than 20 Business Days, prior to the date on which Project Co expects to achieve Commercial Acceptance, which draft Commercial Acceptance Report must contain all information necessary to demonstrate that Project Co has met the Completion Requirements relevant to Commercial Acceptance.
- (b) **(Further draft report):** Project Co must submit to the State and the Independent Certifier (for review in accordance with the Review Procedures) a further draft Commercial Acceptance Report not later than 10 Business Days prior to the date on which Project Co expects to achieve Commercial Acceptance. The further draft

Commercial Acceptance Report must reflect all Commercial Acceptance Tests undertaken to the date of that further draft report.

- (c) **(Compliance with directions):** Project Co must take into account and comply with any directions reasonably given by the State (acting reasonably) or the Independent Certifier in connection with preparing for Commercial Acceptance.

25.8 Notice of Commercial Acceptance

- (a) **(Notice by Project Co):** When Project Co is of the reasonable opinion that it has achieved Commercial Acceptance, Project Co must provide to the State and the Independent Certifier:
 - (i) notice of its opinion; and
 - (ii) the final Commercial Acceptance Report.
- (b) **(Notice by the State):** Notwithstanding that Project Co may not have issued a notice under clause 25.8(a), when the State considers that Project Co has achieved Commercial Acceptance, the State may notify Project Co and the Independent Certifier of its opinion.

25.9 Determination of Commercial Acceptance

- (a) If, in the opinion of the State (acting reasonably):
 - (i) **(Issue Certificate):** Commercial Acceptance has been achieved, the State must issue the certificate of Commercial Acceptance to Project Co (with a copy to the Independent Certifier) within 5 Business Days after receipt of the notice under clause 25.8, which certificate must state the Date of Commercial Acceptance (**Certificate of Commercial Acceptance**); or
 - (ii) **(Issue notice):** Commercial Acceptance has not been achieved, the State must, by not later than 5 Business Days after receipt of the notice issued in accordance with clause 25.8, issue to Project Co (with a copy to the Independent Certifier) a notice either:
 - A. containing details of the outstanding Commercial Acceptance Criteria that must be satisfied by Project Co as a condition precedent to achieving Commercial Acceptance; or
 - B. stating that Commercial Acceptance is so far from being achieved that it is not practicable to provide details of the type referred to in clause 25.9(a)(ii)A,

after which Project Co must continue to expeditiously and diligently progress the Delivery Phase Activities to achieve Commercial Acceptance.
- (b) **(Consequence of notice):** If the State issues a notice under clause 25.9(a)(ii), the process in clauses 25.2 to 25.9(a) will commence again in respect of those outstanding Commercial Acceptance Criteria set out in the State's notice.
- (c) **(State discretion):** The State, in making its determination as to whether Commercial Acceptance has been achieved:
 - (i) will not be restricted by any notice, list or opinion which it previously provided to Project Co under clause 25.9(a)(ii); and
 - (ii) is entitled to raise any other items of work as a ground for determining that Commercial Acceptance has not been achieved.

- (d) **(Consequence of certificate):** The issue of a Certificate of Commercial Acceptance in accordance with this clause 25.9 does not constitute:
 - (i) evidence that Project Co has satisfied the FFP Warranty;
 - (ii) an approval by the State of the completion or acceptance of the Works under this Deed; or
 - (iii) evidence that all or any other obligations under this Deed have been satisfied.

25.10 Commercial Acceptance Outstanding Items

- (a) **(Outstanding Items):** The State may issue a Certificate of Commercial Acceptance with a list of Commercial Acceptance Outstanding Items and the time within which they must be rectified.
- (b) **(Items to be included):** Any Technical Completion Outstanding Items that are deemed under clause 23.10(e), or agreed under clause 23.10(f), to be Commercial Acceptance Outstanding Items will be included in the Commercial Acceptance Outstanding Items, together with the time within which they must be rectified as determined in accordance with clause 23.10.
- (c) **(Program for completion to be submitted):** Within 5 Business Days after the issue of a Certificate of Commercial Acceptance, Project Co must submit to the State (for review in accordance with the Review Procedures) a program for the completion of the Commercial Acceptance Outstanding Items, which complies with clause 25.10(a).
- (d) **(Complete within timeframe):** Project Co must complete or remedy each Commercial Acceptance Outstanding Item in the relevant timeframe determined in accordance with clause 25.10(c) to the satisfaction of the State (acting reasonably).
- (e) **(Failure to complete):** A Major Default will occur if a Commercial Acceptance Outstanding Item is not completed or remedied within the timeframe determined in accordance with clause 25.10(c).

25.11 Post Completion

- (a) **(Post Completion Tests):** Project Co must conduct all Post Completion Tests in accordance with the Completion Requirements and the relevant Completion Plan.
- (b) **(Requirements):** Project Co must:
 - (i) prior to Commercial Acceptance, give the State and the Independent Certifier a notice setting out the anticipated dates on which all Post Completion Tests will be performed which must be as soon as reasonably practicable after Commercial Acceptance and promptly notify the State and the Independent Certifier if any of those dates change;
 - (ii) allow the Independent Certifier and the State to attend, take samples, make measurements and otherwise carry out whatever checks and investigations they may reasonably require in order to ensure that any Post Completion Test has been successfully carried out;
 - (iii) conduct the Post Completion Tests to the satisfaction of the Independent Certifier and the State (acting reasonably);
 - (iv) comply with all reasonable directions of the Independent Certifier and the State in relation to the conduct of any Post Completion Tests; and

- (v) if a test fails, immediately inform the Independent Certifier and the State Representative and carry out rectification works to enable retesting to occur as soon as possible.
- (c) **(Failure to complete or remedy):** If a Post Completion Test is not completed or remedied within the timeframe required by clause 25.11(b)(i), the failure to do so will be a breach of this Deed.
- (d) **(Post Completion Report):** After the completion of all Post Completion Tests, Project Co must submit to the State a Post Completion Report.

25.12 Release after Completion

On and from the date which is 6 Months after the Date of Commercial Acceptance, Project Co releases the State from all Claims in connection with any fact, matter or thing arising out of, or in connection with the carrying out of the Delivery Phase Activities which existed or occurred prior to the Date of Commercial Acceptance, except for any Claim notified to the State in accordance with this Deed prior to that date.

26. Early Completion

- (a) **(Proposed Early Completion Date):** Project Co must, as part of its Delivery Phase Program, identify as soon as reasonably practicable, any Proposed Early Completion Date.
- (b) **(Notification and consent):** Project Co must not achieve Commercial Acceptance earlier than the Original Date for Commercial Acceptance unless:
 - (i) Project Co has provided the State with at least 9 Months written notice (or another period as agreed by the parties) that Project Co anticipates it will achieve Commercial Acceptance on the Proposed Early Completion Date;
 - (ii) if the Proposed Early Completion Date is in a different financial year to the Original Date for Commercial Acceptance, Project Co has provided the State with a Proposed Early Completion Notice by 31 January of the financial year prior to the financial year in which the Proposed Early Completion Date falls; and
 - (iii) the State has consented in writing to Project Co achieving Commercial Acceptance on the Proposed Early Completion Date.
- (c) **(Performance of Services):** If Project Co achieves Commercial Acceptance prior to the Date for Commercial Acceptance, Project Co must start performing the Services on the date that is the later of:
 - (i) the day after the Proposed Early Completion Date; and
 - (ii) the day after the Date of Commercial Acceptance.
- (d) **(State not obliged assist):** The State may assist Project Co, but will not be obliged to take any action to assist or enable Project Co, to achieve early Completion.
- (e) **(Operational Commencement Date):** If Project Co achieves early Completion, the Operational Commencement Date is deemed to be the date on which Project Co starts performing the Services in accordance with clause 26(c), provided the State has consented in accordance with clause 26(b)(iii).

Part E - Operating Phase obligations

27. Operating Phase Plans and Operating Phase Reports

- (a) **(Initial Operating Phase Plans):** The parties acknowledge that the Initial Operating Phase Plans are included as Attachment 5.
- (b) **(Submission and Update):** Project Co must:
 - (i) prepare and update the Operating Phase Plans and the Operating Phase Reports:
 - A. in accordance with the relevant requirements of the Operating Phase Plans and Reports Schedule;
 - B. to the extent applicable, to align with and be consistent with the Delivery Phase Plans; and
 - C. to ensure they contain complete and accurate information in respect of the relevant aspects of the Project;
 - (ii) update all Operating Phase Plans and Operating Phase Reports as necessary to reflect any changes to the nature, understanding or status of the Services; and
 - (iii) submit to the State all Operating Phase Plans and Operating Phase Reports, when prepared and updated, for review in accordance with the Review Procedures.
- (c) **(Performance):** Unless otherwise agreed by the State, Project Co must perform the Services in accordance with the Operating Phase Plans.
- (d) **(Authority Approval):** If an Operating Phase Plan is required to be approved by an Authority, Project Co must ensure that it has obtained that Approval prior to submitting the relevant Operating Phase Plan to the State for review.
- (e) **(Additional information):** Project Co must promptly provide to the State any additional information that the State requests in connection with the Operating Phase Plans and the Operating Phase Reports.
- (f) **(Warranty):** Project Co warrants that:
 - (i) each Operating Phase Plan and Operating Phase Report is complete and correct, and not false or misleading in any material respect, at the time it is provided to the State; and
 - (ii) each Operating Phase Plan will, at all times during the Operating Phase, be fit for purpose.

28. Operating Phase Site Access

28.1 Operating Phase Sub-Licence

- (a) **(Operating Phase Sub-Licence):** Subject to Commercial Acceptance having occurred, the State will procure the grant to Project Co of a non-exclusive sub-licence to enter upon, and occupy the Operating Phase Site to the extent necessary to carry out the Services on the terms set out in this clause 28.1.
- (b) **(Terms of Operating Phase Sub-Licence):** The Operating Phase Sub-Licence procured under clause 28.1(a) will be:

- (i) for a term which will:
 - A. commence on the Operational Commencement Date; and
 - B. end on the Expiry Date; and
 - (ii) on the terms of the form of sub-licence set out in the Site Access and Tenure Schedule.
- (c) **(Personal Right):** The Operating Phase Sub-Licence granted under clause 28.1(a):
- (i) is a personal right in contract, does not create any estate or interest in the Operating Phase Site, does not confer exclusive possession on Project Co or its Associates and does not create the relationship of tenant and landlord between any of them and the State; and
 - (ii) is given subject to the Adverse Rights and the rights of the State, any of its Associates and any other person authorised by it (including the Independent Certifier), to access and occupy the Operating Phase Site in accordance with this Deed and any other State Project Document.
- (d) **(Other access):** Except as set out in clause 28.1(a), Project Co is solely responsible for obtaining access to and from the Operating Phase Site, and to and from any land outside the Operating Phase Site to which access is required to carry out the Services.
- (e) **(Delivery of Operating Phase Sub-Licence):** Not later than 60 Business Days prior to the expected Date of Commercial Acceptance, Project Co must prepare and deliver to the State for review in accordance with the Review Procedures three counterparts of the Operating Phase Sub-Licence which:
- (i) must be on the terms of the form of sub-licence set out in the Site Access and Tenure Schedule and include as an annexure, the site plans for the Operating Phase Site prepared and certified by a licensed surveyor; and
 - (ii) are:
 - A. executed by Project Co; and
 - B. complete, except for those matters that the State is authorised to complete in accordance with clause 28.1(f).
- (f) **(State to complete):** Project Co authorises the State to complete the Operating Phase Sub-Licence by inserting:
- (i) the Operational Commencement Date as the commencement date of the Operating Phase Sub-Licence; and
 - (ii) any other particulars necessary to complete the Operating Phase Sub-Licence including updating the amounts in Schedule 2 of the Operating Phase Sub-Licence to each Licence Fee applicable as at Commercial Acceptance for each relevant Licence Fee Payment Date.
- (g) **(Execution):** Subject to Project Co complying with its obligations under clause 28.1(e), the State must complete the counterparts of the Operating Phase Sub-Licence in accordance with clause 28.1(f), execute each counterpart and return 2 of the completed and executed counterparts to Project Co as soon as reasonably practicable, and in any event prior to the Operational Commencement Date.

- (h) **(Comply with Operating Phase Sub-Licence):** The parties must comply with the terms of the Operating Phase Sub-Licence from the Operational Commencement Date.
- (i) **(General obligations)** Project Co must:
 - (i) meet its obligations in clause 8.11 in respect of the Operating Phase Site; and
 - (ii) not use the Operating Phase Site for any purpose other than the Project Activities.

28.2 State access to the Correctional Complex, records and Inmates

- (a) **(Access):** At all times during the Operating Phase, Project Co must ensure that the State, any of its Associates and any other person either:
 - (i) authorised by the State or under the Corrections Legislation (including Official Visitors and members of the Community Advisory Council); or
 - (ii) otherwise requiring access to perform a function contemplated by Law in connection with the Correctional Complex, Inmates or Staff,
 has free and unfettered access:
 - (iii) to the Correctional Complex:
 - A. as required in accordance with the State Project Documents;
 - B. to review, inspect, test and monitor the provision of the Services;
 - C. to attend any test or investigation that is being carried out at the Correctional Complex;
 - D. in accordance with the Services Requirements, any Laws or any Policies;
 - E. to undertake any audits in accordance with clause 11.3; and
 - F. in connection with any matter which the State deems relevant to the performance of the Services; and
 - (iv) to all Project Co Material or other records in respect of Inmates, including medical records;
 - (v) to all Staff (in accordance with the Output Specification or Law); and
 - (vi) to any Inmate (in accordance with the Output Specification, Law or under delegation of the State Representative or the Commissioner).
- (b) **(Right to visit):** Project Co must procure that the State, any Associate of the State and any other person authorised by the State or under the Corrections Legislation has, at all reasonable times during the Operating Phase, the right to visit any property, site or workshop outside the Operating Phase Site:
 - (i) where materials, plant or Equipment are being manufactured, prepared or stored for use in the Correctional Complex, for the purposes of general inspection and testing; or
 - (ii) used by Project Co for the provision of any Services.

- (c) **(Parties to bear own costs):** Each party will bear its own costs in respect of any rights of access exercised under this clause 28.2, except:
 - (i) where a Defect is revealed (other than a minor Defect), Project Co must pay as a debt due and payable by Project Co to the State the costs and expenses of any inspection, testing or investigation which revealed that Defect; or
 - (ii) in respect of any audit undertaken in accordance with clause 11.3 to which clause 11.3(i) applies.
- (d) **(Facilities):** Project Co must, at its own cost, provide persons requiring access to the Correctional Complex or Inmates to perform a function contemplated by Law with the use of appropriate facilities at the Correctional Complex when required to fulfil their functions.

28.3 Access to the Correctional Complex and Inmates by third parties

Without limiting clause 28.2, during the Operating Phase, Project Co must only permit access to the Correctional Complex and Inmates in accordance with the Correctional Complex Access Protocols to a person who is:

- (a) **(Project Co Associate):** a Project Co Associate, to the extent required to discharge Project Co's obligations under this Deed and provided they otherwise satisfy the requirements of this Deed;
- (b) **(Required by Law):** a person who is required by Law to be given access to the Correctional Complex (but only in accordance with such Law);
- (c) **(Corrections Legislation):** a Visitor entitled to have access to the Correctional Complex under the Corrections Legislation (but only in accordance with the Corrections Legislation); or
- (d) **(Required by Deed):** any other person Project Co is required by this Deed to provide with access to the Correctional Complex (but only to the extent required by and otherwise under this Deed),

and must not permit or allow any other person access to the Correctional Complex or any Inmate.

28.4 Correctional Complex Access Protocols

- (a) **(Access Protocols requirements):** Project Co must:
 - (i) develop and update the Correctional Complex Access Protocols in accordance with the relevant requirements of the Operating Phase Plans and Reports Schedule, for those people entitled to access the Correctional Complex and any Inmates under this Deed; and
 - (ii) ensure that all people who access the Correctional Complex and any Inmates as referred to in clauses 28.2 and 28.3 (other than those people referred to in clause 28.4(b)) do so in accordance with the Correctional Complex Access Protocols.
- (b) **(State access):** Subject to any applicable Laws but notwithstanding the State's rights in accordance with this Deed (including pursuant to clause 42), if the State wishes to access the Correctional Complex or any Inmates, it must and must ensure that its Associates, and any other person authorised by the State (in its capacity as a party to this Deed) under clause 28.2(a)(i) does so in accordance with the Correctional Complex Access Protocols.

29. Obligation to perform the Services

29.1 General

In addition to the obligations set out in clause 5, during the Operating Phase, Project Co must continuously perform the Services in accordance with the Services Requirements.

29.2 Material Defects

- (a) **(Defects to be rectified):** Project Co must rectify all Defects during the Operating Phase regardless of whether or not such Defects are the subject of a notice under this clause 29.
- (b) **(State may give notice):** If, during the Operating Phase, the State is of the opinion that a Material Defect exists, then the State may give a notice to Project Co:
 - (i) specifying the Material Defect;
 - (ii) requiring Project Co to rectify the Material Defect; and
 - (iii) specifying a reasonable time within which this must occur, which period must not, if the Material Defect also gives rise to an Unavailability, a Meal Availability Failure or a Quality Failure, be less than any applicable rectification period specified in the Performance Regime or the Payment Schedule.
- (c) **(Timeframe to rectify):** If a notice is given under clause 29.2(b), Project Co must rectify the Material Defect within the time specified in the State's notice.
- (d) **(State entitled to rectify):** If the Material Defect is not rectified by Project Co within the time specified in the State's notice, then the State is entitled to rectify the Material Defect itself or engage a third party to rectify the Material Defect and the cost of any such rectification work will be a debt due and payable by Project Co to the State.
- (e) **(Rights at Law):** Neither the State's rights, nor Project Co's Liability, whether in accordance with this Deed or otherwise at Law in connection with Defects will be:
 - (i) affected or limited by the rights conferred upon the State by this clause 29 or any other provision of this Deed; or
 - (ii) affected or limited by the failure of the State to exercise any such rights.
- (f) **(Rights unaffected):** Nothing in this clause 29, or any other clause of this Deed in connection with Defects, limits Project Co's obligations in respect of Unavailability, Meal Availability Failures or Quality Failures under the Performance Regime, Payment Schedule or the Output Specification.
- (g) **(Referral of Dispute):** Any Dispute as to whether a defect in the Relevant Infrastructure constitutes a Defect for the purposes of this Deed must be referred for dispute resolution in accordance with clause 50.

29.3 Applicable Laws

- (a) **(Compliance with Law):** Project Co must:
 - (i) ensure that, where any Law requires that a right or entitlement be granted to an Inmate, Project Co grants the right or entitlement to the Inmate; and

- (ii) not, and must procure that none of Project Co's Associates, cause the State or any of the State's Associates to breach any Law.
- (b) **(Notification):** If, after the date of this Deed, either party becomes aware of an international policy, obligation or standard in relation to the management or operation of an Australian prison, that comprises or may reasonably be expected to comprise a Policy, it will notify the other party of the same as soon as reasonably practicable and clause 40.10 shall apply.

29.4 Emergency Services Costs

Project Co must pay:

- (a) **(False alarm):** any costs for false alarms or unnecessary attendance at the Site at any time during the Term by any emergency services; and
- (b) **(NSW Fire and Police):** any costs for NSW Fire and Rescue or NSW Police attendance at the Site at the time during the Term where such attendance is requested by Project Co or its Associates,

and any payments made by the State in relation to such costs shall be a debt due and payable by Project Co to the State.

29.5 Industries

- (a) **(Opportunity to work):** Throughout the Operating Phase, Project Co must offer Inmates the opportunity to work in industries (**Correctional Industries**).
- (b) **(Draft Industries Scheme):** Project Co must submit a draft Industries Scheme to the Commissioner for review in accordance with the Review Procedures prior to the Date of Commercial Acceptance.
- (c) **(Work performed by Inmates):** Any work performed by Inmates in Correctional Industries must comply with:
 - (i) all relevant Laws and Policies;
 - (ii) the Operating Phase Plans; and
 - (iii) the Industries Scheme.
- (d) **(Profits and payments):** Project Co must:
 - (i) account for profits derived from work performed by Inmates in accordance with the Output Specification;
 - (ii) reinvest, and must ensure that its Associates reinvest, any profits derived from the work performed by Inmates back into those industries throughout the Operating Phase; and
 - (iii) subject to clause 29.5(e), make all payments to Inmates for work performed in accordance with the Industries Scheme.
- (e) **(Financial Statements):** Project Co must provide the State with quarterly audited statements of income (in the form specified by the State) in respect of income derived from the industries for the purpose of inspection, copying or auditing by the State.
- (f) **(Victims support levies):** Project Co must deduct from payments to be made to Inmates for work performed victims support levies in accordance with the *Victims Rights and Support Act 2013* (NSW) and forward such deductions to the State.

- (g) **(Inmates):** Without limiting clause 5.3(a), the State accepts no risks in connection with any use by Project Co, or any of its Associates, of Inmates to provide labour at the Correctional Complex.

29.6 Available Inmate Places

- (a) **(Available Inmate Places):** Project Co must, at all times on and from the Operational Commencement Date, provide to the State 1,700 Available Inmate Places at the Correctional Complex.
- (b) **(Ramp-Up Period):** Notwithstanding clause 29.6(a), during the Ramp-Up Period, Project Co is only required to accommodate the number of Inmates in the Correctional Complex and provide the Services in respect of those Inmates in accordance with the Ramp-Up Profile Schedule.
- (c) **(Monthly Service Payment):** Without limiting its rights under this Deed on and from the Operational Commencement Date, the State will pay Project Co the Monthly Service Payment in accordance with the Payment Schedule notwithstanding that, in accordance with the Ramp-Up Profile Schedule, there are less than 1,700 Inmates accommodated at the Correctional Complex.
- (d) **(Performance Regime adjustments):** If at any time during the Ramp-Up Period, the Commissioner is of the opinion (acting reasonably) that Project Co is unable to provide the Services to the number of Inmates proposed in the Ramp-Up Profile Schedule having regard to Project Co's performance of the Services (including reference to any Unavailability, Meal Availability Failures or Quality Failures) then, the Performance Regime will apply and the Monthly Service Payments will be adjusted to the extent and in the manner described in the Performance Regime and Payment Schedule.

29.7 Pharmaceutical Supply arrangements

- (a) **(Prior to Commercial Acceptance):** Prior to Commercial Acceptance, Project Co must conduct a tender process for the appointment of a Pharmaceuticals Supplier.
- (b) **(Tender process):** Project Co must ensure that the tender process for the appointment of the Pharmaceuticals Supplier is conducted consistently with New South Wales Government procurement principles including the principles of value for money, open and fair competition, accountability, risk management and probity and transparency.
- (c) **(Form of tender):** Prior to conducting the tender process for the appointment of the Pharmaceuticals Supplier, Project Co must, in consultation with the State, prepare and submit to the State a copy of the proposed form of tender to be used to appoint a Pharmaceuticals Supplier.
- (d) **(State review):** The proposed form of tender submitted by Project Co in accordance with clause 29.7(c) will be reviewed by the State in accordance with the Review Procedures.
- (e) **(Pricing):** As a tender condition, Project Co must require tenderers to provide unit prices, rates or charging formulas (as applicable) for:
- (i) each Pharmaceutical item;
 - (ii) each Pharmaceutical Related Item;
 - (iii) Pharmaceutical Supply; and
 - (iv) Urgent Pharmaceutical Supply,

which Project Co reasonably anticipates would be required in relation to the issue or administration of Pharmaceuticals to Custodial Patients at the Correctional Complex.

- (f) **(Copies):** Project Co must provide the State with copies of all tenders received from the tenderers for the role of the Pharmaceuticals Supplier as requested by the State.
- (g) **(Consent of the State):** Neither Project Co nor an Associate of Project Co may appoint or replace a Pharmaceuticals Supplier without the prior written consent of the State (which will not be unreasonably withheld).
- (h) **(Imprest Stock):** Any Pharmaceuticals that are intended by Project Co or an Associate of Project Co to be administered to Inmates as Imprest Stock are subject to the prior approval of the State from time to time.
- (i) **(Changes in price):** Project Co or an Associate of Project Co must obtain the prior written consent of the State (which will not be unreasonably withheld) for any increase to:
 - (i) any fixed unit price or rate (where a charging formula does not otherwise apply); and
 - (ii) any percentage increase against the base cost for any charging formula, which would be payable in relation to any Pharmaceuticals, Pharmaceutical Related Items, Pharmaceutical Supply or Urgent Pharmaceutical Supply contained in the Pharmaceuticals Supplier's appointment.
- (j) **(Changes in appointment):** Subject to clauses 29.7(h) and 29.7(i), Project Co may, from time to time during the Operating Phase, notify the State of changes made to the terms of the Pharmaceuticals Supplier's appointment, to ensure the availability of Pharmaceuticals necessary for the provision of the Health Services at the Correctional Complex.
- (k) **(Branding):** Project Co will:
 - (i) order and administer the best value generic equivalent of branded Pharmaceuticals; and
 - (ii) where a patent for a branded patented Pharmaceutical expires and a generic competitor or a biosimilar product enters the market, order and administer a generic Pharmaceutical equivalent to, or biosimilar of, the relevant patented Pharmaceutical within one month of the expiry of the patent,other than where:
 - (iii) the generic brand does not provide the best value for money to the State; or
 - (iv) there is a clinical reason to not prescribe a generic equivalent of the branded Pharmaceutical or the previously patented Pharmaceutical (as the case may be).
- (l) The obligations of Project Co under this clause 29.7 are without limitation to the requirements in clause 12.

30. Equipment during the Operating Phase

30.1 Title and responsibility for risk

- (a) **(Ownership):** Project Co must ensure that the State (or a nominee of the State) owns all Equipment during the Operating Phase.
- (b) **(Transfer of title):** To the extent not already owned by the State (or a nominee of the State), Project Co must transfer title to all Equipment which is procured by Project Co:
 - (i) during the Delivery Phase, on the Operational Commencement Date; and
 - (ii) during the Operating Phase, at the time of procurement,to the State (or a nominee of the State), free from any encumbrances.
- (c) **(Obligations):** Project Co must maintain, replace and repair all items of Equipment until the end of the Operating Phase in accordance with the Asset Management Plan, the Services Requirements and its other obligations under this Deed.

30.2 Replacement

- (a) **(Equipment replacement):** In addition to its obligations in clauses 5 and 29, when Project Co is required to replace an item of Equipment, it must do so with Equipment that:
 - (i) is in at least the same position in the market in respect of functionality, standard, quality and level of technological advancement as the Equipment that it is replacing was at the time the replaced Equipment was procured; and
 - (ii) has a design life equal to or greater than the Equipment it is replacing, as specified in the Design Life Schedule.
- (b) **(New Equipment):** If there is a new item of Equipment readily available in the market that:
 - (i) has better functionality;
 - (ii) has a better standard relative to the market;
 - (iii) has a higher level of quality;
 - (iv) has a design life, as specified in the Design Life Schedule, equal to or greater; or
 - (v) is more technically or technologically advanced,than the Equipment it is replacing and the new item of Equipment:
 - (vi) does not materially increase operating or maintenance costs of the State, the cost of any Reviewable Services or any other costs payable by the State; and
 - (vii) has a whole of life cost to Project Co less than or equal to 110% of the Indexed whole of life cost to Project Co of the item of Equipment it is replacing,

Project Co must use that new item of Equipment to replace the relevant item of Equipment.

- (c) **(Notification of State):** If Project Co considers that a new item of Equipment does not meet the requirements set out in clause 30.2(b)(vi), Project Co must promptly notify the State in writing (giving reasons).
- (d) **(State may waive requirement):** Following receipt of a notice from Project Co in accordance with clause 30.2(c), the State may, in its absolute discretion, elect to waive such requirement in which case, Project Co must use that new item of Equipment to replace the relevant item of Equipment.

30.3 Computer requirement

- (a) During the Operating Phase, Project Co shall maintain access to the State's corporate information system known as the Offender Integrated Management System.
- (b) During the Operating Phase, Project Co shall:
 - (i) establish a link from Project Co's computer system; and
 - (ii) use software which is either:
 - A. compatible with the Commissioner's computer system; or
 - B. supplied by the State,so that the Commissioner:
 - (iii) has on-line 24 hour access to the Records; and
 - (iv) can print out and store the Records on the Commissioner's computer system.
- (c) During the Operating Phase, Project Co must continually, as appropriate, upgrade the software and systems on Project Co's computer system.
- (d) When Project Co undertakes a software upgrade in accordance with clause 30.3(c), Project Co must immediately:
 - (i) notify the Commissioner in writing; and
 - (ii) undertake the work and provide the facilities to ensure that any computer terminal which is linked to Project Co's computer system provided by Project Co to the State or any of its Associates is similarly upgraded.

31. Quality Assurance during the Operating Phase

- (a) **(Certification of Subcontractors):** In addition to its obligations in clause 11.1, Project Co must ensure that all Key Subcontractors or Significant Subcontractors engaged to perform any of the Services are certified to AS/NZS ISO 9001 as soon as practicable after the commencement of the provision of the Services and thereafter at all times during the Operating Phase.
- (b) **(Additional certification):** Project Co must ensure that the relevant Key Subcontractors or Significant Subcontractors engaged to perform the relevant Services are also certified to:
 - (i) ISO 55001 - quality assurance for asset management;

- (ii) AS/NZS ISO 4801 - quality assurance for occupational health & safety management systems;
- (iii) AS/NZS ISO 14001 - quality assurance for environmental management systems; and
- (iv) ISO 22000 – quality assurance for food safety.

32. Asset Ownership and Condition

32.1 Fixtures

All fixtures affixed to the Site, including the Correctional Complex, will be owned by the owner of the relevant part of the Site from the time they are affixed free from any encumbrance.

32.2 Refurbishment Works

In addition to its obligations in clause 30 to replace Equipment, Project Co must carry out Refurbishment Works using materials, finishes and other items that:

- (a) **(Quality)**: have the same or higher levels of quality as that which would be used in accordance with Best Industry Practice; and
- (b) **(Costs)**: do not materially increase operating or maintenance costs to the State, the cost of any Reviewable Services or any other costs payable by the State.

32.3 Deferral of Refurbishment Works by Project Co

- (a) **(Deferral)**: Project Co may only defer any Refurbishment Works:
 - (i) in accordance with this clause 32.3;
 - (ii) if, notwithstanding the deferral, Project Co will continue to satisfy the FFP Warranty; and
 - (iii) the deferral will not result in a breach of clause 32.3(e).
- (b) **(Proposal)**: Subject to clause 32.3(e), if Project Co proposes to defer any Refurbishment Works, it must identify in the Asset Management Plan submitted for review in accordance with the Review Procedures:
 - (i) the details of each proposed deferral;
 - (ii) the period of time of deferral; and
 - (iii) whether that deferral would:
 - A. entitle the State to reject the Asset Management Plan in accordance with clause 32.3(c); or
 - B. breach clause 32.3(e).
- (c) **(State may reject)**: The State may reject any Asset Management Plan submitted in accordance with clause 32.3(b):
 - (i) if the State considers, acting reasonably, that the submitted Asset Management Plan will not enable Project Co to meet its obligations under clause 32.3(a); or
 - (ii) for the reasons set out in clause 32.3(d); or

- (iii) if the proposed deferral in the submitted Asset Management Plan would result in a breach of clause 32.3(e).
- (d) **(Reasons for rejection):** The State may reject any Asset Management Plan submitted in accordance with clause 32.3(b) if Project Co's proposed deferral of Refurbishment Works would result in the relevant Refurbishment Works being deferred by a period (measured in Operating Years) equal to or greater than 30% of the period of the relevant replacement or refurbishment cycle shown in:
 - (i) the Asset Management Plan current as at the Date of Commercial Acceptance where the item has not been subject to any Refurbishment Works;
 - (ii) if the item the subject of the Refurbishment Works was not included in the Asset Management Plan current as at the Date of Commercial Acceptance, the Asset Management Plan in which the relevant item and the replacement cycle for the relevant item was first shown; or
 - (iii) if the item has been the subject of Refurbishment Works, the Asset Management Plan that first included the Refurbishment Works.
- (e) **(Project Co may not defer):** Project Co must not defer, or propose to defer, any Refurbishment Works scheduled in the then current Asset Management Plan to take place during the five years prior to the Final Expiry Date.
- (f) **(Permanently deferred Refurbishment Works):** If, at the Expiry Date, there are any Refurbishment Works set out in the Asset Management Plan which have not been performed by Project Co, Project Co must pay to the State the State's share of the Saving (calculated in accordance with the Change Compensation Principles).

32.4 Residual life and Design Life

- (a) **(Fit for purpose):** Project Co represents and warrants that each:
 - (i) Residual Life Item will be, at the Expiry Date, capable of being Fit for Purpose at all times during its residual life as specified in the Residual Life Schedule, provided that after the Expiry Date it is operated and maintained in accordance with Best Services Practices; and
 - (ii) Design Life Item with a specified design life in excess of the Expiry Date will, at the Expiry Date, continue to meet the applicable design life specified in the Design Life Schedule.
- (b) **(Representations and warranties):** The representations and warranties made by Project Co under clause 32.4(a) are made, and will be deemed to have been made, on the Expiry Date.
- (c) **(Survival):** This clause 32.4 will survive rescission, termination or expiration of this Deed.

33. Repricing Reviewable Services

33.1 Reviewable Services Schedule

- (a) **(Original Reviewable Services Schedule):** For the purposes of the Proposal and to assist in the repricing of the Reviewable Services, Project Co has prepared the Original Reviewable Services Schedule and the Reviewable Services Plan.
- (b) **(Status and content of Original Reviewable Services Schedule):** The Original Reviewable Services Schedule sets out the basis on which Project Co has priced the Reviewable Services for the first Reviewable Services Term, including:

- (i) details of relevant margins;
 - (ii) details in respect of the allocation of responsibilities and risks between Project Co, the Operator and any other Subcontractors in respect of the performance of the Reviewable Services; and
 - (iii) the staffing profiles and shift patterns in respect of the performance of the Reviewable Services, including details of the number of full time equivalent positions involved in performing the Services, consistent with the Financial Model.
- (c) **(Reviewable Services Schedule updated):** The Original Reviewable Services Schedule (in the case of the first Reviewable Services Term), and then, in the case of each subsequent Reviewable Services Term, the then current Reviewable Services Schedule and Reviewable Services Plan:
- (i) will be updated at the commencement of the subsequent Reviewable Services Term to reflect:
 - A. the terms and prices agreed or determined for that subsequent Reviewable Services Term; and
 - B. the information required under clause 33.1(b) for that subsequent Reviewable Services Term; and
 - (ii) as updated in accordance with clause 33.1(c)(i), will be used for the purposes of pricing the Reviewable Services for the following Reviewable Services Term.
- (d) **(Overarching principles for repricing Reviewable Services):** Unless otherwise agreed in writing by the State, Project Co must price the provision of each Reviewable Service for the ensuing Reviewable Services Term in accordance with the following pricing principles and otherwise in accordance with this clause 33:
- (i) Project Co must include all efficiencies, innovations and continuing improvements so as to reduce or minimise the cost of delivering the Reviewable Services for the next Reviewable Services Term in its offer under clause 33.4;
 - (ii) there must be no new margins and no increase to any margins, from those margins identified in the Original Reviewable Services Schedule;
 - (iii) there must be no net increase to the Monthly Service Payment from the previous Reviewable Services Term as a result of any reallocation of poor performance risk as between Project Co and any Subcontractors following the pricing of each Reviewable Service for an ensuing Reviewable Services Term; and
 - (iv) unless otherwise agreed by the State (acting reasonably), there must be no increase in the aggregate number of full time equivalent positions involved in performing the Reviewable Services, from the Original Reviewable Services Schedule including those involved in "Management and Administration" other than:
 - A. where necessary due to:
 - 1) any changes under clause 33.3(a); or
 - 2) any Modification implemented under this Deed; or
 - B. where Project Co can demonstrate to the satisfaction of the State (acting reasonably) that such changes in the aggregate

number of full time equivalent positions are required to meet the requirements of this Deed for the next Reviewable Services Term.

33.2 State benchmarking

Project Co acknowledges that the State may, at any time in its discretion:

- (a) **(State benchmarking)**: benchmark the pricing for the Reviewable Services against other correctional centres in New South Wales for any purpose including to inform its decision whether to proceed to make a request for Project Co to submit an offer in accordance with clause 33.4(a);
- (b) **(Information)**: provide Project Co with information obtained by the State arising out of the benchmarking of the Reviewable Services undertaken by the State; and
- (c) **(Meeting)**: request that Project Co:
 - (i) meet with the State to discuss the outcome of any benchmarking undertaken by the State and Project Co must attend such meetings; and
 - (ii) procure the attendance of a representative of the Operator or any other Subcontractor at such meetings.

33.3 Preparation for repricing

Not later than 18 Months before each Reviewable Services Date, the State will consult with and notify Project Co of:

- (a) **(Reviewable Services)**: changes to be made to the Services or Services Requirements and any terms of this Deed for the Reviewable Services for the purposes of the next Reviewable Services Term, which may include a change to the Services or the Services Requirements;
- (b) **(Timetable)**: a timetable for the repricing of the Reviewable Services;
- (c) not used; and
- (d) **(Amendments)**: any required amendments to the then current Reviewable Services Plan.

33.4 Request for offer to reprice

- (a) **(Request for offer)**: The State may request Project Co to submit an offer for the provision of the Reviewable Services for the next Reviewable Services Term.
- (b) **(Project Co offer)**: Whether or not the State has made a request in accordance with clause 33.4(a), not later than 15 Months before the Reviewable Services Date, Project Co may (and if the State has made a request in accordance with clause 33.4(a), Project Co must) submit an offer for the provision of the Reviewable Services for the next Reviewable Services Term on the terms notified by the State under clause 33.3 **(Initial Offer)**.
- (c) **(Offer detail)**: Project Co's Initial Offer must:
 - (i) contain an overarching explanation and details of any proposed changes to the price of the Reviewable Services;
 - (ii) be priced in accordance with the pricing principles set out in clause 33.1(d);

- (iii) break down the price for each of the Reviewable Services for the next Reviewable Services Term;
 - (iv) include the staffing profiles and shift patterns in respect of the performance of the Reviewable Services for the next Reviewable Services Term, including the number of full time equivalent positions involved in "Management and Administration" compared with the then current Reviewable Services Schedule;
 - (v) detail all of the relevant factors and inputs into the proposed price including proposals in connection with labour and materials required to perform the Services;
 - (vi) clearly identify the allocation of responsibility for the performance of obligations where such obligations may be provided pursuant to two or more Services (including Services which do not constitute Reviewable Services); and
 - (vii) provide details of any changes that may have been made to their subcontracting arrangements for the Reviewable Services during the previous Reviewable Services Term.
- (d) **(Offer submitted):** If Project Co submits an Initial Offer, then:
- (i) for a period of 4 Months after the Initial Offer is submitted (or such longer period agreed between the parties), the State agrees to negotiate exclusively with Project Co for the provision of the Reviewable Services during the next Reviewable Services Term; and
 - (ii) the State will, by a date not later than 1 Month after the expiration of that 4 Month period, advise Project Co whether:
 - A. Project Co's Initial Offer or Project Co's final negotiated offer (**Negotiated Offer**) is acceptable to the State for the provision of the Reviewable Services; or
 - B. the State requires Project Co to conduct a competitive tender under clauses 33.6 to 33.8 (inclusive) in respect of the Reviewable Services.
- (e) **(Offer remains open):** Notwithstanding that the State may require Project Co to conduct a competitive tender, Project Co's Initial Offer and Negotiated Offer (if any) must remain open for subsequent acceptance by the State until the Reviewable Services Tender Expiry Date.

33.5 No offer made

- (a) If Project Co does not submit an offer under clause 33.4(b), then, the State may:
- (i) **(Current terms):** require Project Co to continue to provide the Reviewable Services on the then current terms and pricing for the next Reviewable Services Term; or
 - (ii) **(Require competitive tender process):** require Project Co to conduct a competitive tender to be conducted in accordance with clauses 33.6 to 33.8 (inclusive).

33.6 Competitive tender

- (a) **(Project Co to conduct tender process):** If the State requires Project Co to conduct a competitive tender pursuant to clause 33.4(d)(ii)B or 33.5(a)(ii), Project

Co must conduct a competitive tender in accordance with this clause 33.6 and the Reviewable Services Plan.

- (b) **(No delegation):** Project Co may not subcontract or otherwise delegate any aspect of a competitive tender conducted under this clause 33.6 without the prior consent of the State.
- (c) **(Initial meeting):** Promptly, and in any event within 1 Month, after receipt of the State's request under clause 33.4(d)(ii)B or clause 33.5(a)(ii) for a competitive tender to be conducted under this clause 33.6, Project Co must commence the competitive tender process by convening an initial meeting with the State and the probity officer (if applicable).
- (d) **(Consultation):** At the initial meeting convened under clause 33.6(c) (and any subsequent meetings agreed between them), Project Co, the State and the probity officer (if applicable) will work collaboratively, having regard to the Reviewable Services Plan, to seek to agree on:
 - (i) the appropriate timetable for conducting the tender by Project Co for the Reviewable Services, including the proposed date for releasing the tender to the market and identifying all activities that involve the State, including the dates for:
 - A. any submission of documents to the State (including any revisions or resubmissions); and
 - B. any review, comment, outcomes or actions required to be performed by the State,all of which must be consistent with this clause 33 and the Reviewable Services Plan;
 - (ii) the appropriate manner of advertising the tender for the Reviewable Services and the means of identifying prospective tenderers;
 - (iii) evaluation criteria, evaluation plan and evaluation panel (which may, at the State's discretion, include a representative of the State), which will include those set out in clause 33.6(h); and
 - (iv) the draft tender documentation which must:
 - A. provide such information concerning the Project, the Reviewable Services and the Project Documents as the State reasonably requires to ensure the tenderers are fully informed of the opportunity tendered (including details of the evaluation criteria set out in clause 33.6(d)(iii));
 - B. impose a duty of confidentiality on tenderers;
 - C. require tenders to be conforming, and irrevocable until one Month after the relevant current Reviewable Services Term;
 - D. require tenderers to comply with the Subcontracting requirements set out in clause 12.3 including providing consents to the conduct of any Probity Investigations which may be required by the State;
 - E. attach a draft Subcontract:
 - 1) substantially on the same terms (other than price and term and any amendments required in accordance with clause 33.3) as the current

Subcontract for the provision of the tendered Reviewable Services; and

- 2) which provides for the review of the Reviewable Services in accordance with the terms of this clause 33;
 - F. include a reasonable transition plan for the prompt transfer of the Services from the Operator to that successful third party tenderer;
 - G. require tenderers to accept the terms of the draft Subcontract; and
 - H. enable Project Co to prepare a proposed updated Reviewable Services Schedule in accordance with the pricing principles set out in clause 33.1(d) (provided that this does not require the disclosure of any current pricing information, including margins, Monthly Service Payments or full-time equivalents, to tenderers); and
- (v) whether Project Co or the State should manage the tender process.
- (e) **(Review of request for tender):** Not later than 30 Business Days prior to the proposed date for releasing the tender to the market, Project Co must provide to the State:
- (i) the final request for tender prepared by Project Co which is proposed to be issued to prospective tenderers;
 - (ii) the list of proposed tenderers; and
 - (iii) Project Co's proposed evaluation plan in respect of the request for tender,
- for the Reviewable Services for review in accordance with the Review Procedures.
- (f) **(Collaboration with the State):** Subject to clause 33.6(i), Project Co must:
- (i) actively manage the tender process;
 - (ii) keep the State regularly informed as to the progress of the tender;
 - (iii) during the tender process, give the State reasonable prior written notice of any interviews or meetings with the tenderers and the State may, in its discretion, attend such interviews or meetings; and
 - (iv) during the tender process, give the State copies of all correspondence or documents received by Project Co from the tenderers or provided by Project Co to the tenderers.
- (g) **(Offers):** Subject to clause 33.6(i), Project Co must seek offers by competitive tender on the basis of the tender approved by the State in accordance with clause 33.6(e), from at least three experienced and capable service providers with the financial capacity to provide the Reviewable Services over the remainder of the Term (or if there are not three such service providers active in the market and if approved by the State pursuant to clause 33.6(e), such lesser number) for the Reviewable Services which must not include (without the consent of the State) offers from:
- (i) Project Co or any Associate of Project Co;

- (ii) any more than one Related Body Corporate of any Associate of Project Co; or
 - (iii) any service provider that has not received the prior approval of the State (which must not be unreasonably withheld).
- (h) **(Content of offers):** Subject to clause 33.6(i), Project Co must procure that each offer obtained under clause 33.6(g) addresses the following criteria:
- (i) details of the contract price, which reflect a competitive pricing of the Reviewable Services in the then current market;
 - (ii) current capacity and capability to carry out the Reviewable Services over the Reviewable Services Term, including current workload and resources plans, key people, subcontractors and consultants;
 - (iii) previous performance of services similar to the Reviewable Services together with referees;
 - (iv) financial capacity to provide the Reviewable Services;
 - (v) demonstration that Project Co will be able to continue to meet the performance standards in the Output Specification relevant to the Reviewable Services; and
 - (vi) value for money delivered to the State.
- (i) **(State to manage the tender process):** Within 15 Business Days after receipt of the documentation in accordance with clause 33.6(e), the State may notify Project Co that it wishes to manage the tender process. If the State notifies Project Co that it wishes to manage the tender process:
- (i) Project Co must:
 - A. comply with all reasonable requests of the State to assist with that competitive tender process; and
 - B. refrain from doing anything that may impede the State in conducting that competitive tender process;
 - (ii) the State must:
 - A. keep Project Co regularly informed as to the progress of the tender;
 - B. during the tender process, give Project Co reasonable prior written notice of any interviews or meetings with the tenderers and Project Co may, in its discretion, attend such interviews or meetings; and
 - C. provide Project Co with a copy of all offers received by the State; and
 - (iii) the State must use the list of proposed tenderers prepared by Project Co in accordance with clause 33.6(e) and (g), as approved by the State or as amended by agreement between the State and Project Co.

Project Co acknowledges and agrees that the State's management of the tender process pursuant to this clause 33.6(i) is an administrative function only and does not relieve Project Co from, or alter or affect, Project Co's obligations, Liabilities or responsibilities.

33.7 Outcome of competitive tender process

Project Co must, within 6 Months after the notice from the State under clause 33.4(d)(ii)B or 33.5(a)(ii) (or if the State has managed the tender process in accordance with clause 33.6(i), within 1 Month of receipt by Project Co of the offers received by the State in accordance with clause 33.6(i)(ii)C):

- (a) provide to the State copies of all offers Project Co has procured (including procured through the State in accordance with clause 33.6(i)) which meet the requirements set out in clauses 33.6(g) and 33.6(h); and
- (b) any further details as the State reasonably requires in relation to the tender and the offers,

so that the State and Project Co can collaboratively work together, in accordance with clause 33.8 to seek to reach agreement on the appointment of one of the tenderers to provide the Reviewable Services for the next Reviewable Services Term.

33.8 Consultation

- (a) **(Reviewable Services):** During the period of 1 Month following provision of the information under clause 33.7, Project Co and the State must regularly and collaboratively consult with each other concerning those offers which comply with clauses 33.6(g) and 33.6(h), to seek to reach agreement on:
 - (i) the evaluation report in connection with each offer; and
 - (ii) the appointment of one of the tenderers to provide the Reviewable Services for the next Reviewable Services Term having regard to:
 - A. the experience, capability and financial capacity of each tenderer;
 - B. the extent to which each offer provides value for money to the State when compared with each of the other offers; and
 - C. the ability of Project Co to continue to meet the Output Specification and otherwise comply with this Deed on subcontracting the Reviewable Service to any of the tenderers.
- (b) **(State agreement):** Project Co must not enter into any contract with any tenderer for the provision of the Reviewable Services without the prior agreement of the State.
- (c) **(Probity Investigations):** Project Co must ensure that each of the tenderers for the Reviewable Services, and any persons likely to be associated with the provision of the Reviewable Services, provide their consent to the carrying out of any Probity Investigations required by the State.

33.9 Appointment and Payment

- (a) **(Successful tenderer):** If an offer made by a tenderer is acceptable to the State (whether or not the tender process was conducted by the State or Project Co), Project Co must subcontract the provision of the Reviewable Services for the next Reviewable Services Term to the successful tenderer, pursuant to a Subcontract which complies with clause 33.6(d)(iv)E.
- (b) **(Deemed approval):** A Subcontract entered into in accordance with this clause 33.9 will be deemed to be approved by the State for the purposes of clause 12.2.
- (c) **(Adjustments):** The parties must adjust:

- (i) the Monthly Service Payment (and the Financial Model); and
- (ii) the terms of this Deed (including any changes to be made to the Services or Services Requirements made by the State pursuant to clause 33.3(a)),

for the balance of the Operating Phase to reflect:

- (iii) Project Co's offer accepted by the State; or
 - (iv) the Subcontract entered into in accordance with clause 33.9(a),
- (as applicable), unless clause 33.10(a) or 33.10(b) applies, in which case the parties must adjust the Monthly Service Payment (and the Financial Model) for the balance of the Operating Phase to reflect the circumstances described in clause 33.10(a) or 33.10(b) (as applicable).

33.10 Failure to agree

If none of the offers made by the tenderers are acceptable to the State (whether or not the tender process was managed by the State or Project Co), the State may:

- (a) **(Acceptance)**: accept Project Co's Initial Offer or Negotiated Offer (if any);
- (b) **(Current terms)**: require Project Co to proceed to provide the Reviewable Services under:
 - (i) the current terms; and
 - (ii) pricing in accordance with clause 33.11; or
- (c) **(Modification)**: omit the Reviewable Services from the Services by way of a Modification and carry out the Reviewable Services itself or procure a third party to carry out the Reviewable Services (in which case the Monthly Service Payment will be adjusted and this Deed amended as necessary in accordance with the Change Compensation Principles for the omission of the Reviewable Services).

33.11 Continued provision of Reviewable Services

- (a) **(Appointment of Subcontractor)**: Subject to clause 33.11(b), without limiting the State's rights under this Deed, if a Subcontractor is intended by the State to be appointed to carry out the Reviewable Services in the next Reviewable Services Term but has not yet been appointed under clause 33.9 by the date of commencement of the next Reviewable Services Term, Project Co must continue to provide the Reviewable Services on the terms and pricing for the immediately prior Reviewable Services Term and in accordance with the Output Specification, until such time as a Subcontractor is appointed under clause 33.9 and commences provision of those Reviewable Services.
- (b) **(Backdated price)**: If the period for provision of the Reviewable Services by Project Co under clause 33.11(a) extends beyond the Reviewable Services Tender Expiry Date, the State will pay the price offered by Project Co (if any) in Project Co's Initial Offer for the continued provision of the Reviewable Services backdated to the Reviewable Services Tender Expiry Date.

33.12 Probity of process

The State may, at any time, appoint a probity officer to, or have the State Representative, oversee the whole or any part of the process referred to in this clause 33 and Project Co must:

- (a) **(Provide assistance)**: provide all assistance and information required by; and

- (b) **(Comply with directions):** comply with all directions of, the probity officer or State Representative, in connection with that process.

34. Benchmarking of Utilities

- (a) Project Co must, for each Utility:
- (i) not less than three months prior to each Utilities Review Date, commence a tender process acceptable to the State (without limiting clause 34(b)) to obtain separate tenders for the Utility from no fewer than three retailers (or, to the extent that there are fewer than three retailers able to supply or provide the required Utility, Project Co must use reasonable endeavours to obtain quotations from as many retailers as possible):
- A. providing price quotations:
- 1) of the price per unit of volume for the Utility or where the price per unit of volume for the Utility varies depending on usage or time of usage, the applicable prices per unit of volume for the Utility for each usage or time of usage range; and
- 2) to the extent it is market practice to include fixed components of pricing, fixed component pricing, provided that the fixed component is included in the Model Output Schedule as part of the Financial Close Financial Model,
- and, in each case, which price must be:
- 3) inclusive of all costs, charges, fees and loss adjustment factors which the Utility retailer proposes to pass on to the purchaser;
- 4) valid for a nominated period acceptable to the State; and
- 5) based upon consumption of the Utility which does not exceed the "Maximum Units" for each Utility specified in the Model Output Schedule as part of the Financial Close Financial Model;
- (ii) demonstrate to the reasonable satisfaction of the State that the Utility retailer it intends to select and engage is the best choice having regard to:
- A. the price quoted in the prevailing market conditions; and
- B. the experience, capability, financial and regulatory standing of the Utility retailer in the context of the Project; and
- (iii) select a Utility retailer acceptable to the State from the Utility retailers who have provided tenders to Project Co pursuant to this clause 34(a).
- (b) For the purposes of any tender process required under clause 34(a)(i):
- (i) Project Co must permit the State to review all materials that are prepared or received in the process of obtaining tenders and provide any other information that the State reasonably requires. This includes any

- consumption data for the Correctional Complex, which if requested by the State, must be provided at the end of each Operating Year;
- (ii) the State may (but is not obliged to) specify the information that tenderers are required to provide in their responses to a request for tender;
 - (iii) Project Co will retain responsibility for undertaking the tender process including retaining primary responsibility for:
 - A. the preparation of the tender documents and collation of the information required to be provided to prospective tenderers;
 - B. general management of the tender process such as co-ordinating meetings and advertising or compiling the list of prospective tenderers and notifying tenderers to be invited to submit tenders; and
 - C. evaluating the tender responses received by Project Co; and
 - (iv) the State will have the right to object to the selection of any person as a prospective tenderer if the State reasonably believes:
 - A. that person does not (or could not reasonably be considered to) comply with any of the criteria referred to in this clause 34; or
 - B. the selection of that person as a prospective tenderer would give rise to a potential or perceived conflict of interest.
- (c) On or prior to each Utilities Review Date, Project Co must select, and enter into, a Retail Utility Contract acceptable to the State with a Utility retailer in accordance with clause 34(a)(iii).
- (d) By no later than 1 month after each Utilities Review Date, Project Co must provide the State with the Retail Utility Contracts it has entered into in accordance with this clause 34.
- (e) Project Co must provide the State with a statement from each provider under each Retail Utility Contract it has entered into identifying the forecast maximum demand or capacity on which the pricing in each Retail Utility Contract is based. This will include, as applicable, any notification under the terms of the Retail Utility Contract by Project Co or any of its Associates to the retailer on its expected, forecast or anticipated demand (**Maximum Demand**).
- (f) On each Utilities Review Date, the relevant price inputs for each Utility will be updated in the Model Output Schedule to reflect the relevant prices in the Retail Utility Contract as deflated by the CPI Annual Multiplier and expressed in 30 June 2017 dollars. The Maximum Units for each Utility which will not be adjusted and will remain equal to the "Maximum Units" specified in the Model Output Schedule as part of the Financial Close Financial Model until the Expiry Date.

Part F - Payment Provisions

35. Conditional Debt Pay Down

35.1 CDPD Conditions

The State's obligation to pay the CDPD Amount is subject to the following conditions precedent (**CDPD Conditions**):

- (a) **(Commencement)**: the CDPD Period has commenced and not expired;
- (b) **(Default of termination)**: there is no subsisting Major Default or Default Termination Event;
- (c) **(Major Default)**: no Major Default (other than a Major Default occurring under paragraph (h) or (m) of the definition of Major Default) has occurred in the 6 month period immediately prior to the CDPD Notice Date;
- (d) **(Multiple defaults)**: not more than one Major Default (other than a Major Default occurring under paragraph (h) or (m) of the definition of Major Default) has occurred in the 18 month period immediately prior to the CDPD Notice Date;
- (e) **(Default Termination Event)**: no Default Termination Event has occurred in the 12 month period immediately prior to the CDPD Notice Date;
- (f) **(Single cost of rectifying)**: the costs of rectifying any single subsisting Defect will not exceed [REDACTED] and
- (g) **(Aggregate cost of rectifying all)**: the aggregate cost of rectifying all subsisting Defects will not exceed [REDACTED]

35.2 CDPD Payment Date

- (a) **(CDPD Amount)**: Subject to clause 35.1, the State must pay the CDPD Amount on the CDPD Payment Date in accordance with the Receivables Purchase Deed.
- (b) **(Outstanding Debt)**: Project Co must apply or procure the application of the CDPD Amount in partial repayment of the then outstanding Debt and ensure that the repaid amount is not available to be redrawn at any time under the Finance Documents.

35.3 Satisfaction of CDPD Conditions

- (a) **(Best endeavours)**: Project Co must use its best endeavours to procure the satisfaction of the CDPD Conditions prior to expiry of the CDPD Period.
- (b) **(Single conditions)**: When Project Co considers that a CDPD Condition has been satisfied, Project Co must promptly and in any event within 5 Business Days give the State:
 - (i) a written notice stating that it considers that the CDPD Condition has been satisfied; and
 - (ii) reasonable evidence that the CDPD Condition has been satisfied.
- (c) **(All conditions)**: When Project Co considers that all of the CDPD Conditions have been satisfied (or waived by the State), Project Co must:

- (i) give the State a written notice stating that it considers that all of the CDPD Conditions have been satisfied (or waived by the State); and
 - (ii) provide the State with the documents and information required under clause 59 and the CDPD Adjustment Protocol.
- (d) **(State notice)**: Within 10 Business Days after receiving a notice under clause 35.3(c)(i), the State will give Project Co:
- (i) written notice:
 - A. that the State agrees that all of the CDPD Conditions have been satisfied (or waived by the State);
 - B. that the State accepts Project Co's calculation of the CDPD Amount; and
 - C. confirming the CDPD Payment Date,**(CDPD Satisfaction Notice)**; or
 - (ii) written notice:
 - A. that the State does not agree that all of the CDPD Conditions have been satisfied (or waived by State);
 - B. that the State does not accept Project Co's calculation of the CDPD Amount; and
 - C. the reasons for the State's determination.
- (e) **(Outstanding CDPD Conditions)**: If the State gives a notice under clause 35.3(d)(ii)A, Project Co must continue to use its best endeavours to procure the satisfaction of the outstanding CDPD Conditions and this clause 35.3 will re-apply.
- (f) **(Breach)**: A breach of clause 35.3(a) by Project Co will not, of itself, be a Major Default or a Default Termination Event.
- (g) **(Payment)**: The payment of the CDPD Amount does not constitute approval by the State of the completion or acceptance of the Delivery Phase Activities in accordance with the State Project Documents, or evidence that the Correctional Complex is Fit for Purpose or constitute evidence that all or any other obligations of Project Co under the State Project Documents have been satisfied.

35.4 Waiver of CDPD Conditions

- (a) **(State may waive)**: The State may waive one or more of the CDPD Conditions in its absolute discretion by giving written notice to Project Co, except that the State cannot waive the requirement that the CDPD Period has commenced.
- (b) **(Consequence of waiver)**: Any waiver by the State of a CDPD Condition does not constitute a waiver by the State of any of its rights, powers or discretions in respect of any subsisting breach of this Deed, a Major Default, a Default Termination Event or Defect (as may be relevant).
- (c) **(CDPD Payment Date)**: The State may specify the CDPD Payment Date in the notice under clause 35.4(a).

36. Payments Adjustments & Taxes

36.1 State's payment obligations

- (a) **(Payment obligations):** In consideration of Project Co providing the Services, the State will pay Project Co the Monthly Service Payment:
 - (i) calculated in accordance with the Payment Schedule; and
 - (ii) in arrears,during the Operating Phase from the end of the first Month of the Operating Phase.

- (b) **(Other payments):** Other than the Monthly Service Payment and the CDPD Amount the State will pay any payment that is due and payable to Project Co, and Project Co must pay any payment that is due and payable to the State:
 - (i) at the time specified in this Deed or the relevant State Project Document for the particular payment; or
 - (ii) if no time is specified for the payment of the relevant amount, the payment will be made:
 - A. by the State, in the case of a payment to Project Co:
 - 1) during the Delivery Phase, 20 Business Days after a written demand is made for payment of the amount; and
 - 2) during the Operating Phase, at the same time as the next Monthly Service Payment is made by the State to Project Co after the relevant amount becomes due and payable and a written demand is made for payment of the amount; and
 - B. by Project Co in the case of a payment to the State, within 20 Business Days after a written demand being made by the State for payment of the relevant amount.

36.2 Monthly Service Payments

- (a) **(Payment Claims):** Within 5 Business Days after the end of each Month during the Operating Phase, Project Co must prepare and provide to the State a Payment Claim for:
 - (i) the Monthly Service Payment for that Month; and
 - (ii) any other amounts then due and payable by the State to Project Co or by Project Co to the State under this Deed (other than the CDPD Amount).

- (b) **(Payment Statement):** The State will, within the later of:
 - (i) 5 Business Days after receipt by the State of a Payment Claim; and
 - (ii) 5 Business Days after receipt by the State of the relevant Monthly Performance Report,provide to Project Co a statement (**Payment Statement**) stating the amount payable to or by Project Co (which may be more or less than the amount set out in

the Payment Claim) and the reasons for any difference to the amount in the Payment Claim.

- (c) **(No Payment Claim)**: If Project Co does not issue a Payment Claim or Monthly Performance Report, the State may still issue a Payment Statement setting out the amount payable to or by Project Co.
- (d) **(Registered)**: Each of the State and Project Co acknowledges that it (or in the case of the State, an entity on behalf of the State) is registered for GST when it enters into this Deed and that each party will notify the other party if it (or the relevant entity) ceases to be registered.
- (e) **(Tax Invoice)**: Without limiting Project Co's right to dispute the amount for payment stated in the Payment Statement, Project Co or the State (as applicable) will provide to the other party a Tax Invoice in connection with any supplies the subject of the Payment Statement for the amount stated in the Payment Statement within 2 Business Days of receipt of the Payment Statement.
- (f) **(Failure to provide Tax Invoice)**: Without limiting clause 36.2, if Project Co or the State (as applicable) fails to provide a Tax Invoice in the time required, the State or Project Co (as the case may be) may prepare the Tax Invoice on behalf of Project Co or the State (as applicable) and provide that Tax Invoice to Project Co or the State (as applicable).
- (g) **(Timing of payment)**: Subject to clause 36.6, payment of the amount stated to be payable to or by Project Co in the Payment Statement will be made by the State to Project Co or by Project Co to the State (as the case may be) within 10 Business Days of receipt of the Tax Invoice provided under clause 36.2(e) or clause 36.2(f).
- (h) **(Payment not evidence of proper performance)**: Neither payment of Monthly Service Payments by the State to Project Co nor the issuing of any Payment Statement is:
 - (i) evidence that the Project Activities have been carried out by Project Co in accordance with the State Project Documents; or
 - (ii) an admission of liability,and is only to be taken as payment on account.
- (i) **(Correction of previous Payment Statement)**: The State may, in any Payment Statement, correct any error in any previous Payment Statement issued by the State.

36.3 Payment adjustments under the Performance Regime and Payment Schedule

- (a) **(Performance Regime applies)**: The Monthly Service Payments will be adjusted to the extent and in the manner described in the Performance Regime and the Payment Schedule to reflect the agreed principle that the State will only pay for the quantum and quality of the Services actually provided. If a Charge Event occurs, the State may elect to:
 - (i) adjust the Monthly Service Payment in accordance with this clause 36.3(a); or
 - (ii) require Project Co to pay to the State the corresponding 'charge' as specified in the Performance Regime within 20 Business Days of demand by the State.
- (b) **(Payments)**: To the extent that Project Co must pay the State for any Liabilities contemplated by the exclusions in clause 36.3(e) and those Liabilities are in excess

of the Monthly Service Payments, then in addition to any other remedies of the State or its Associates under this Deed or at Law, the future Monthly Service Payments will be reduced to the extent necessary for the State or its Associates to be compensated for those Liabilities in full. To the extent that the State and its Associates are unable to recover such compensation by the reduction of future Monthly Service Payments, any shortfall in such compensation will be a debt due and payable by Project Co to the State.

- (c) **(Project Co acknowledgements):** Project Co acknowledges and agrees that if clause 36.3(a), or any adjustment under the Performance Regime or Payment Schedule pursuant to that clause, is held to be void or unenforceable, other than a challenge to the Performance Regime or Payment Schedule initiated by the State or its Associates, clause 36.3(a), the Performance Regime and the Payment Schedule will not limit Project Co's Liability to the State under this Deed or otherwise at Law for any Liability suffered by the State up to an amount equal to the amount that would have been applied as a consequence of the Unavailability, Meal Availability Failure or Quality Failure had it not been held to be void or unenforceable.
- (d) **(Sole remedy):** Subject to clauses 36.3(c) and 36.3(e), adjustment of the Monthly Service Payments by application of the Performance Regime or Payment Schedule under clause 36.3(a), will be the only monetary consequence for Project Co for any Unavailability, Meal Availability Failure or Quality Failure to which the Performance Regime or Payment Schedule applies.
- (e) **(Exclusions to sole remedy):** Clause 36.3(d) does not limit or affect:
- (i) any other right or remedy under this Deed or at Law (other than, subject to this clause 36.3(e), for monetary compensation to the extent such right or remedy applies to the same events as the Unavailability, Meal Availability Failure or Quality Failure to which the Performance Regime or Payment Schedule applies);
 - (ii) the State's right to recover in respect of loss or damage caused by an Unavailability, Meal Availability Failure or Quality Failure under clauses 45 (other than clause 45.1), to the extent that the State has not been fully compensated for that loss or damage;
 - (iii) the State's rights under clause 45.5;
 - (iv) the State's entitlement to recover any costs, expenses or Liabilities incurred by the State as a consequence of exercising its rights under clause 42;
 - (v) the State's rights under this Deed or any other State Project Document in respect of the event that caused or contributed to the Unavailability, Meal Availability Failure or Quality Failure (as opposed to the Unavailability, Meal Availability Failure or Quality Failure itself);
 - (vi) any payment on termination of this Deed (including a Termination Payment); or
 - (vii) any Liability of Project Co to the State or an Associate of the State suffered or incurred by the State or any Associate of the State as a result of any:
 - A. fraudulent, unlawful or criminal act or omission; or
 - B. any wilful breach of a Project Document,by Project Co or any of its Associates where the State has not been completely compensated for that Liability by the adjustment in accordance with clause 36.3(a).

36.4 Refund

If:

- (a) **(Payment):** the State pays Project Co, or Project Co pays the State any amount under clause 36.2(g) or otherwise; and
- (b) **(Entitlement):** it is subsequently agreed or determined for any reason that the recipient was not entitled to that payment under this Deed,

the recipient will immediately refund to the party which made the payment, that payment plus interest at the Overdue Rate from the day the payment was paid under clause 36.2(g) or otherwise to (and including) the date of repayment under this clause 36.4.

36.5 Interest

- (a) **(Interest):** Subject to clause 36.6, and other than where Section 2.2 of the Termination Payments Schedule applies in relation to a Termination Payment if a party fails to pay any amount due and payable by that party to the other party within the time required under this Deed, then it must pay interest on that amount:
 - (i) from the date on which payment was due and payable until the date on which payment is made;
 - (ii) calculated on daily balances at the Overdue Rate; and
 - (iii) capitalised monthly.
- (b) **(Sole entitlement):** The amount specified in this clause 36.5 will be a party's sole entitlement to interest including damages for loss of, use of, or the cost of borrowing, money.

36.6 Set-off

- (a) **(State's payments):** Without limiting the State's rights at Law, the State may deduct from any moneys due and payable to Project Co under the State Project Documents or otherwise at Law:
 - (i) any moneys due and payable by any Group Member to the State;
 - (ii) any Liabilities contemplated by the exclusions in clause 36.3(e); and
 - (iii) the amount of any Claim that the State may make in good faith against any Group Member.
- (b) **(Details of set-off):** The State must provide Project Co with reasonable details of the basis on which it is setting off any amount pursuant to clause 36.6(a).
- (c) **(Project Co's payments):** Project Co must make all payments to the State free from any set-off or counterclaim and without deduction or withholding for or on account of any present or future Tax, unless Project Co is compelled by Law to make such a deduction or withholding.
- (d) **(Deduction or withholding):** If a party is compelled by Law to make a deduction or withholding for the benefit of an Authority, it must:
 - (i) remit the deducted or withheld amount to the relevant Authority within the time required by Law; and
 - (ii) provide to the other party all information and documentation relating to that deduction or withholding, including any information or

documentation required to obtain a credit for or repayment of the deducted or withheld amount from an Authority.

36.7 Liability for Taxes

- (a) **(Project Co to Indemnify):** Subject to clause 36.8, Project Co must indemnify the State against, and must pay the State on demand the amount of, all Taxes (excluding Rates, land tax and any stamp or like duty (**Duty**), and any penalty, fine, charge or interest in respect of any Rates, land tax or Duty) incurred in connection with:
- (i) the negotiation, preparation, execution and registration of this Deed or any other Project Document;
 - (ii) the transactions that this Deed or any other Project Document contemplates; and
 - (iii) any amendment to, or any consent, approval, waiver, release or discharge of or under, this Deed or any other Project Document.
- (b) Project Co must:
- (i) **(Timely lodgement):** attend to the timely lodgement for stamping of the State Project Documents and the Finance Documents on or before the due date for lodgement prescribed by Law (**Lodgement Due Date**);
 - (ii) **(Duty Estimate):** at least 20 Business Days prior to the Lodgement Due Date give the State an estimate of the Duty payable (**Duty Estimate**) and an opportunity to review and comment on all submissions, correspondence and other materials before they are provided to the NSW Office of State Revenue and not refuse to adopt any changes to the contents of those documents or to the Duty Estimate that are reasonably requested by the State provided that any changes are requested within 10 Business Days prior to the Lodgement Due Date; and
 - (iii) **(Correspondence, notices and assessments):** give the State a copy of all correspondence, notices and assessments issued by the NSW Office of State Revenue in connection with Duty payable in respect of the State Project Documents, the Finance Documents or any transaction contemplated by any of them, within 5 Business Days after Project Co receives the relevant correspondence, notices or assessments.
- (c) **(State to indemnify):** The State will pay and indemnify Project Co and any parties to the Finance Documents against, and reimburse Project Co and any parties to the Finance Documents for, all Duty (including any penalty, fine, charge or interest payable in respect of Duty) in respect of the State Project Documents, the Finance Documents or any document or transaction expressly contemplated by, any of them which is payable to the NSW Government, the Chief Commissioner of State Revenue or the NSW Office of State Revenue, provided that the State will not pay, indemnify or reimburse Project Co for any Duty, penalty, fine, charge or interest payable in respect of Duty:
- (i) which results from any failure or any delay by any Project Co Entity:
 - A. in lodging a document required to be lodged with the NSW Office of State Revenue by the due date for lodgement prescribed by Law; and
 - B. in paying an amount to the NSW Office of State Revenue, for which Project Co has been put in immediately available funds

by the State, by the due date for payment prescribed by Law;
or

- (ii) arising from any Refinancing, a change to financiers or any change in the equity interest of Project Co or a Group Member.
- (d) **(Available funds):** Without limiting clause 36.7(c), the State must put Project Co in immediately available funds to pay the amount of the Duty Estimate to the NSW Office of State Revenue at least 5 Business Days prior to the Lodgement Due Date and Project Co must pay the amount of the Duty Estimate to the NSW Office of State Revenue by the Lodgement Due Date. Project Co must provide evidence of payment having been made (such as a copy of the stamped page of a document or a receipt) to the State within 5 Business Days after receipt of such evidence.
- (e) **(Reassessment):** If the NSW Office of State Revenue issues an assessment or reassessment for an amount greater than the Duty Estimate then, without limiting clause 36.7(c), Project Co must promptly notify the State and the State must put Project Co in immediately available funds to pay the amount due to the NSW Office of State Revenue within the earlier of 10 Business Days after notification and at least 5 Business Days prior to the due date and Project Co must pay the amount due to the NSW Office of State Revenue by the due date.
- (f) **(Refund):** If the amount of Duty assessed by the NSW Office of State Revenue is less than the Duty Estimate, Project Co must, to the extent permitted by Law, promptly seek a refund of the amount overpaid and pass any refund on to the State within 5 Business Days of receipt.
- (g) **(Rates and land tax):** The State must pay Project Co, and indemnify Project Co against, all Rates and land tax, if any, in respect of the Site until the end of the Term.
- (h) **(Prompt notice):** Project Co must promptly provide to the State a copy of any notices, assessments or correspondence which it receives in relation to any Rates and land tax to which the indemnity in clause 36.7(g) applies.
- (i) **(State dissatisfaction with assessment):** In the event that the State is dissatisfied with any assessment, or threatened assessment, or notice in relation to the calculation of, any Duty, Rates or land tax which the State is required to pay under this clause 36.7(i):
 - (i) the State may notify Project Co that it wishes to take carriage of negotiations with the relevant Authority in respect of the assessment, threatened assessment or notice (**Tax Proceedings**);
 - (ii) the State will be responsible for all costs in relation to the conduct, defence or settlement of the Tax Proceedings (including the costs of Project Co in providing any co-operation or assistance);
 - (iii) subject to the State complying with its obligations under this clause 36.7(i), Project Co must provide all reasonable assistance to the State in relation to the conduct, defence or settlement of the Tax Proceedings, including, if requested by the State, to be named as the taxpayer in any objections or appeals;
 - (iv) the State must act in good faith at all times;
 - (v) the State must not take any action which it is objectively unreasonable to take in all the circumstances;
 - (vi) the State must pay to Project Co so much of any Tax as is required by the relevant Authority to be paid in relation to the Tax Proceedings;

- (vii) the State must provide to Project Co an indemnity in a form agreed to by Project Co (such agreement to not be unreasonably withheld or delayed) against all liability, loss, damage, cost, expense, judgment, charge, diminution in value or deficiency which may result from any action taken at the request of the State by Project Co in connection with the conduct of the Tax Proceedings; and
- (viii) the State will liaise with and keep Project Co informed of its negotiations, and provide copies of all relevant correspondence to Project Co on a timely basis.

36.8 GST

(a) **(Interpretation):**

- (i) Except where the context suggests otherwise, terms used in this clause 36.8 have the meanings given to those terms by the GST Act (as amended from time to time).
- (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 36.8.
- (iii) Unless otherwise expressly stated, all consideration to be provided under this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 36.8.
- (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

(b) **(Reimbursements):** Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

(c) **(Additional amount of GST payable):** Subject to clause 36.8(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:

- (i) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 36.8), for that supply is exclusive of GST;
- (ii) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
- (iii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 36.8(c)(ii).

(d) **(Variation of GST):**

- (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 36.8(c) and clause 36.8(e)), varies from the additional amount paid by the Recipient under clause 36.8(c), then the Supplier will provide a corresponding refund or credit to, or will

be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 36.8(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 36.8(c).

- (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) **(Exchange of non-monetary consideration):**
 - (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 36.8(c) applies is a Taxable Supply made by the Recipient (the **Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 36.8(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
 - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 36.8(c) (or the time at which such GST Amount would have been payable in accordance with clause 36.8(c) but for the operation of clause 36.8(e)(i)).
- (f) **(No merger):** This clause 36.8 will not merge on completion or termination of this Deed.

36A. Securitised Licence Structure

36A.1 Completion Price and Completion Payment

- (a) **(Payment of Completion Price):** Subject to clause 36A.1(b), in consideration for Project Co progressively undertaking the Works and carrying out the other Delivery Phase Activities, the State agrees to pay the Completion Price to Project Co (or as Project Co directs) by paying each Completion Payment on each Completion Payment Date.
- (b) **(Corresponding Receivables Purchase Payment):** The State has no obligation to pay a Completion Payment unless, and its obligation is limited to the extent that, the State receives the corresponding Receivables Purchase Payment for the Initial Receivables from Finance Co under the Receivables Purchase Deed.
- (c) **(Adjustments):** The amount of the Completion Price (and the corresponding Receivables Purchase Price for the Initial Receivables) may only be adjusted as follows:
 - (i) to reflect a decrease in the Completion Payment in accordance with clause 36A.3; or
 - (ii) to reflect a decrease in the Completion Payment as agreed in writing by the parties on or before the Date of Commercial Acceptance,provided that no adjustment to the Completion Price or a corresponding Receivables Purchase Price for the Initial Receivables will affect the limitation referred to in clause 36A.1(b).
- (d) **(Licence Fee adjustment)** If the Completion Price (and the corresponding Receivables Purchase Price for the Initial Receivables) is adjusted in accordance with clause 36A.1(c), the State and Project Co agree to adjust the Licence Fee payable under the Operating Phase Sub-Licence in accordance with the Change Compensation Principles.

- (e) **(No set-off):** Notwithstanding any other clause of any State Project Document, the State may not set off any amount due and payable by Project Co or Finance Co to the State under the State Project Documents against any Completion Payment.
- (f) **(Right, title and interest):** To the extent it has not already passed, all right, title and interest of Project Co in the Works to which a Completion Payment applies passes to the State on payment by the State under clause 36A.1(a).
- (g) **(Relief is sole remedy):** Notwithstanding any other clause of any State Project Document, the State acknowledges that, if a Receivables Purchase Payment for the Initial Receivables is not received in full or at all from Finance Co under the Receivables Purchase Deed, the State's only right or remedy in respect of such non-payment is the relief from payment of the corresponding Completion Payment under clause 36A.1(b).

36A.2 Securitised Modification Payment

- (a) **(Payment of Securitised Modification Payment):** If:
 - (i) a Change Compensation Event occurs and the State and Project Co agree that Finance Co will provide additional financing for that event under the Change Compensation Principles; or
 - (ii) the parties agree in writing that Finance Co will provide additional financing in relation to the Project which is to be reflected in the Securitised Licence Structure,

the State must pay a Securitised Modification Payment to Project Co on the Additional Payment Date.
- (b) **(Corresponding Receivables Purchase Payment):** The State has no obligation to pay a Securitised Modification Payment unless, and its obligation is limited to the extent that, it receives the corresponding Receivables Purchase Payment for the relevant Additional Receivables from Finance Co under the Receivables Purchase Deed in relation to that Change Compensation Event or that additional financing which the parties have agreed in writing pursuant to clause 36A.2(a)(ii) that Finance Co will provide in relation to the Project.
- (c) **(No set-off):** Notwithstanding any other clause of any State Project Document, the State may not set off any amount due and payable by Project Co or Finance Co to the State under the State Project Documents against a Securitised Modification Payment.
- (d) **(Right, title and interest):** To the extent it has not already passed, all right, title and interest of Project Co in the Works to which a Securitised Modification Payment applies passes to the State on payment by the State under clause 36A.2(a).
- (e) **(Relief is sole remedy):** Notwithstanding any other clause of any State Project Document, the State acknowledges that, if the additional Receivables Purchase Payment for the relevant Additional Receivable is not received in full or at all under the Receivables Purchase Deed, the State's only right or remedy in respect of such non-payment is the relief from payment of the corresponding Securitised Modification Payment under clause 36A.2(b).

36A.3 Reduction in debt finance requirements

If:

- (a) a Change Compensation Event:
 - (i) occurs prior to the Date of Commercial Acceptance; and

- (ii) results in a reduction in the cost of undertaking the Works or other Delivery Phase Activities (calculated in accordance with the Change Compensation Principles) in respect of which debt finance was to have been provided under the Finance Documents,

and as a result of that Change Compensation Event there is a corresponding reduction in the debt finance procured by Finance Co under the Finance Documents and reflected in the Securitised Licence Structure; or

- (b) prior to the Date of Commercial Acceptance, the parties otherwise agree pursuant to clause 36A.1(c)(ii) to any arrangement that results in a reduction in the debt finance procured by Finance Co under the Finance Documents and reflected in the Securitised Licence Structure,

then in each case on the next Completion Payment Date:

- (c) the Completion Payment payable by the State on that and on each subsequent Completion Payment Date will be reduced by amounts calculated with reference to the reduction in the debt finance procured by Finance Co under the Finance Documents as a result of that Change Compensation Event or agreed pursuant to clause 36A.1(c)(ii) and reflected in the Securitised Licence Structure; and
- (d) the Receivables Purchase Payments for the Initial Receivables payable by Finance Co on that and on each subsequent Completion Payment Date under the Receivables Purchase Deed will be reduced by the same amount as calculated at clause 36A.3(c); and
- (e) the Licence Fee payable by Project Co on the Licence Fee Payment Dates under the Tenure Document will be reduced by an amount that is calculated with reference to the amount calculated at clause 36A.3(c).

36A.4 No Change in Risk Allocation

- (a) **(No Increased State Risk Allocation):** The parties acknowledge and agree that the Securitised Licence Structure is not intended to result in an Increased State Risk Allocation.
- (b) **(No Claim):** Project Co undertakes not to make any Claim inconsistent with the acknowledgement in clause 36A.4(a) and to procure that neither Finance Co nor any of Project Co's or Finance Co's Related Bodies Corporate will make any such Claim.
- (c) **(If Increased State Risk Allocation):** If the State believes (on reasonable grounds supported by external advice) that the Securitised Licence Structure results or is likely to result in an Increased State Risk Allocation, then it may give Project Co a notice stating that the Securitised Licence Structure is to be amended to the extent necessary to ensure there is no Increased State Risk Allocation.
- (d) **(Necessary amendments):** Following receipt of a notice given by the State under clause 36A.4(c), Project Co agrees to do anything requested by the State in that notice or otherwise reasonably necessary to modify the State Project Documents and the Securitised Licence Structure to ensure that there is no Increased State Risk Allocation.
- (e) **(Damages not adequate):** Project Co acknowledges and agrees that:
 - (i) damages may not be an adequate remedy for the State for any failure by Project Co to comply with the undertakings in this clause 36A.4; and
 - (ii) if there is a breach or purported breach by Project Co of its obligations in this clause 36A.4, the State may seek and is entitled to injunctive or declaratory relief.

36A.5 Indemnity

Project Co indemnifies the State for:

- (a) **(All costs or loss)**: all Liability incurred by the State as a result of any Increased State Risk Allocation to the extent that it is not removed or remedied by changes to the Securitised Licence Structure agreed in accordance with clause 36A.4; and
- (b) **(Any Claim)**: any Claim brought against the State by Project Co or Finance Co or any Related Body Corporate of either Project Co or Finance Co which is inconsistent with the acknowledgement in clause 36A.4(a).

Part G - Expiry and Handover obligations

37. Expiry obligations

37.1 Assistance in securing continuity

- (a) **(Transfer of responsibility):** Subject to clause 37.1(b), Project Co must:
- (i) in respect of the obligations set out in clause 37.1(a)(iii), 37.1(a)(iv), 37.1(a)(v) and 37.1(a)(ix), in the period commencing 2 years prior to the Final Expiry Date; and
 - (ii) without limiting clause 37.1(a)(i), in respect of all of the obligations set out in this clause 37.1(a), in the period which is not less than:
 - A. 6 Months before the Final Expiry Date; or
 - B. where Project Co is given less than 6 Months' notice of an Expiry Date, during the relevant notice period,

do all things reasonably required by the State to ensure the smooth and orderly transfer of responsibility for delivering the Project to the State or its nominee including:

- (iii) meeting with the State and such other persons notified by the State to discuss delivery of the Project on reasonable notice by the State;
- (iv) providing access to its operations for managers and supervisors of the State or its nominee for the purpose of familiarisation;
- (v) providing sufficient information to the State or its nominee to determine the status and condition of the Project, including the Final Refurbishment Works;
- (vi) providing sufficient resources, including personnel, for the time required to facilitate the transfer of the Project to the State or its nominee;
- (vii) procuring the novation or, if such novation cannot be procured, the assignment to the State or its nominee of:
 - A. such Subcontracts as the State may nominate;
 - B. any leases, subleases and licences requested by the State; and
 - C. any warranties (provided in respect of the Project that are capable of assignment);
- (viii) subject to clause 61, grant or procure the grant to the State or its nominee of such Intellectual Property Rights, including an assignment or sub-licence of all licences relating to any software belonging to any third party used in connection with the Services or any other aspect of the Relevant Infrastructure, as will enable the State or its nominee to deliver the Project to the standards specified in, and in accordance with, this Deed;
- (ix) assisting in the transfer of any employees of Project Co or any Subcontractor who agree with the State to be employed by the State or its nominee after the Expiry Date;

- (x) training personnel nominated by the State in all aspects of the operation, maintenance and repair of the Relevant Infrastructure to a level of competency that will allow those personnel to operate, maintain and repair the Relevant Infrastructure to the standards required of Project Co under this Deed from the relevant Expiry Date; and
 - (xi) doing all other acts and things to enable the State (or its nominee) to be in a position to deliver the Project to the standards specified in this Deed, with minimum disruption.
- (b) **(Expiry Date):** Where the Expiry Date is prior to the Final Expiry Date, Project Co must meet the requirements under clause 37.1(a) unless the State, acting reasonably, determines such requirements cannot be met within the required time due to the limited notice period Project Co has received of the Expiry Date, in which case, Project Co must meet such requirements as soon as practicable after the Expiry Date.
 - (c) **(Adjustments and payments):** Where any employees of Project Co or a Subcontractor are to be transferred to the State or its nominee, unless otherwise agreed, Project Co or the relevant Subcontractor will make adjustments and payment to the State or its nominee in respect of all actual or contingent liability for annual leave, accrued rostered days off, sick leave, long service leave and all other employee entitlements which are not to be paid out to the relevant transferring employees at the time of transfer of employment.

37.2 Dedicated Transition Person

Without limiting its obligations under clause 37.1:

- (a) **(Expiry of Project):** for not less than 6 Months before the expiry of the Project in accordance with clause 37.1; or
- (b) **(Notice period):** where the Expiry Date is prior to the Final Expiry Date and Project Co is given less than 6 Months' notice of the Expiry Date, during the relevant notice period,

Project Co must provide a dedicated person, with appropriate expertise and experience, to manage the transition out and handover of the Project.

37.3 Handover

- (a) Subject to clause 37.3(b), by the Expiry Date, Project Co must have:
 - (i) **(Handover of Relevant Infrastructure and Site):** handed over the Relevant Infrastructure and the Site (including all rights, title and interest in them) to the State or its nominee free from any encumbrances and in the Handover Condition;
 - (ii) **(Handover Package):** delivered to the State all items required as contemplated by the Handover Package (as updated in accordance with the Delivery Phase Plans and Reports Schedule, the Operating Phase Plans and Reports Schedule, the Output Specification and any other requirements of this Deed);
 - (iii) **(Transfer of rights):** transferred to the State or its nominee all rights, title and interest, free from any encumbrances, in Equipment used by Project Co or its Associates predominantly or exclusively for the delivery of the Services, required by the State to allow the State or its nominee to provide the Services to the standards required of Project Co under this Deed;

- (iv) **(Delivery of information):** delivered to the State or its nominee, all Project Co Material not previously delivered to the State as required by the State or its nominee;
 - (v) **(Payment of insurance proceeds):** paid to the State or its nominee, any insurance proceeds Project Co has received from any Insurances for the reinstatement or replacement of the Relevant Infrastructure to the extent not already reinstated or replaced, and assigned to the State any rights available to Project Co under the Insurances in respect of the reinstatement or replacement of the Relevant Infrastructure; and
 - (vi) **(Transfer of approvals):** done all acts and things necessary to enable the State (or its nominee) to have transferred to it or to obtain all Approvals necessary to deliver the Project.
- (b) **(Expiry Date):** Where the Expiry Date is prior to the Final Expiry Date, Project Co must meet the requirements under clause 37.3(a) unless the State, acting reasonably, determines such requirements cannot be met within the required time due to the limited notice period Project Co has received of the Expiry Date, in which case Project Co must meet such requirements as soon as practicable after the Expiry Date.

37.4 Appointment of Handover Reviewer

- (a) **(Handover Reviewer):** No later than 12 Months before the inspections to be undertaken in accordance with clause 37.5 (or where clause 37.5(a)(ii) applies, within such shorter period as is required by the State), Project Co and the State must meet to determine the identity of a Handover Reviewer to be engaged jointly by Project Co and the State to perform the tasks identified in clause 37.5.
- (b) **(State Representative to appoint):** If Project Co and the State Representative are unable to agree on the appointment of the Handover Reviewer within 3 Months before the Condition Review Date, the Handover Reviewer will be appointed by the State and the State and Project Co will jointly engage the Handover Reviewer, provided that the Handover Reviewer to be engaged must:
 - (i) be reasonably acceptable to the State and Project Co;
 - (ii) have appropriate qualifications and experience; and
 - (iii) have no interest or duty which conflicts or may conflict with its functions as the Handover Reviewer.
- (c) **(Terms of engagement):** The Handover Reviewer will be appointed on similar terms to the Independent Certifier Deed, taking into account any changes required to reflect the different role and the effluxion of time since the engagement of the Independent Certifier.

37.5 Handover Reviewer Role

- (a) **(Joint inspection):** Project Co, the State and the Handover Reviewer appointed under clause 37.4 must carry out joint inspections of the Relevant Infrastructure:
 - (i) at least:
 - A. 3 years before the Final Expiry Date; and
 - B. every 6 Months after that initial inspection until the Final Expiry Date; or

- (ii) where the Expiry Date is earlier than the Final Expiry Date, within any shorter period before the date of termination the State reasonably requires,

(each a **Condition Review Date**).

- (b) **(Program to achieve proper Handover)**: Following the first Condition Review Date in accordance with clause 37.5(a), the Handover Reviewer must give to the State and Project Co a written report specifying:

- (i) the details of the maintenance and repair work (if any) required to be carried out by Project Co to meet the Handover Condition and a program for undertaking those works (**Final Refurbishment Works**); and
- (ii) an estimate of the total costs of carrying out the Final Refurbishment Works,

(the **Outstanding Matters Report**).

- (c) **(Update of Outstanding Matters Report)**: The Handover Reviewer must give to the State and Project Co an updated Outstanding Matters Report after each Condition Review Date subsequent to the first one, which includes details of:

- (i) the Final Refurbishment Works that have been completed;
- (ii) the Final Refurbishment Works still to be completed; and
- (iii) the itemised estimate of the total costs of carrying out the remaining Final Refurbishment Works at that point in time.

- (d) **(Disputing Outstanding Matters Report)**: If Project Co or the State do not agree with any aspect of the Outstanding Matters Report:

- (i) they must give details of such objections to the Project Co Representative or the State Representative (as the case may be) and the Handover Reviewer, within 10 Business Days of receipt of that Outstanding Matters Report; and
- (ii) the parties must confer in good faith with each other and the Handover Reviewer with a view to reaching agreement on the scope, program and cost of the Final Refurbishment Works,

and if the parties cannot reach agreement on the relevant aspect of the Outstanding Matters Report within a further 10 Business Days of the date on which the details of the objections are provided under clause 37.5(d)(i), the Dispute may be referred by either party to expert determination in accordance with clause 52.

37.6 State election

- (a) **(State discretion)**: Notwithstanding the terms of this clause 37, the State may, by giving notice to Project Co:
 - (i) adjust any Condition Review Date to an alternative date which may not be earlier than 3 years before the Final Expiry Date;
 - (ii) relieve Project Co from any obligation to undertake any of the Final Refurbishment Works in any Operating Year; or
 - (iii) acting reasonably, increase the number of times and frequency with which the Handover Reviewer must inspect and assess the condition of the Relevant Infrastructure, assess any Final Refurbishment Works or prepare or update the Outstanding Matters Report.

- (b) **(Variation and cost):** If the State exercises its rights under clause 37.6(a)(ii):
 - (i) the Output Specification, the relevant Operating Phase Plans and any other relevant parts of this Deed will be varied; and
 - (ii) any subsequent Monthly Service Payment will be reduced by the cost of the relevant Final Refurbishment Works,

as agreed by the parties or, where not agreed within 5 Business Days after the date on which the State gives the relevant notice under clause 37.6(a)(ii), as determined by expert determination under clause 52.

37.7 Implementing Final Refurbishment Works

- (a) **(Operating Phase Plans):** Project Co must:
 - (i) within 1 Month after the Handover Reviewer has delivered each Outstanding Matters Report:
 - A. amend the relevant Operating Phase Plans to include details of the Final Refurbishment Works that Project Co is required to undertake in accordance with the then current Outstanding Matters Report or as otherwise determined in accordance with clause 37.5; and
 - B. submit the updated Operating Phase Plans to the State for review in accordance with the Review Procedures; and
 - (ii) undertake the Final Refurbishment Works in accordance with the updated Operating Phase Plans.
- (b) **(Debt due):** After the Expiry Date the State may undertake and complete (or engage others to undertake and complete) any Final Refurbishment Works which have not been completed by Project Co to the satisfaction of the Handover Reviewer, and all costs incurred by the State in doing so will be a debt due and payable by Project Co to the State.

37.8 Security for Final Refurbishment Works

- (a) **(Security threshold):** After a Condition Review Date, if the aggregate of the remaining Monthly Service Payments is equal to or less than [REDACTED] of the estimated total cost of the remaining Final Refurbishment Works specified in the then current Outstanding Matters Report (**Threshold Amount**) Project Co must make an election under clause 37.8(b).
- (b) **(Project Co election):** If so required under clause 37.8(a), Project Co must, within 10 Business Days of the Condition Review Date either elect to:
 - (i) notify the State that the State may deposit into a registered bank account opened by the State in the State's name (the **Handover Escrow Account**) each subsequent Monthly Service Payment until the balance of the Handover Escrow Account equals or exceeds the Threshold Amount (in which case the State must proceed accordingly); or
 - (ii) provide to the State a Handover Bond having a face value equal to the Threshold Amount,

as security for the performance of Project Co's obligations under this clause 37.

- (c) **(Project Co makes no election):** If Project Co fails to make an election in accordance with clause 37.8(b) within 20 Business Days of the Condition Review Date, Project Co will be deemed to have elected that clause 37.8(b)(i) will apply.

- (d) **(Changes to Outstanding Matters Report):** If the scope or estimated cost of the Final Refurbishment Works are amended in accordance with clause 37.5 or clause 37.6, the Threshold Amount will be adjusted accordingly.

37.9 Handover Escrow Account

Where the State opens a Handover Escrow Account in accordance with clause 37.8(b)(i):

- (a) **(Interest earned):** interest earned on money in the Handover Escrow Account must be deposited into the Handover Escrow Account and Project Co is entitled, on request, to receive copies of the statements for the Handover Escrow Account;
- (b) **(Cost of Final Refurbishment Works):** the State must draw upon the Handover Escrow Account to pay Project Co:
 - (i) the cost of the Final Refurbishment Works completed by Project Co, where the Handover Reviewer determines (following a Condition Review Date) that the relevant Final Refurbishment Works required to be performed by Project Co by the date of the review have been satisfactorily performed, provided that after drawing such amount the balance of the Handover Escrow Account equals or exceeds the then current Threshold Amount; or
 - (ii) if any Final Refurbishment Works have not been satisfactorily completed as at the Expiry Date, as determined by the Handover Reviewer, the balance of the Handover Escrow Account less the aggregate of the total cost of carrying out the remaining Final Refurbishment Works as set out in the then current Outstanding Matters Report and any interest earned on that amount in the Handover Escrow Account; and
- (c) **(State benefit):** the State may draw upon the Handover Escrow Account for its own benefit where there are moneys remaining in the Handover Escrow Account after all amounts have been drawn and paid to Project Co in accordance with clause 37.9(b).

37.10 Handover Bond

- (a) **(Expiry date):** Any Handover Bond, including any replacement Handover Bond provided under clause 37.10(d), must have an expiry date no earlier than 1 year after the end of the Term.
- (b) The State:
 - (i) **(Return after completion):** must return the Handover Bond to Project Co 10 Business Days after completion of all Final Refurbishment Works to the satisfaction of the Handover Reviewer; and
 - (ii) **(Drawing on bond):** may draw on the Handover Bond for the full amount of the Handover Bond remaining after the Expiry Date to the extent required to perform the Final Refurbishment Works.
- (c) **(One annual reduction):** Project Co may reduce the amount of the Handover Bond in the manner stated in clause 37.10(d) no more than once an Operating Year and then at the Expiry Date to account for Final Refurbishment Works completed to the satisfaction of the Handover Reviewer, provided that the amount of the Handover Bond is no less than the then current Threshold Amount.
- (d) **(Replacement Handover Bond):** Where the amount of the Handover Bond is reduced pursuant to clause 37.10(c), subject to any right of the State to have recourse to the existing Handover Bond, the State must return that Handover Bond to Project Co in exchange for the delivery to the State by Project Co of a

replacement Handover Bond that complies in all respects with this Deed and is for an amount which is not less than the relevant reduced amount.

(e) **(Notice and replacement):** If:

- (i) the issuer of a Handover Bond ceases to hold a current licence issued by the Australian Prudential Regulation Authority or have the Required Rating; or
- (ii) the specified location within Sydney (or such other place as approved by the State) is no longer available for demand to be given or for payment to be made under a Handover Bond,

then Project Co must:

- (iii) promptly notify the State of that circumstance; and
- (iv) within 5 Business Days after being requested to do so, procure the issue to the State of a replacement Handover Bond that complies in all respects with this Deed and is for the same amount.

Part H - Change in Circumstances

38. Delivery Phase - delay

38.1 Delay to Completion

- (a) **(Early Warning):** If Project Co becomes aware of an Extension Event or any other matter which will, or is likely to:
- (i) give rise to a delay in achieving Completion; or
 - (ii) prevent Project Co from performing the Delivery Phase Activities,
- it must promptly give the State and the Independent Certifier notice of the matter and the delay or effect it is likely to cause (**Early Warning (Delivery)**).
- (b) **(Prevent):** In this clause 38, 'prevent' or 'prevented' does not mean that Project Co is permanently prevented from performing its obligations.

38.2 Entitlement to Claim

If, during the Delivery Phase, Project Co:

- (a) has been or will be delayed in achieving Completion; or
 - (b) is otherwise prevented from performing the Delivery Phase Activities,
- by an Extension Event, Project Co will be entitled to claim:
- (c) an extension of time to the relevant Date for Completion for the period of the delay; and
 - (d) relief from any of its other Delivery Phase Activities,

in accordance with this clause 38.

38.3 Change Notice

- (a) **(Claiming relief):** Subject to clauses 38.3(b) and 38.3(c), to claim an extension of time to the relevant Date for Completion or relief from its other Delivery Phase Activities (or both), Project Co must submit a Change Notice (with reference to the Early Warning (Delivery), if relevant) which includes the estimated period of time of the delay, within 20 Business Days after the date on which it first became aware of the occurrence of the relevant Extension Event.
- (b) **(Extended delay):** Where the delay extends beyond the period set out in the Change Notice submitted in accordance with clause 38.3(a), and Project Co wants to claim an extension of time in respect of the further delay or relief from its other Delivery Phase Activities (or both), Project Co must notify the State and, once the consequences of the Extension Event have ceased, promptly (and in any event, within 10 Business Days), submit an updated Change Notice.
- (c) **(Contamination or Modifications):** In order to claim:
- (i) an extension of time to the relevant Date for Completion; or
 - (ii) relief from its other Delivery Phase Activities,
- (or both) for an Extension Event which is:

- (iii) a Contamination Compensation Event, Project Co must submit its initial Change Notice under the Change Compensation Principles and clause 8.6; and
- (iv) a Modification or a Change in Mandatory Requirements, Project Co must submit its initial Change Notice under Change Compensation Principles and clause 40.

38.4 Conditions precedent to extension of time or relief

Subject to clause 38.6, it is a condition precedent to Project Co's entitlement to an extension of time or relief from its other Delivery Phase Activities (or both) that:

- (a) **(Change Notices):** Project Co submits to the State and the Independent Certifier Change Notices in accordance with clauses 38.3(a) and 38.3(b);
- (b) **(Extension of time):** with respect to a claim for an extension of time, Project Co can demonstrate that:
 - (i) it has actually been or will be delayed by the relevant Extension Event in a manner which will delay the achievement of Completion; and
 - (ii) the Extension Event has caused or will cause activities on the critical path contained and shown in the then current Delivery Phase Program to be delayed;
- (c) **(Relief):** with respect to a claim for relief from its other Delivery Phase Activities, Project Co's performance of all or any part of the Delivery Phase Activities is actually prevented by the relevant Extension Event; and
- (d) **(Delivery Phase Program):** Project Co is, at the time it submits the relevant Change Notice and any updated Change Notice, complying with its obligations in connection with the Delivery Phase Program in accordance with clause 16.2(b)(ii).

38.5 Extension of time and relief determined by Independent Certifier

- (a) **(State right to provide information):** The State may provide any evidence to the Independent Certifier and Project Co it considers relevant to the Independent Certifier's consideration of Project Co's Change Notice submitted in accordance with clause 38.3.
- (b) **(Independent Certifier determination):** If the conditions precedent in clause 38.4 have been satisfied, the Independent Certifier will, subject to clause 38.5(c):
 - (i) with respect to a claim for an extension of time, extend the relevant Date for Completion by a reasonable period of time;
 - (ii) with respect to a claim for relief from Project Co's other Delivery Phase Activities, grant Project Co such other reasonable relief from the Delivery Phase Activities; or
 - (iii) with respect to a claim for an extension of time and for relief from Project Co's other Delivery Phase Activities, extend the relevant Date for Completion by a reasonable period of time and grant Project Co such other reasonable relief from the Delivery Phase Activities,

taking into account all relevant evidence presented by the parties but subject to clause 16.2(d).
- (c) **(Limitations):** Notwithstanding anything in clause 38.5(b), the Independent Certifier may not:

- (i) extend the relevant Date for Completion by a period of time longer than the period of time claimed by Project Co; or
 - (ii) grant Project Co relief from any Delivery Phase Activity from which Project Co has not claimed relief.
- (d) **(Notice of determination):** The Independent Certifier must provide notice of its determination under clause 38.5(b) to Project Co and the State within 20 Business Days after the later of:
- (i) the date on which Project Co submits its Change Notice pursuant to clause 38.3(a); and
 - (ii) where Project Co has submitted an updated Change Notice in accordance with clause 38.3(b), the date on which that updated Change Notice is submitted.
- (e) **(Interim determinations):** In the circumstances contemplated by clause 38.5(d)(ii), the Independent Certifier may, in its absolute discretion, give interim determinations of Project Co's entitlement to an extension of time notwithstanding that the effects of the relevant Extension Event are continuing.

38.6 Unilateral extensions

- (a) **(Unilateral extensions):** Whether or not Project Co has made, or is entitled to make, a claim for, or is entitled to, an extension of time under this clause 38, the State may, in its absolute discretion at any time and from time to time, by notice to Project Co and the Independent Certifier, unilaterally extend any Date for Completion following the occurrence of an Extension Event.
- (b) **(Acknowledgements):** The parties acknowledge that:
- (i) the State is not required to exercise the State's discretion under clause 38.6(a) for the benefit of Project Co; and
 - (ii) the exercise or failure to exercise the State's discretion under this clause 38.6 is not capable of being the subject of a dispute for the purposes of clause 50 or otherwise subject to review.
- (c) **(Compensation):** In circumstances where the State exercises its power under this clause 38.6 as a consequence of a delay to Completion caused by a Compensable Extension Event for which Project Co is entitled to an extension of time in accordance with this Deed, the State must pay compensation to Project Co in accordance with clause 38.7.

38.7 Entitlement to Costs

- (a) **(Compensable Extension Event):** Subject to clause 38.7(b) and 38.7(c), to the extent that Project Co is granted an extension of time to the Date for Completion under clause 38.5(b)(i) or 38.6 for a Compensable Extension Event, the State will pay Project Co the amount calculated in accordance with the Change Compensation Principles, other than in connection with any costs of repairing or rebuilding the Relevant Infrastructure which will be determined under clause 44 provided that Project Co has complied and continues to comply with the requirements under clause 38.4.
- (b) **(Relief from obligations):** If the Date for Completion is not extended under clause 38.5(b)(i) but Project Co is granted relief from its other Delivery Phase Activities in accordance with clause 38.5, Project Co will not be entitled to any compensation, including any Prolongation Costs or Financing Delay Costs.

- (c) **(Agreed Uninsurable Risk):** If the Compensable Extension Event for which Project Co is entitled to compensation under clause 38.7(a) arises from a risk that is an Agreed Uninsurable Risk, then:
- (i) clause 47.3 applies to the extent the Agreed Uninsurable Risk gives rise to loss or damage to the Relevant Infrastructure; and
 - (ii) in all other circumstances, this clause 38.7 applies unless the parties have otherwise agreed the means by which the risk should be managed under clause 47.1, in which case the agreed means will apply.

38.8 Not used

38.9 Concurrent delays

Project Co is not entitled to an extension of time under clause 38.3 or compensation under clause 38.7 in respect of a delay to Completion caused by an Extension Event to the extent that an event which is not an Extension Event causes a delay to Completion contemporaneous, concurrent or overlapping with the delay to Completion caused by the relevant Extension Event.

38.10 Acceleration by Project Co

If Project Co chooses to compress the Delivery Phase Activities or otherwise accelerate progress other than in accordance with a direction of the State under clause 38.11:

- (a) **(No obligation to assist):** the State is not obliged to take any action to assist or enable Project Co to achieve any particular sequencing or rate of progress of the Project Activities; and
- (b) **(State's obligations):** the time for the carrying out of the State's obligations is not affected by the acceleration or compression.

38.11 Acceleration Notice

- (a) **(Delivery Phase Activities):** Whether or not Project Co makes a claim under clause 38.3, if:
 - (i) any part or the whole of the Delivery Phase Activities are delayed by an Extension Event; and
 - (ii) Project Co would have been entitled to an extension of time to a Date for Completion for the cause of delay in accordance with this clause 38,the State may direct Project Co to submit a Change Notice setting out the estimated time and cost consequences of accelerating any part, or the whole, of the Delivery Phase Activities to overcome or minimise the extent and effect of some or all of the delay including, if required, in order to achieve Completion by the relevant Date for Completion.
- (b) **(Submission of Change Notice):** Project Co must submit a Change Notice within 10 Business Days of the State's direction under 38.11(a) and the Change Compensation Principles will apply.

38.12 Reasonably achievable

- (a) **(Change Notice to consider):** In any Change Notice submitted in response to a direction under clause 38.11 Project Co must identify whether and to what extent the acceleration is reasonably achievable in the circumstances.

- (b) **(State not to direct unreasonable acceleration)**: If some or all of the acceleration is not reasonably achievable in the circumstances then the State must not direct the acceleration to the extent that it is not reasonably achievable.

38.13 Acceleration

If the State gives Project Co a Change Response to accelerate in response to a Change Notice submitted by Project Co under clause 38.11:

- (a) **(Accelerate as directed)**: Project Co must accelerate the Delivery Phase Activities as directed;
- (b) **(Extra actual costs)**: if Project Co would, but for the direction, have been entitled to an extension of time to the Date for Completion for the cause of the delay, the State must pay Project Co the amount calculated in accordance with the Change Compensation Principles in respect of those extra costs properly and reasonably incurred by Project Co and directly attributable to accelerating the Delivery Phase Activities; and
- (c) **(Delay not subject to State's direction)**: Project Co's rights under clause 38.3 will not be affected for that part of any delay that is not the subject of the State's direction to accelerate.

38.14 Force Majeure during Delivery Phase

- (a) **(Project Co's obligations)**: If:
 - (i) an Extension Event is a Force Majeure Event;
 - (ii) the Force Majeure Event prevents Project Co from performing the Delivery Phase Activities; and
 - (iii) Project Co has been granted relief from its obligation to perform the relevant Delivery Phase Activities under clause 38.5,then, the obligations of Project Co under this Deed which are affected by the Force Majeure Event and which are the subject of the relief granted under clause 38.5 will be suspended, but only to the extent that and for so long as, Project Co has been granted relief from its obligation to perform the relevant Delivery Phase Activities under clause 38.5.
- (b) **(State's obligations)**: The obligations of the State under this Deed which are affected by the Force Majeure Event will be suspended, but only to the extent that, and for so long as, the Force Majeure Event prevents the State from meeting its obligations under this Deed.
- (c) **(Party not in breach)**: A party's failure to perform its obligations under this Deed which are suspended under clause 38.14(a) or 38.14(b) (as the case may be) will not be a breach of this Deed, a Major Default or a Default Termination Event during that period of suspension.
- (d) **(Uninsured Force Majeure Event)**: If:
 - (i) the suspension of Project Co's obligations in accordance with clause 38.14(a) results in a Date for Completion being extended to such an extent that Project Co is not able to fully pay its scheduled repayments of principal and interest in accordance with the Project Documents; and
 - (ii) the Force Majeure Event is also a Day 1 Uninsurable Risk or an Agreed Uninsurable Risk and does not give rise to loss or damage to the Works,

(Uninsured Force Majeure Event) then Project Co will be entitled to payment of an amount calculated in accordance with the Change Compensation Principles, provided that Project Co is meeting the conditions precedent set out in clause 38.4.

- (e) **(Exceptions):** If the Force Majeure Event for which Project Co is entitled to relief under this clause 38.14 arises from a risk that is an Agreed Uninsurable Risk, then:
- (i) clause 47.3 applies to the extent the Agreed Uninsurable Risk gives rise to loss or damage to the Relevant Infrastructure; and
 - (ii) in all other circumstances, this clause 38.14 applies unless the parties have otherwise agreed the means by which the risk should be managed under clause 47.1, in which case the agreed means will apply.

38.15 Time not at large

None of:

- (a) **(Breach):** a breach of this Deed or any other State Project Document by the State or any of its Associates;
- (b) **(Modification):** a Modification directed, or Modification Order issued, by the State or the State Representative;
- (c) **(Act or omission):** an other act or omission of the State, the Independent Certifier or any of the State's Associates;
- (d) **(Failure to grant extension):** a failure by the Independent Certifier to grant an extension of time under clause 38.5 or to do so within the time required by that clause;
- (e) **(State discretion):** a failure by the State to exercise its discretion pursuant to clause 38.6;
- (f) **(Time bar):** the operation of any time bar, including clause 38.4(a); or
- (g) **(Other default):** other default, act or omission of the State, the Independent Certifier or any of the State's Associates,

sets the Date for Completion, or any other time, at large.

38.16 Not used

38A. Compensable Events – Delivery Phase

38A.1 Applicability

This clause 38A does not apply in respect of any Compensable Extension Event which is also a Compensable Event for which Project Co is entitled to make a claim for an extension of time pursuant to clause 38 and all relief in respect of such Compensable Extension Event must be claimed and will be determined pursuant to clause 38.

38A.2 Early Warning

If Project Co becomes aware of a Compensable Event which will, or is likely to, result in Project Co incurring additional costs in carrying out the Project Activities or overcoming the consequences of such Compensable Event, it must promptly give the State and the Independent Certifier notice of the matter and the additional costs likely to be incurred as a result (**Early Warning (Compensable Event)**).

38A.3 Entitlement to Costs

- (a) **(Entitlement to Claim):** If, during the Delivery Phase, a Compensable Event occurs and results in Project Co incurring additional costs in carrying out the Project Activities or overcoming the consequences of such Compensable Event, Project Co will be entitled to claim compensation in accordance with this clause 38A.
- (b) **(Compensable Event):** Subject to clause 38A.3(c), to the extent that Project Co is determined to be entitled to additional costs under clause 38A.6(b) as a consequence of a Compensable Event, the State will pay Project Co the amount calculated in accordance with the Change Compensation Principles, other than in connection with any costs of repairing or rebuilding the Relevant Infrastructure which will be determined under clause 44.
- (c) **(Agreed Uninsurable Risk):** If the Compensable Event for which Project Co is entitled to compensation under clause 38A.3(b) arises from a risk that is an Agreed Uninsurable Risk, then:
 - (i) clause 47.3 applies to the extent the Agreed Uninsurable Risk gives rise to loss or damage to the Relevant Infrastructure; and
 - (ii) in all other circumstances, this clause 38A.3 applies unless the parties have otherwise agreed the means by which the risk should be managed under clause 47.1, in which case the agreed means will apply.

38A.4 Change Notice

- (a) **(Claiming relief):** Subject to clause 38A.4(b), to claim compensation, Project Co must submit a Change Notice (with reference to the Early Warning (Compensable Event), if relevant) which includes the estimated amount of compensation, within 20 Business Days after the date on which it first became aware of the occurrence of the relevant Compensable Event.
- (b) **(Additional compensation):** Where the amount of compensation exceeds the amount set out in the Change Notice submitted in accordance with clause 38A.4(a), and Project Co wants to claim additional compensation, Project Co must notify the State and, once the consequences of the Compensable Event have ceased, promptly (and in any event, within 10 Business Days), submit an updated Change Notice.

38A.5 Conditions precedent to a claim for compensation

It is a condition precedent to Project Co's entitlement to compensation under this clause 38A that:

- (a) **(Change Notices):** Project Co submits to the State and the Independent Certifier Change Notices in accordance with clauses 38A.4(a) and 38A.4(b); and
- (b) **(Compensation):** Project Co actually incurs additional costs in carrying out the Project Activities as a result of the Compensable Event or overcoming the consequences of such Compensable Event.

38A.6 Compensation determined by Independent Certifier

- (a) **(State right to provide information):** The State may provide any evidence to the Independent Certifier and Project Co it considers relevant to the Independent Certifier's consideration of Project Co's Change Notice submitted in accordance with clause 38A.4.
- (b) **(Independent Certifier determination):** If the conditions precedent in clause 38A.5 have been satisfied, the Independent Certifier will determine the additional costs for which Project Co is entitled to be compensated in accordance with the

Change Compensation Principles, taking into account all relevant evidence presented by the parties.

- (c) **(Notice of determination):** The Independent Certifier must provide notice of its determination under clause 38A.6(b) to Project Co and the State within 20 Business Days after the later of:
- (i) the date on which Project Co submits its Change Notice pursuant to clause 38A.4(a); and
 - (ii) where Project Co has submitted an updated Change Notice in accordance with clause 38A.4(b), the date on which that updated Change Notice is submitted.
- (d) **(Interim determinations):** In the circumstances contemplated by clause 38A.6(c)(ii), the Independent Certifier may, in its absolute discretion, give interim determinations of Project Co's entitlement to additional costs notwithstanding that the effects of the relevant Compensable Event are continuing.

38B. Sole remedy

38B.1 Sole remedy (Project Co)

Subject to clauses 5.3(b) and 5.3(c):

- (a) **(Delay during the Delivery Phase):** Project Co's sole remedy for a delay or disruption during the Delivery Phase is as set out in clauses 38 and 38A; and
- (b) **(State Liability):** Project Co will not be entitled to make, and the State will have no liability for, any Claim made by Project Co (including for damages for breach):
- (i) for any compensation as a consequence of any delay or disruption during the Delivery Phase (including any delay to Completion) other than for compensation which is determined in accordance with clauses 38 and 38A; and
 - (ii) for any delay during the Delivery Phase (including any delay to Completion) other than:
 - A. a claim for an extension of time;
 - B. a claim for relief from Project Co's other Delivery Phase Activities; and
 - C. a claim for Prolongation Costs and Financing Delay Costs,each of which is determined in accordance with clause 38.

38B.2 Sole remedy (State)

- (a) **(Monthly Service Payment):** Except if the State elects to terminate this Deed, the State acknowledges and agrees that the State's sole financial remedy, and Project Co's sole financial Liability, for failure to achieve Completion by the Date for Completion is limited to the amount of the Monthly Service Payment not required to be paid by the State in those circumstances.
- (b) **(Acknowledgement):** Project Co acknowledges and agrees that nothing in clause 38B.2(a) limits the State's right with respect to an event giving rise to delay or the consequences of such event (as opposed to the delay itself).

39. Operating Phase – Intervening Events

39.1 Intervening Events entitling Claim

- (a) **(Notification):** If Project Co becomes aware of an Intervening Event or any other matter which has prevented, or will prevent it from performing any of the Services in accordance with this Deed, Project Co must promptly notify the State of that Intervening Event, its then current effect, and any likely further effect (**Early Warning (Operations)**).
- (b) **(Prevent):** In this clause 39, 'prevent' or 'prevented' does not mean that Project Co is permanently prevented from performing its obligations.
- (c) **(Relief):** If, during the Operating Phase, an Intervening Event prevents Project Co from meeting any of the Services Requirements in accordance with this Deed, Project Co will be entitled to claim relief from performance in accordance with this clause 39.
- (d) **(Claim for relief):** Subject to clause 39.1(e), in order to claim relief from performance under this clause, Project Co must submit an initial Change Notice to the State:
 - (i) if the Intervening Event is a Contamination Compensation Event, in accordance with clause 8.6(a); and
 - (ii) for all other Intervening Events, within 20 Business Days after the date upon which it became aware of the first occurrence of the Intervening Event.
- (e) **(Updates):** Where:
 - (i) the period for which Project Co is prevented from performing any of the Services in accordance with this Deed, extends beyond the period of time specified in the Change Notice submitted in accordance with clause 39.1(d); and
 - (ii) Project Co wants to claim relief from performance in respect of that further period,

Project Co must notify the State and, once the consequences of the Intervening Event have ceased, promptly (and in any event, within 10 Business Days), submit an updated Change Notice.

39.2 Conditions precedent to relief

It is a condition precedent to the State granting any relief or Project Co having any entitlement in connection with an Intervening Event that:

- (a) **(Change Notice):** Project Co submits to the State:
 - (i) its initial Change Notice in accordance with clause 39.1(d); and
 - (ii) any updated Change Notice in accordance with clause 39.1(e); and
- (b) **(Actual prevention):** Project Co's performance of all or any part of the Services under this Deed is actually prevented by the relevant Intervening Event.

39.3 Services suspended and no breach

Subject to clause 39.5, to the extent that:

- (a) an Intervening Event prevents Project Co from meeting any of the Services Requirements in accordance with this Deed; and
 - (b) the conditions precedent in clause 39.2 have been satisfied,
- then:
- (c) the relevant obligation of Project Co will be suspended; and
 - (d) the failure to perform the affected Services will not be a breach of this Deed by Project Co, a Project Co Act or Omission, a Major Default or a Default Termination Event,

but only until the earlier of:

- (e) the date the Intervening Event and its consequences cease to prevent performance of the relevant Services; and
- (f) the date on which the Intervening Event and its consequences would have ceased to prevent performance, had Project Co or any of its Associates not failed to do any of the things contemplated by clause 43.1(b).

39.4 Continue to provide Services

Subject to clause 39.5, if an Intervening Event prevents Project Co from meeting any of the Services Requirements in accordance with this Deed, then Project Co:

- (a) **(Perform obligations)**: must, subject to clause 39.3 and unless it is actually or practically impossible to do so at the Correctional Complex given the nature of the Intervening Event, continue to provide the Services and otherwise perform its obligations under this Deed;
- (b) **(Amend its methodology)**: must use all reasonable endeavours to amend its methodology for performing the Services as necessary to continue to provide the Services during the Intervening Event; and
- (c) **(Best Services Practices)**: must perform the Services in accordance with Best Services Practices.

39.5 Essential Services

- (a) **(Provision of Essential Services)**: Notwithstanding the occurrence of an Intervening Event, Project Co must continue to perform the Essential Services except to the extent and for the duration that the State exercises its rights under clause 42.3 to perform the Essential Services as a consequence of a Step-in Event.
- (b) **(Physical damage)**: If the Correctional Complex is physically damaged such that it is actually or practically impossible to provide accommodation to some or all of the Inmates (having regard to mitigation measures that can be undertaken by Project Co including relocating Inmates within the Correctional Complex), the parties will meet in good faith within 2 Business Days of a request by either party to discuss alternative arrangements to accommodate those Inmates, including the ability of the State to transfer Inmates to any available places at other correctional facilities in New South Wales.

39.6 Intervening Events other than Insured Risks or Force Majeure Events

- (a) **(Payment of Monthly Service Payment)**: Subject to clause 39.6(c), 39.7 and 39.8, notwithstanding that Project Co's obligations to perform the Services affected by any Intervening Event that are suspended in accordance with clause 39.3 for the period of the suspension:

- (i) the State must continue to pay Project Co the Monthly Service Payment in connection with the Services affected by the Intervening Event which are suspended in accordance with clause 39.3 for the period of the suspension;
- (ii) the Monthly Service Payment will not be subject to Abatement in accordance with the Performance Regime and the Payment Schedule in connection with the Intervening Event; and
- (iii) the State will deduct from the Monthly Service Payment, the amounts of any recurrent and other costs which are permanently avoided by Project Co because the obligation to carry out the relevant Services has been suspended,

provided that Project Co has complied and continues to comply with clause 39.2.

- (b) **(Compensation for Costs):** If Project Co's obligation to perform the Services is suspended in accordance with clause 39.3 because of a Compensable Intervening Event, to which clause 39.6(a) applies, then the State will, in addition to the amounts referred to in clause 39.6(a), pay Project Co an amount calculated in accordance with the Change Compensation Principles, other than in connection with any costs of repairing or rebuilding the Correctional Complex which will be determined under clause 44 provided that Project Co has complied and continues to comply with the requirements under clause 39.2.
- (c) **(Agreed Uninsurable Risk):** If the Intervening Event for which Project Co is entitled to relief from performance in accordance with clause 39.6(a) is an Agreed Uninsurable Risk, then:
 - (i) clause 47.3 applies to the extent the Agreed Uninsurable Risk gives rise to loss or damage to the Relevant Infrastructure; and
 - (ii) in all other circumstances, this clause 39.6 applies, unless the parties have otherwise agreed the means by which the risk should be managed in accordance with clause 47.1, in which case the agreed means will apply.

39.7 Intervening Event which is an Insured Risk

- (a) **(Abatement of Monthly Service Payment):** Subject to clause 39.8, if the Intervening Event in respect of which Project Co is entitled to relief under this clause 39 is an Insured Risk, notwithstanding that Project Co's obligations to perform the Services are suspended in accordance with clause 39.3, the Monthly Service Payment will be adjusted in accordance with the Performance Regime and the Payment Schedule to the extent the Services are not being provided in accordance with this Deed.
- (b) **(Abatement not to constitute Major Default or Default Termination Event):** Any Abatement of the Monthly Service Payment in accordance with clause 39.7(a), will not be included in calculating any Major Default Service Failure or Service Failure Default Termination Event, provided that Project Co is complying with its obligations under clause 39.2.
- (c) **(Compensation for Costs):** If Project Co's obligation to perform the Services is suspended in accordance with clause 39.3 because of a Compensable Intervening Event, to which clause 39.7(a) applies, then the State will pay Project Co an amount calculated in accordance with the Change Compensation Principles, other than in connection with any costs of repairing or rebuilding the Correctional Complex which will be determined under clause 44, provided that Project Co has complied and continues to comply with the requirements under clause 39.2.

39.8 Intervening Event which is a Force Majeure Event

- (a) **(Adjustment of Monthly Service Payment):** Subject to clause 39.8(d), if the Intervening Event in respect of which Project Co is entitled to performance relief under this clause 39 is a Force Majeure Event, for the period of suspension under clause 39.3, the Monthly Service Payment will be adjusted in accordance with the Performance Regime and the Payment Schedule to the extent the Services are not being provided in accordance with this Deed.
- (b) **(Adjustment not to constitute Major Default):** Any adjustment of the Monthly Service Payment in accordance with clause 39.8(a) will not be included in calculating any Major Default Service Failure or Service Failure Default Termination Event, provided that Project Co is complying with its obligations under clause 39.2.
- (c) **(Minimum Payment):** If any adjustment of the Monthly Service Payment in accordance with clause 39.8(a) results in Project Co:
- (i) not being able to fully pay its scheduled repayments of principal and interest in accordance with its Forecast Debt obligations from the Monthly Service Payment;
 - (ii) Project Co not receiving the Lifecycle Charge for the relevant Month that otherwise would have been due and payable to Project Co by the State; or
 - (iii) not receiving the amount of the Monthly Service Payment referable to the Services that Project Co continues to deliver under this Deed, notwithstanding the Force Majeure Event,
- then Project Co will be entitled to payment of an amount calculated in accordance with the Change Compensation Principles, provided that Project Co has complied and continues to comply with the requirements under clause 39.2.
- (d) **(Agreed Uninsurable Risk):** If the Intervening Event for which Project Co is entitled to relief from performance in accordance with clause 39.8(a) is an Agreed Uninsurable Risk, then:
- (i) clause 47.3 applies to the extent the Agreed Uninsurable Risk gives rise to loss or damage to the Relevant Infrastructure; and
 - (ii) in all other circumstances, clause 39.6 or this 39.8 (as applicable) applies, unless the parties have otherwise agreed the means by which the risk should be managed in accordance with clause 47.1, in which case the agreed means will apply.

39.9 Alternative arrangements

- (a) **(Alternative arrangements or method):** Without limiting clause 42, during the period of suspension of any Services as a result of an Intervening Event, the State may:
- (i) make alternative arrangements for the performance of those Services at no cost to Project Co, and without the State incurring any Liability to Project Co in respect of those alternative arrangements; or
 - (ii) direct Project Co to deliver those Services by an alternative method or 'work around' from that contemplated in the then current Operating Phase Plans and the Output Specification to the extent that it is reasonably possible for Project Co to do so.
- (b) **(Payment):** If the State requires Project Co to perform those Services by an alternative method or 'work around' in accordance with clause 39.9(a)(ii), the State

must pay Project Co an amount calculated in accordance with the Change Compensation Principles in respect of such alternative method or 'work around'.

39.10 Cessation of Intervening Event

Project Co must:

- (a) **(Notification)**: notify the State; and
- (b) **(Performance of Services)**: recommence performing all Services suspended as a result of the Intervening Event;

immediately after it ceases to be prevented from performing those Services as a result of the relevant Intervening Event or its consequences.

39.11 Sole Remedy

Subject to clause 5.3(b) and 5.3(c):

- (a) **(Intervening Event)**: if Project Co is prevented from performing the Services in accordance with this Deed as a consequence of an Intervening Event, Project Co's sole remedy during the Operating Phase is as set out in this clause 39; and
- (b) **(Relief and compensation)**: Project Co will not be entitled to make any Claim, and the State will have no Liability for, any Claim made by Project Co (including for damages for breach) for Project Co being prevented from providing the Services in accordance with this Deed other than for the relief and compensation in accordance with this clause 39.

40. Modifications

40.1 Modification Request by the State

The State may at any time issue to Project Co a notice entitled "Modification Request" which must include details of:

- (a) **(Proposed Modification)**: the proposed Modification which the State is considering;
- (b) **(Preferred financing)**: the State's preferred financing for the proposed Modification in accordance with the Change Compensation Principles (where the Modification will result in an increase to the cost of the Relevant Infrastructure or the Services); and
- (c) **(Specific information)**: any specific information that the State requires Project Co to include in its Change Notice or that may be relevant to the preparation of the Change Notice,

(Modification Request).

40.2 Estimate of cost of Change Notice

If Project Co needs to engage a third party other than any Consortium Member to provide design, engineering or quantity surveying or other services to assist in the preparation of the Change Notice for a proposed Modification requested under clause 40.1, Project Co must provide the State with a capped price for those costs within 5 Business Days after receiving the Modification Request.

40.3 Modification Proposal

Unless the State withdraws the Modification Request, Project Co must submit a Change Notice entitled "Modification Proposal" in accordance with the Change Compensation Principles:

- (a) within 20 Business Days after the receipt of the Modification Request; or
- (b) at such later time as agreed by the State (acting reasonably, taking into account the size and complexity of the proposed Modification and the information to be included in a Modification Proposal).

40.4 Payment for Change Notice prepared by Project Co

If:

- (a) Project Co prepares a Modification Proposal in accordance with clause 40.3; and
- (b) the State does not issue a Modification Order in respect of the proposed Modification,

then the State must reimburse the reasonable third party costs of the type described in clause 40.2 incurred by Project Co in preparing the Modification Proposal, capped at the price provided by Project Co for the Modification Proposal under clause 40.2.

40.5 Change Response

- (a) **(State to Issue):** The State must issue a Change Response to a Modification Proposal in accordance with the Change Compensation Principles and the Change Compensation Principles will apply.
- (b) **(Modification Order):** Subject to clauses 40.4 and 40.10(c)(iii), Project Co must not begin any work or incur any cost, and will not have any entitlement to make any Claim in respect of a Modification unless a Change Response entitled "Modification Order" requiring Project Co to proceed with the Modification has been issued by the State.
- (c) **(State may withdraw):** Subject to clause 40.10, the State may withdraw a Modification Request at any time prior to issuing a Modification Order, in which case Project Co must not proceed with the Modification.

40.6 Omission by State

- (a) **(Omitted Project Activities):** The parties acknowledge and agree that:
 - (i) the State may issue a Modification Request that seeks to decrease, omit, delete or remove any part of the Project Activities (**Omitted Project Activities**); and
 - (ii) if the State has issued a Change Response entitled "Modification Order" in accordance with the Change Compensation Principles in respect of such Omitted Project Activities, the State may itself or may engage an Associate of the State to undertake any Omitted Project Activities.
- (b) **(Coordination with Project Activities):** Project Co must:
 - (i) permit the State or any of the State's Associates to carry out any Omitted Project Activities;
 - (ii) co-operate with the State and any of the State's Associates in carrying out any Omitted Project Activities (as applicable); and

- (iii) co-ordinate the Project Activities with the work carried out or to be carried out by the State or any of the State's Associates in connection with any Omitted Project Activities (as applicable).

40.7 Instruction to proceed

- (a) **(Instruction):** Whether or not:
 - (i) the State has issued a Modification Request under clause 40.1; or
 - (ii) Project Co has issued a Modification Proposal under clause 40.3;the State may at any time instruct Project Co to implement a Modification by issuing a Change Response entitled "Modification Order" in accordance with the Change Compensation Principles.
- (b) **(Implementation):** If the State issues a Change Response entitled "Modification Order" under clause 40.7(a), Project Co must implement the Modification on the terms set out in that Modification Order.

40.8 Modifications proposed by Project Co

- (a) **(Project Co may propose a Modification):** Project Co may request the State to direct a Modification by submitting a Change Notice entitled "Modification Proposal" to the State in accordance with the Change Compensation Principles (**Modification Proposal**).
- (b) **(State may approve or reject):** Upon receipt of a Modification Proposal, the Change Compensation Principles will apply save that the State will be under no obligation to issue a Modification Order requiring Project Co to proceed with the Modification proposed by Project Co under clause 40.8(a).
- (c) **(Project Co to bear risks of costs):** Unless otherwise agreed in writing by the State, Project Co will:
 - (i) bear all risks and costs associated with a Modification proposed by Project Co; and
 - (ii) not be entitled to make any Claim against the State arising out of, or in any way in connection with, a Modification proposed by Project Co,including where the State issues a Modification Order requiring Project Co to implement the Modification in accordance with the Modification Proposal.
- (d) **(Sharing of Savings):** If the State issues a Modification Order in respect of a Modification proposed by Project Co under clause 40.8(a) and the Modification will give rise to a Saving, the State and Project Co will share any Saving between the parties as determined in accordance with the Change Compensation Principles.

40.9 Directions

- (a) **(State direction):** If Project Co considers that a direction by the State constitutes or involves a Modification and the State has not given that direction expressly by way of a Modification Order, and Project Co intends to make a Claim that the direction is a Modification, Project Co must:
 - (i) within 10 Business Days after receiving the direction and before commencing any work the subject matter of the direction, give written notice to the State that it considers the direction constitutes or involves a Modification; and

- (ii) within 10 Business Days (or such other period as agreed with the State acting reasonably, taking into account the size and complexity of the alleged Modification and the information to be included in the Change Notice) after giving the notice under clause 40.9(a)(i) and before commencing any work the subject matter of the direction, give the State a Change Notice in respect of the alleged Modification.
- (b) **(Confirmation):** Within 20 Business Days of the State receiving a Change Notice under clause 40.9(a) the State must issue a Change Response:
- (i) confirming that the direction is in fact a Modification, in which case the State will issue a Modification Request in respect of the relevant direction in accordance with this clause 40 and the Change Compensation Principles;
 - (ii) withdrawing the direction, in which case Project Co must not comply with the direction; or
 - (iii) informing Project Co that, in the State's view, the direction does not constitute or involve a Modification in which case Project Co must, subject to clause 5.2(a), comply with the direction but may refer the matter to dispute resolution in accordance with clause 50.
- (c) **(Conditions for Project Co claim):** Project Co is not entitled to make any Claim in respect of a direction that gives rise to a Modification of the type described in clause 40.9(a) unless it has given a notice under clause 40.9(a).

40.10 Change in Mandatory Requirements

- (a) **(Change in Mandatory Requirements):** Project Co must provide to the State a notice within 5 Business Days after becoming aware of any Change in Mandatory Requirements.
- (b) **(Project Co action):** If a Change in Mandatory Requirements occurs, Project Co must provide to the State:
- (i) within 5 Business Days after becoming aware of such Change in Mandatory Requirements, where necessary, an estimate of third party costs of the type described in clause 40.2 to be incurred for preparing a Change Notice in response to a Change in Mandatory Requirements; and
 - (ii) within 20 Business Days after becoming aware of that Change in Mandatory Requirements, or at such later time as agreed by the State (acting reasonably), a Change Notice in respect of the relevant Change in Mandatory Requirements in accordance with the Change Compensation Principles.
- (c) **(State action):** The State must issue a Modification Order in accordance with the Change Compensation Principles in response to a Change Notice provided under clause 40.10(b)(ii) unless the relevant Change in Mandatory Requirements is a Change in Policy described in paragraph (a) or (b) of that definition, in which case the State must:
- (i) direct Project Co as to whether or not it requires Project Co to comply with the relevant Change in Mandatory Requirements, provided that the State must direct Project Co to comply with the relevant Change in Mandatory Requirements if a failure to comply with that Change in Mandatory Requirements would result in Project Co being in breach of Legislation or any Approval;
 - (ii) if the State directs that it requires Project Co to comply with the relevant Change in Mandatory Requirement under clause 40.10(c)(i), issue a

Change Response entitled "Modification Order" in accordance with the Change Compensation Principles; and

- (iii) if the State directs Project Co not to comply with the relevant Change in Mandatory Requirements under clause 40.10(c)(i), reimburse Project Co the reasonable third party costs of the type described in clause 40.2 incurred by Project Co in preparing the Change Notice, capped at the amount of any estimate provided by Project Co for the Change Notice under clause 40.2 (or such higher amount as the State may approve).
- (d) **(Conditions for Project Co claim):** Project Co is not entitled to make any Claim in respect of a Change in Mandatory Requirements unless it has given a notice in accordance with clause 40.10(a) and 40.10(b)(ii).

40.11 Extension of time

- (a) **(Claim for extension of time):** Where Project Co considers that it has been delayed in achieving Completion or has otherwise been prevented in performing the Delivery Phase Activities as a consequence of a Modification or a Change in Mandatory Requirements then Project Co must include in its Change Notice provided under this clause 40 its claim for an extension of time or other relief (or both) and clause 38 will apply in respect of the relevant relief or extension of time claim (or both) (unless the State and Project Co can agree on an extension of time or other form of relief (or both) in accordance with clause 40.11(b)).
- (b) **(State may agree):** The State and Project Co may agree:
 - (i) that Project Co is entitled to an extension of time or other form of relief (or both); and
 - (ii) the period of any such extension of time or other form of relief (or both), within 10 Business Days after the State receives Project Co's Change Notice, in which case the agreed extension of time or other form of relief (or both) will apply and be included in the Change Response.
- (c) **(Failure to agree on extension of time):** Where Project Co has claimed an extension of time in accordance with clause 40.11(a) and the State and Project Co cannot agree that Project Co is entitled to an extension of time or the period for the extension of time, the State may issue separate Change Responses for:
 - (i) the non-time related aspects of the relevant Modification or a Change in Mandatory Requirements (as applicable); and
 - (ii) the extension of time (if any) which will be determined in accordance with clause 38.5.
- (d) **(Dispute):** Project Co may refer any Dispute in relation to a State determination under clause 40.11(c) for dispute resolution in accordance with clause 50.

40.12 Minor Modifications

- (a) **(Purposes):** The parties agree that the purposes of this clause 40.12 are to:
 - (i) better facilitate and more efficiently give effect to Minor Modifications; and
 - (ii) ease the administrative burden on Project Co and the State in the implementation of Minor Modifications,

and Project Co must seek to give effect to the purpose stated in clause 40.12(a) in complying with its obligations under this clause 40.12.

- (b) **(Minor Modification Proposal):** Without limiting the State's rights under clause 40.7, Project Co or the State may propose a Modification which is a Minor Modification by issuing a notice entitled "Minor Modification Proposal".
- (c) **(Accumulation):** Project Co or the State may agree to accumulate Minor Modifications on a monthly basis (or such other period as is agreed by the parties) by recording the proposed Minor Modifications by agreement on a register and either the State or Project Co submitting a Minor Modification Proposal for all Minor Modifications on that register, at the end of each month, and prior to their implementation.
- (d) **(Notice):** Within 7 Business Days after receipt of a Minor Modification Proposal from Project Co or the State (as the case may be) the receiving party must provide the other party with a notice which:
 - (i) accepts the Minor Modification Proposal; or
 - (ii) sets out reasonable amendments to the Minor Modification Proposal.
- (e) **(Terms):** The State and Project Co will implement the Minor Modification on the terms:
 - (i) of the Minor Modification Proposal where a Minor Modification Proposal is accepted under clause 40.12(d)(i); or
 - (ii) agreed between the State and Project Co, as recorded in an amended Minor Modification Proposal where either party seeks to amend a Minor Modification Proposal under clause 40.12(d)(ii).
- (f) **(Failure to agree):** If the State and Project Co fail to agree in accordance with clause 40.12(e)(ii), in respect of the Minor Modification Proposal, the State may:
 - (i) issue a Modification Order under clause 40.7; or
 - (ii) issue a Modification Request under clause 40.1,in order to implement the Minor Modification.
- (g) **(Rights as if Minor Modification is Modification):** Nothing in this clause 40.12 will prevent either party from exercising their rights under clause 40 as if the Minor Modification was in fact a Modification.
- (h) **(State direction):** If the State considers that the Minor Modification process is not meeting the purposes set out in clause 40.12(a), the State may, at its discretion, direct Project Co to no longer use the Minor Modification process set out in this clause 40.12, in which case, all Minor Modifications will be managed in accordance with the process set out in clause 40 (other than this clause 40.12) and this clause 40.12 will be deemed not to operate.
- (i) **(Change Compensation Principles to apply):** Any amounts claimed or payable for a Minor Modification must be calculated in accordance with the Change Compensation Principles, unless the parties agree otherwise.
- (j) **(Directions):** If Project Co considers that any direction given by the State, other than a direction given in a Minor Modification Proposal, constitutes or involves a Minor Modification, Project Co must provide written notice to this effect to the State within 2 Business Days of receipt of the direction.
- (k) **(Agreement in respect of directions):** If the State agrees that the direction constitutes or involves a Minor Modification then the State must to the extent that the direction does so, serve a Minor Modification Proposal and the process for performance of the Minor Modification will proceed in accordance with this clause 40.12.

- (l) **(Non-Agreement in respect of directions):** If the State does not agree that the direction constitutes a Minor Modification, clause 40.9 will apply.

40.13 Implementation

If the State issues a Modification Order in accordance with this clause 40 Project Co must implement the Modification in accordance with the terms of the Modification Order.

41. Refinancing

41.1 Project Co to provide details of Refinancing

- (a) **(Provision of details):** Project Co must promptly provide the State with full details of any proposed Refinancing, including:
- (i) a copy of the last agreed Financial Model, adjusted for the proposed Refinancing:
 - A. showing all of the material changes to any Project Co Entity's obligations to the Financiers (or their assigns or successors) in a format that allows the calculation of the anticipated Refinancing Gain or Refinancing Loss in accordance with clause 41.5; and
 - B. with projections for the cash flow of any Project Co Entities from the proposed date of the Refinancing to the end of the Term, including projected Distributions after taking the Refinancing into account;
 - (ii) the basis for assumptions used in the adjusted Financial Model referred to in clause 41.1(a)(i);
 - (iii) a certificate on terms and in a form acceptable to the State from the auditors of the adjusted Financial Model referred to in clause 41.1(a)(i), as to its operation and effect;
 - (iv) all information, including terms and conditions, provided by any Project Co Entity to its existing and prospective financiers, or by any Project Co Entity's existing and prospective financiers to any Project Co Entity, in relation to the proposed Refinancing; and
 - (v) whether any Project Co Entity considers that the consent of the State under clause 41.2 is required for the proposed Refinancing.
- (b) **(Further information):** The State may, within 10 Business Days after receiving details of the proposed Refinancing referred to in clause 41.1(a)(i) (or any revised proposed Refinancing submitted under clause 41.3(c)), request any further information which the State reasonably requires from Project Co regarding the proposed Refinancing. If such further information is available to any Project Co Entity, Project Co must (to the extent that the further information is available to it or Finance Co) provide the additional information as soon as reasonably practicable but no later than 5 Business Days after the State's request.

41.2 State consent to Refinancing

- (a) **(Restrictions):** Project Co must not (and must ensure that Finance Co does not) enter into any Refinancing which:
- (i) gives rise to a Refinancing Gain;

- (ii) gives rise to an increase in the amount of outstanding Debt at or beyond the proposed date of the Refinancing above that forecast at that time in the last agreed Financial Model;
- (iii) gives rise to an increase in the amount of outstanding Debt beyond that forecast for any future period in the last agreed Financial Model;
- (iv) reduces the tenor of the relevant Refinancing tranche by a period greater than 18 Months from that forecast in the Financial Close Financial Model;
- (v) is likely to give rise to an increase or adverse change in the liabilities or the profile of the risks or liabilities of the State (whether actual or contingent) under the Project Documents; or
- (vi) incorporates an Exotic Swap,

without the prior consent of the State, which must be provided in accordance with this clause 41.2.

- (b) **(State consent):** The State may only withhold its consent to a Refinancing under clause 41.2(a) if:
 - (i) the State reasonably believes that the Refinancing will bring about an increase or adverse change in the potential liabilities or the profile of the risks or potential liabilities of any Project Co Entity under any Project Document (other than as consented to by the State and reflected in the Financial Model) without adequate compensation to the State;
 - (ii) the Refinancing is prior to the Date of Commercial Acceptance; or
 - (iii) the Refinancing incorporates an Exotic Swap.
- (c) **(Deemed consent):** The State will not withhold its consent to a Refinancing under clause 41.2(a) (and if the State has not reverted within 21 Business Days of a consent request by Project Co, the State is deemed to have consented) if:
 - (i) the sole purpose of the Refinancing is to prevent a maturity date under the Finance Documents being reached;
 - (ii) the circumstances in clause 41.2(b) have not or will not arise; and
 - (iii) Project Co has:
 - A. complied with its obligations under clause 41.1; and
 - B. delivered to the State the information required under clause 41.1(b) no less than 40 Business Days but no more than 90 Business Days before the relevant maturity date under the Finance Documents.
- (d) **(Consent without prejudice):** The granting of consent under clause 41.2(a) by the State will be without prejudice to the State's rights under this Deed, including its right to any State Refinancing Share.

41.3 Review process

- (a) **(Refinancing Review Period):** If under clause 41.2(a) the State is required to provide its consent to a Refinancing, the State must provide or withhold its consent within the period commencing on the date Project Co provides all of the details of the proposed Refinancing referred to in clause 41.1(a) and ending 20 Business Days after that date (**Refinancing Review Period**).

- (b) **(State may comment):** During the Refinancing Review Period, prior to providing or withholding consent, the State may provide comments (and sufficient detail to substantiate those comments) to Project Co in respect of the proposed Refinancing if the State has reasonably formed the view that any of the events in clause 41.2(b) will occur as a result of the proposed Refinancing.
- (c) **(Revised proposed Refinancing):** Following receipt of comments from the State under clause 41.3(b), Project Co may vary the proposed Refinancing in order to ensure that none of the events in clause 41.2(b) will occur as a result of the proposed Refinancing and resubmit the revised proposed Refinancing to the State for review during the Refinancing Review Period.
- (d) **(Further information):** Upon receipt of the revised proposed Refinancing the State may request further information that is reasonably required from any Project Co Entity regarding the revised proposed Refinancing in accordance with clause 41.1(b).
- (e) **(Extension):** If Project Co resubmits the proposed Refinancing to the State in accordance with clause 41.3(c), the Refinancing Review Period will be extended for a further period of 20 Business Days (or such shorter period as requested by Project Co and agreed to by the State) from the date of such resubmission.
- (f) **(Dispute resolution):** Any dispute as to whether the State's consent is required for a proposed Refinancing or if the State is entitled to withhold its consent to a proposed Refinancing may be referred by either party for resolution in accordance with clause 50.

41.4 Refinancing documents

- (a) **(Delivery):** Project Co must deliver a certified true copy of each amended and amending Finance Document to the State within 10 Business Days after execution.
- (b) **(Execution):** Project Co must not (and must ensure that Finance Co does not) execute any Refinancing until:
 - (i) any new Financiers or an appointed representative on behalf of the new Financiers has (as applicable) have executed a deed with the State substantially in the form of the Financiers Tripartite Deed or become bound by the Financiers Tripartite Deed; and
 - (ii) any retiring Financier, or an appointed representative on behalf of the retiring Financiers, who is party to the Financiers Tripartite Deed, has executed any documents reasonably requested by the State to terminate their rights under the Financiers Tripartite Deed.

41.5 Calculation of Refinancing Gain or Refinancing Loss

- (a) **(Impact to be calculated):** For each proposed Refinancing, the impact of the proposed Refinancing on Distributions to Equity Investors in the then current Financial Model must be calculated in order to establish the extent to which gains may arise that may need to be shared with the State in accordance with clause 41.6.
- (b) **(Calculation Formula):** The impact of the proposed Refinancing will be calculated in accordance with the following definitions:

Refinancing Gain means any amount greater than zero when calculated in accordance with the below formula, in which case clause 41.6 will apply.

Refinancing Loss means any amount equal to or less than zero when calculated in accordance with the below formula, in which case clause 41.6 will not apply.

Formula = A - B

where:

A = the net present value of Distributions projected over the remaining period of the Term if the proposed Refinancing is executed, using the Equity IRR and the then current Financial Model as adjusted to reflect the proposed Refinancing, in a manner consistent with clause 41.8, but without taking into account any adjustment for any sharing with the State of any Refinancing Gain arising from the proposed Refinancing; and

B = the net present value of the Distributions projected over the remaining period of the Term immediately prior to the proposed Refinancing using the Equity IRR and the then current Financial Model prior to any adjustments to reflect the proposed Refinancing.

41.6 Sharing Refinancing Gains

- (a) **(State entitlement):** The State will be entitled to █████ of the benefit of any Refinancing Gain that arises from a Refinancing (**State Refinancing Share**).
- (b) **(Payment):** The State may, taking into account the nature and timing of the Refinancing Gain, elect to receive the State Refinancing Share as:
 - (i) a direct payment (to the extent any Project Co Entity receives an amount referable to the Refinancing Gain as a direct payment);
 - (ii) a reduction in the Monthly Service Payments for the period of the Refinancing; or
 - (iii) a combination of the above.
- (c) **(Dispute resolution):** The State and Project Co must act reasonably to agree the manner and timing of payments of the State Refinancing Share and failing agreement, either party may refer the matter to dispute resolution in accordance with clause 50.

41.7 Costs relating to a Refinancing

Project Co must pay to the State the reasonable costs incurred by the State in relation to considering a proposed Refinancing or consenting to a Refinancing.

41.8 Adjustments to Financial Model upon a Refinancing Gain

For the purpose of clause 59, on execution of a Refinancing that results in a Refinancing Gain, the Financial Model will be adjusted as follows:

- (a) **(Amendment):** Debt, fees and margins for the period of the Refinancing will be updated to reflect the amended or amending Finance Documents;
- (b) **(Debt balances):** the actual Debt balance after the Refinancing and the forecast amortisation profile of Debt balances for the remainder of the Term will be updated to reflect the amended or amending Finance Documents;
- (c) **(Financial covenants):** the impact of financial covenants which result in the forced retention of cash amounts within any Project Co Entity will be updated to reflect the amended or amending Finance Documents;
- (d) **(Costs incurred):** legal, swap break and other costs reasonably and properly incurred in connection with the Refinancing will replace those equivalent costs previously forecast for the period of the Refinancing including those costs paid to the State in accordance with clause 41.7;

- (e) **(Monthly Service Payments)**: the Monthly Service Payments for the period of the Refinancing will be adjusted and direct payments to the State will be recorded to reflect the State Refinancing Share in accordance with clause 41.6 as adjusted in accordance with close protocols for the Refinancing to be agreed prior to the financial close of the relevant Refinancing; and
- (f) **(Further adjustments)**: further required adjustments as otherwise reasonably agreed between the State and Project Co.

42. Emergencies and Step-In by the State

42.1 State may instruct

If an Emergency occurs which cannot be dealt with by the normal performance of the Project Activities, the State, in addition to its rights under clause 42.2, may instruct Project Co to immediately:

- (a) **(Suspend performance)**: suspend performance of all or any part of the Project Activities; or
- (b) **(Additional activities)**: undertake additional or alternative services as and when required by the State,

in each case to ensure that the Emergency is dealt with, and normal performance of the Project Activities resumes, as soon as is reasonably practicable.

42.2 Relief and Payment

- (a) **(Suspension)**: Subject to clause 42.2(b), if the State directs Project Co in accordance with clause 42.1(a), the suspension:
 - (i) during the Delivery Phase will be a Compensable Extension Event; and
 - (ii) during the Operating Phase will be an Intervening Event,unless the Emergency that gives rise to the exercise of the State's rights is a result of a Project Co Act or Omission or an act or omission of an Inmate, to the extent arising from a failure by Project Co or its Associates to perform the Services in accordance with this Deed.
- (b) **(Force Majeure Event)**: If the State directs Project Co in accordance with clause 42.1(a) and the Emergency that gives rise to the exercise of the State's rights is a result of a Force Majeure Event:
 - (i) during the Delivery Phase, clause 38.14 will apply as if the Emergency was an Extension Event caused by a Force Majeure Event; and
 - (ii) during the Operating Phase, clause 39 will apply as if the Emergency was an Intervening Event caused by a Force Majeure Event,unless the Emergency that gives rise to the exercise of the State's rights is a result of a Project Co Act or Omission or an act or omission of an Inmate, to the extent arising from a failure by Project Co or its Associates to perform the Services in accordance with this Deed.
- (c) **(Change Compensation Event)**: If the State directs Project Co in accordance with clause 42.1(b) this will be a Change Compensation Event, unless caused or contributed to by a Project Co Act or Omission or an act or omission of an Inmate, to the extent arising from a failure by Project Co or its Associates to perform the Services in accordance with this Deed.

42.3 Right of Step-In

If:

- (a) **(Major Default)**: a Major Default occurs;
- (b) **(Default Termination Event)**: a Default Termination Event occurs;
- (c) **(State Cure Notice)**: a State Cure Notice has been issued by the D&C Subcontractor or the Operator in accordance with the D&C Side Deed or Operator Side Deed (as applicable);
- (d) **(Request)**: Project Co requests, in writing;
- (e) **(Intervening Event)**: an Intervening Event occurs;
- (f) **(Additional services)**: an event or circumstance occurs which requires additional or alternate services materially greater than the Services required by the Services Requirements;
- (g) **(Emergency)**: an Emergency occurs; or
- (h) **(Entitled by Law)**: the State is entitled by Law (including the Corrections Legislation) to act to discharge a statutory power or duty,

(each a **Step-In Event**), the State may elect to do any or all of the following:

- (i) **(Management)**: assume total or partial management and control of the whole or any part of the Site, the Relevant Infrastructure or the Project Activities;
- (j) **(Site access)**: access those parts of the Site and the Relevant Infrastructure to which Project Co has access or is entitled to occupy; and
- (k) **(Minimise effect)**: take such other steps as are necessary in the reasonable opinion of the State for it to carry out the Project Activities and minimise the effect of the relevant Step-In Event,

provided that the State must not exercise its rights under this clause 42.3 on the occurrence of a Major Default for so long as Project Co is complying with its obligations under clauses 48.3 and 48.4 in respect of that Major Default.

42.4 Notice

The State must, if it is reasonably practicable to do so, give prior notice of any exercise of its rights under clause 42.3 and in any event must, as soon as practicable, provide notice to Project Co that it is exercising those rights.

42.5 Consequences of the State exercising its rights

- (a) **(Suspension of State rights)**: During the exercise of the State's rights under clause 42.3, Project Co's rights and obligations under this Deed are suspended to the extent necessary to permit the State to exercise its rights.
- (b) **(No limitation)**: Except to the extent that Project Co's obligations are suspended under clause 42.5(a), the exercise by the State of its rights under clause 42.3 (or the cessation of such exercise) will not affect any other right of the State under this Deed or any other State Project Document or at Law.

42.6 Payments

- (a) **(Step-in caused by Project Co):** Where the State has exercised its rights under clause 42.3 as a consequence of any Step-In Event:
- (i) contemplated by clauses 42.3(a) to 42.3(d); or
 - (ii) contemplated by clauses 42.3(e) to 42.3(h), which was the result of any Project Co Act or Omission or an act or omission of an Inmate, to the extent arising from a failure by Project Co or its Associates to perform the Services in accordance with this Deed,
- then:
- (iii) where the State exercises its rights during the Delivery Phase, any Step-in Liability will be a debt due and payable by Project Co to the State, other than to the extent the Step-in Liability is incurred as a consequence of any breach of the State Project Documents by the State or a negligent act or omission of the State or its Associates;
 - (iv) where the State exercises those rights during the Operating Phase:
 - A. the Monthly Service Payment will be adjusted in accordance with the Performance Regime and the Payment Schedule to the extent the Services are not being provided in accordance with this Deed; and
 - B. any Step-in Liability in excess of the Monthly Service Payment amount (as adjusted in accordance with the Performance Regime and the Payment Schedule under clause 42.6(a)(iv)A), will be a debt due and payable by Project Co to the State, other than to the extent the State's Liability is incurred as a consequence of any breach of the State Project Documents by the State or a negligent act or omission of the State or its Associates.
- (b) **(Step in not caused by Project Co):** Subject to clause 42.6(c), where the State exercises its rights under clause 42.3 as a consequence of any Step-in Event contemplated by clauses 42.3(e) to 42.3(h), and the Step-in Event is not a result of any Project Co Act or Omission or an act or omission of an Inmate, to the extent arising from a failure by Project Co or its Associates to perform the Services in accordance with this Deed, the State's exercise of those rights:
- (i) during the Delivery Phase will be a Compensable Extension Event; and
 - (ii) during the Operating Phase, will be an Intervening Event.
- (c) **(Payments during Force Majeure Event):** Where the State has exercised its rights under clause 42.3 as a consequence of any Step-in Event contemplated by clauses 42.3(e) to 42.3(h) and that Step-in Event is the result of a Force Majeure Event which is not a result of any Project Co Act or Omission or an act or omission of an Inmate, to the extent arising from a failure by Project Co or its Associates to perform the Services in accordance with this Deed:
- (i) during the Delivery Phase, clause 38.14 will apply as if that Step-In Event was an Extension Event caused by a Force Majeure Event; and
 - (ii) during the Operating Phase, clause 39 will apply as if that Step-In Event was an Intervening Event caused by a Force Majeure Event.

42.7 Project Co to assist the State

Project Co must:

- (a) **(Access to be granted)**: grant such access rights as are necessary, and take all action that is required by the State, to assist the State in exercising its rights under clause 42.3;
- (b) **(Sufficient resources)**: provide sufficient resources, including personnel, to enable the State to exercise its rights under clause 42.3; and
- (c) **(Not to hinder)**: not do anything to hinder, disrupt or prevent the State in exercising its rights under clause 42.3.

42.8 Undertake Project consistent with this Deed

When exercising its rights under clause 42.3, the State must use its reasonable endeavours to carry out the relevant Project Activities in a manner which is consistent with the State Project Documents, but taking into account the State's statutory rights and the circumstances that prompted the State to exercise those rights.

42.9 Limits on State liability during step-in

Project Co acknowledges and agrees that:

- (a) **(No obligation to remedy)**: the State is not obliged to:
 - (i) exercise its rights under clause 42.3; or
 - (ii) remedy any breach, or to overcome or mitigate any risk or risk consequences, in connection with which the State exercises its rights under clause 42.3; and
- (b) **(No claim)**: Project Co will not be entitled to make any Claim against the State, arising in connection with the exercise by the State of its rights under clause 42.3, except:
 - (i) as expressly provided in this Deed;
 - (ii) if the State has acted fraudulently or in bad faith in exercising its rights under clause 42.3; or
 - (iii) if, in the course of exercising its rights under clause 42.3, the State has acted in breach of its obligations under this Deed.

42.10 Cessation of step-in rights

- (a) **(State may cease)**: The State may, at any time, cease to exercise its rights in accordance with this clause upon giving 5 Business Days' notice to Project Co.
- (b) **(State must cease)**: The State must cease to exercise its rights in accordance with this clause 42 where the State has exercised its rights as a consequence of any of the Step-In Events under:
 - (i) clauses 42.3(a) or 42.3(b), and the Major Default or Default Termination Event (as the case may be) has been cured or its consequences have been remedied or overcome; or
 - (ii) clause 42.3(c), and the D&C Subcontractor or the Operator (as applicable) notifies the State that the default under the relevant Subcontract has been cured or its consequences have been remedied or overcome;

- (iii) clause 42.3(d), and the relevant event has ceased and its consequences have been remedied or overcome; or
 - (iv) clauses 42.3(e) to 42.3(h), and the relevant event has ceased and its consequences have been remedied or overcome.
- (c) **(Project Co to recommence)**: If the State ceases to exercise its rights under clause 42.3 in accordance with this clause 42.10:
- (i) Project Co must immediately recommence carrying out any obligations suspended due to the exercise by the State of those rights; and
 - (ii) the State must give reasonable assistance to Project Co to ensure that this process of transition is effected as smoothly as possible.

43. Relief Events

43.1 Reduction in State liability for Relief Events

The State's Liability and Project Co's entitlements in connection with any Relief Event will be reduced:

- (a) **(Caused by Project Co)**: to the extent that the Relief Event is:
 - (i) within the reasonable control of Project Co and its Associates;
 - (ii) caused or contributed to by any breach of another Project Document by Project Co or any of its Associates who is a counterparty to the Project Document; or
 - (iii) caused or contributed to by a Project Co Act or Omission or an act or omission of an Inmate, to the extent arising from a failure by Project Co or its Associates to perform the Services in accordance with this Deed;
- (b) **(Failure to mitigate)**: to the extent Project Co, or any of its Associates, fails to:
 - (i) use all reasonable endeavours to mitigate, minimise or avoid the effects, consequences or duration of the Relief Event (including by putting in place temporary measures reasonably required by the State); or
 - (ii) take all reasonable steps which a prudent, competent and experienced contractor in the circumstances of Project Co or the relevant Associate of Project Co would have taken to mitigate, minimise or avoid the effects, consequences or duration of the Relief Event;
- (c) **(Insurance proceeds)**: by any insurance proceeds:
 - (i) payable to Project Co, or any of its Associates, in respect of any Insurances; or
 - (ii) which would have been payable to Project Co or any of its Associates in accordance with any Insurances but for a failure by Project Co to comply with this Deed or a failure by Project Co or any of its Associates to comply with any Project Documents, or with the terms of those Insurances; and
- (d) **(Knowledge)**: in respect of an extension of time claim pursuant to clause 38 (other than a claim contemplated in clause 38.3(b) or 38.3(c)), to the extent Project Co ought reasonably to have become aware of the occurrence of the Extension Event prior to the date 20 Business Days before submitting its Change Notice pursuant to clause 38.3(a).

43.2 Meetings and other information

If requested by the State (acting reasonably), the parties will, from time to time within five Business Days of a request from the State (in writing), meet to discuss the consequences of a Relief Event, including:

- (a) **(Questions or issues)**: any questions or issues the State may wish to raise concerning any information contained within a notice in respect of a Relief Event;
- (b) **(Further steps)**: what further steps (if any) Project Co may reasonably take in order to avoid or mitigate the effects of the Relief Event (including any steps Project Co has taken or is proposing to take to make a claim under the Insurance Policies);
- (c) **(Mitigation)**: the extent to which Project Co or its Associates can mitigate the effects of a Relief Event, including any insurance which may mitigate the effects of the Relief Event; and
- (d) **(Other matters)**: any other matters that the State may wish to raise in connection with the Relief Event.

Part I - Risk, Indemnity and Insurance

44. Loss or Damage

44.1 Risk of loss or damage

Subject to this clause 44, Project Co bears the risk of loss or damage to the Relevant Infrastructure during the Term (including loss or damage caused by Inmates).

44.2 Notification of Loss and Damage

- (a) **(Notification):** Project Co must promptly notify the State of any loss or damage to the Relevant Infrastructure including details of the nature and extent of such loss or damage.
- (b) **(Repair or rebuild):** Within:
- (i) where the Relevant Infrastructure has been wholly destroyed or substantially damaged, 60 Business Days; or
 - (ii) otherwise, 20 Business Days,
- after any loss or damage to the Relevant Infrastructure, the State must notify Project Co whether or not it requires Project Co to repair or rebuild any Relevant Infrastructure for which Project Co retains the risk of loss or damage.
- (c) **(Mitigation measures):** Without prejudice to the State's rights under this Deed and Project Co's obligations under this Deed, the State acknowledges that prior to the State notifying Project Co whether to repair or rebuild in accordance with clause 44.2(b), Project Co may undertake reasonable mitigation measures in respect of that loss or damage to the extent reasonably required by its Insurances.

44.3 Repairing and rebuilding

- (a) **(Project Co to repair or rebuild):** If the State notifies Project Co that it requires Project Co to repair or rebuild the Relevant Infrastructure in accordance with clause 44.2(b), Project Co must:
- (i) subject to allowing reasonable time for inspection by insurers, take immediate steps to clear any debris and begin initial repair work;
 - (ii) promptly consult with the State, and unless directed by the State to repair or rebuild the Relevant Infrastructure to a different specification:
 - A. promptly repair or rebuild the Relevant Infrastructure in accordance with the requirements of this Deed; and
 - B. ensure that the repaired or rebuilt Relevant Infrastructure complies with the requirements of this Deed;
 - (iii) consult with the State as to the programming of the repair or rebuilding works, and the Site access required to effect the relevant repair, rebuilding or reinstatement;
 - (iv) ensure:
 - A. there is minimal disruption to the Relevant Infrastructure, the Site and the Project Activities; and
 - B. to the greatest extent possible, continue to comply with its obligations under the Project Documents;

- (v) keep the State fully informed of the progress of the repair or rebuilding of the Relevant Infrastructure; and
 - (vi) subject to clause 44.3(c) to 44.3(e), pay for the cost of repairing or rebuilding the Relevant Infrastructure.
- (b) **(State insurance proceeds):** The State will make available to Project Co the proceeds of any Insurance received by the State for the purpose of repairing or rebuilding the Relevant Infrastructure.
- (c) **(Cost impact on Relevant Infrastructure):** If:
- (i) the State directs Project Co that the Relevant Infrastructure is to be repaired or rebuilt to different specifications than the Design Requirements; and
 - (ii) the incremental cost of repairing or rebuilding according to the different specifications exceeds the total cost of repairing or rebuilding the Relevant Infrastructure in accordance with the Design Requirements,
- the State must direct a Modification in accordance with clause 40 in respect of the repair or rebuild works which are different to the Design Requirements.
- (d) **(Cost impact on Project Activities):** If the repairing or rebuilding of the Relevant Infrastructure to different specifications to the Design Requirements will increase or decrease the cost of performing the Services over the remainder of the Term, the State must direct a Modification in accordance with clause 40 but only in respect of such increase or decrease.
- (e) **(Damage caused by State breach):** If the loss or damage to the Relevant Infrastructure was caused by:
- (i) a breach by the State of any State Project Document; or
 - (ii) a fraudulent, negligent, reckless, unlawful or malicious act or omission of the State or any of its Associates when acting in respect of the Project,
- then the cost of repairing or rebuilding the Relevant Infrastructure by Project Co which is over and above the Insurance proceeds received by Project Co in respect of the repairing or rebuilding (or which would have been received by Project Co but for any breach by Project Co or any of its Associates of this Deed or the relevant insurance policy), plus the cost in respect of a deductible or excess under any Insurance, will be a Change Compensation Event.
- (f) **(Corrections Act):** If:
- (i) an Inmate causes any loss of or damage to the Correctional Complex as a result of committing a Correctional Centre Offence (as that term is defined in the Corrections Act); and
 - (ii) the General Manager or Visiting Magistrate orders that the Inmate pay a specified amount as compensation for the loss or damage in accordance with the Corrections Legislation,
- then, to the extent that the Inmate pays such compensation to Project Co or its Associates, Project Co must promptly provide such amounts to the State.

44.4 Uninsurable Risk or Day 1 Uninsurable Risk

If the event which gave rise to the loss of, or damage to, the Relevant Infrastructure is an Agreed Uninsurable Risk, then the parties' rights and obligations will be as set out in clause 47.3.

44.5 Minor damage

If any loss of, or damage to, the Relevant Infrastructure for which the State would, but for this clause 44.5, be liable is of such a minor nature (when considered item by item and in aggregate) that it can be remedied by Project Co:

- (a) **(Additional costs)**: without incurring additional costs;
- (b) **(Site-based resources)** through the use of its site-based resources during normal working hours; and
- (c) **(Project Activities)**: without adversely affecting the ability of Project Co to carry out the Project Activities,

then Project Co must rectify that damage (at its own cost).

44.6 Consequences of State election not to repair or rebuild

If the State notifies Project Co not to repair or rebuild the Relevant Infrastructure, the State must:

- (a) **(Modification)**: where the Relevant Infrastructure has not been wholly destroyed or substantially damaged, omit the relevant part of the Relevant Infrastructure from the Project by directing a Modification in accordance with clause 40; or
- (b) **(Wholly destroyed or substantially damaged)**: if the Relevant Infrastructure has been wholly destroyed or substantially damaged, and the loss or damage was caused by:
 - (i) any act or omission of Project Co or an Inmate, this will be deemed to be a Default Termination Event and the State must issue a notice to terminate this Deed for default in accordance with clause 49.4;
 - (ii) any act or omission of the State, the State must issue a notice to voluntarily terminate this Deed in accordance with clause 49.2; or
 - (iii) any other event, including a Force Majeure Event or an Agreed Uninsurable Risk, this will be deemed to be a Force Majeure Termination Event and the State must issue a notice to terminate this Deed for Force Majeure in accordance with clause 49.3.

44.7 State may repair or reinstate

Without limiting any other provision of this Deed, if Project Co does not repair or rebuild the Relevant Infrastructure where required to do so in accordance with clause 44.3:

- (a) **(Notification)**: the State may notify Project Co that the State intends to repair or remedy any destruction, loss or damage, or replace or reinstate the Relevant Infrastructure (or procure a third party to do so); and
- (b) **(Failure to comply)**: if Project Co is not complying with its obligations under clause 44.3, the State may, without further notice, elect to remedy or repair any destruction, loss or damage, or replace or reinstate the Relevant Infrastructure (or procure a third party to do so) in which case, the costs and expenses incurred in doing that work will be a debt due and payable by Project Co to the State.

44.8 Damage to third party property

- (a) **(Project Co interference)**: Other than in accordance with its obligations under this Deed, Project Co must not interfere with, obstruct, damage or destroy any property on, under, over, in, or in the vicinity of, the Site.

- (b) **(Project Co to rectify and compensate):** If Project Co or any of its Associates interferes with, obstructs, damages or destroys any property (other than the Relevant Infrastructure) on, under, over, in or in the vicinity of, the Site, other than in accordance with its obligations under this Deed, Project Co must:
 - (i) promptly rectify any such loss or damage; and
 - (ii) reasonably compensate the affected person for that interference, obstruction, loss or damage where Project Co has a legal liability to do so.

45. Indemnities and Consequential or Indirect Loss

45.1 Indemnity for Project Co breach

Subject to clauses 38B.2 and 36.3(d), Project Co indemnifies the State, the State's employees and officers and NSW Government (each an **Indemnified Person**) from and against any Claim or Liability suffered or incurred by any Indemnified Person in connection with:

- (a) **(Breach of Deed)** any breach by Project Co of this Deed; or
- (b) **(Breach State Project Document):** any breach by Project Co or any of its Associates of any State Project Document.

45.2 General indemnity

Project Co indemnifies the Indemnified Persons from and against any Claim (including Claims by Inmates) or Liability suffered or incurred by any Indemnified Person in connection with:

- (a) **(Loss or damage):** any loss of, or damage or destruction to, property (other than the cost of repairing or rebuilding the Relevant Infrastructure addressed in clauses 44.3 to 44.7);
- (b) **(Injury or death):** any injury to, illness or death of, any person; or
- (c) **(Third parties):** to the extent not covered under clause 45.2(a) or 45.2(b), any third party actions (including by Inmates) brought against the Indemnified Persons,

to the extent caused or contributed to by Project Co or any of its Associates in connection with the Project or the Project Activities.

45.3 Corrections Act Indemnity

Project Co indemnifies the Indemnified Persons from and against any Claim (including Claims by Inmates) or Liability suffered or incurred by any Indemnified Person in connection with:

- (a) **(Damage):** damage to the Correctional Complex and any associated public property in the possession or under the control of Project Co or its Associates; and
- (b) **(Complaint):** the State attending or responding to any complaint, inquiry, inquest or commission arising out of or in connection with the Correctional Complex or an Inmate (or former Inmate).

45.4 Project Information

Project Co:

- (a) **(Indemnity):** indemnifies the State and any of its Associates against any Claim or Liability suffered or incurred by the State or any of its Associates, and releases and must procure that its Associates or any other person to whom the Project Information is disclosed by Project Co, an Associate of Project Co or any person on

Project Co's or its Associate's behalf, release the State and any of the State's Associates from any Claim, arising in connection with the provision of, or the purported reliance upon, or use of, the Project Information by Project Co, an Associate of Project Co or any other person to whom the Project Information is disclosed by Project Co, an Associate of Project Co or any person on Project Co's or its Associate's behalf to the extent only that a Claim is made against the State or any of its Associates by Project Co, an Associate of Project Co or any other person to whom the Project Information is disclosed by Project Co, an Associate of Project Co or any person on Project Co's or its Associate's behalf; and

- (b) **(Release)**: releases and must procure that its Associates release the State and any of the State's Associates from any Claim in respect of any failure by the State to make available to Project Co any information, data or material relating to the Project.

45.5 Intellectual Property and Moral Rights Indemnity

- (a) **(Intellectual Property Rights, Moral Rights or other rights)**: Project Co indemnifies and releases the State and its Associates and the State's respective sub-licensees (each an **Indemnified IP Party**) against any Claim made against, or Liability suffered or incurred by, any Indemnified IP Party arising out of or in connection with any infringement, violation, alleged infringement or alleged violation by any Indemnified IP Party of any Intellectual Property Rights, Moral Rights or other analogous rights of any person but excluding State Background IP, in connection with:
- (i) delivery of the Project;
 - (ii) any Use of Developed IP by the State, its Associates or any person nominated or authorised by the State;
 - (iii) any Use of Developed IP by or on behalf of Project Co as referred to in clause 61.3(c);
 - (iv) any Use of other Project Co Material, Project Co Background IP or the Relevant Infrastructure as delivered by or on behalf of Project Co to the State or as modified by Project Co; or
 - (v) any other Use of other Project Co Material, Project Co Background IP or the Relevant Infrastructure by the State, its Associates or any person nominated or authorised by the State as permitted or contemplated by this Deed.
- (b) **(Project Co obligations to replace, modify or obtain new licence)**: If a Claim referred to in clause 45.5(a) substantially interferes with any Indemnified IP Party's Use of any Developed IP or other Project Co Material, Project Co Background IP or the Relevant Infrastructure, Project Co will (at the State's option, and without limiting any of the State's other rights under any State Project Document or at Law):
- (i) without additional charge to the State, replace the Developed IP or other Project Co Material, Project Co Background IP or the Relevant Infrastructure, with a non-infringing product or service of at least equivalent functionality and performance, and which otherwise meets all relevant requirements for that Project Co Material, Project Co Background IP or the Relevant Infrastructure in accordance with the Project Documents;
 - (ii) without additional charge to the State, modify the Developed IP, other Project Co Material, Project Co Background IP or the Relevant Infrastructure to overcome the infringement without materially impeding functionality or performance or rendering it non-compliant with any

relevant requirements for that Material, Project Co Background IP or the Relevant Infrastructure in accordance with the Project Documents; or

- (iii) obtain a licence for the relevant Indemnified IP Party to continue to use and enjoy the Developed IP, other Project Co Material, Project Co Background IP or the Relevant Infrastructure (as applicable) and pay any additional fee required for that licence.
- (c) **(No limitation):** Neither the State's rights nor Project Co's Liabilities or obligations, whether under this Deed or otherwise according to Law, in connection with Intellectual Property Rights, are limited by the terms of this clause 45.5.

45.6 Privacy indemnity

Project Co must release, indemnify and must keep indemnified on demand, the State and its Associates from and against any Claim or Liability (including any Claim made by, or Liability to, a third party) which the State or any of its Associates suffer or incur resulting from any act done or practice engaged in by Project Co or any Associate of Project Co in connection with the Project, which would, had that act or practice been done or engaged in by the State, have contravened any of the Privacy Legislation.

45.7 Release

Project Co releases, and must procure that each of its Associates releases, each of the Indemnified Persons from any Claim or Liability for damage, destruction, loss, death, illness or injury to the extent caused by Project Co or any of its Associates in connection with the Project or the Project Activities.

45.8 Limits on Project Co liability to indemnify and release

Project Co's Liability to indemnify and release the Indemnified Persons or the Indemnified IP Parties in accordance with this Deed will be reduced to the extent that any such Claim or Liability is caused or contributed to by:

- (a) **(Breach):** any breach by the State of any State Project Documents;
- (b) **(Fraud):** any fraudulent, negligent, reckless, unlawful or malicious act or omission of the Indemnified Persons or the Indemnified IP Parties (as applicable); or
- (c) **(Relief Event):** a Relief Event, but only to the extent that the reduction in Project Co's Liability to indemnify or release is agreed by the parties or determined in accordance with the Change Compensation Principles (if at all),

other than to the extent that Project Co is entitled to recover under any of the Insurances (or would have been entitled to recover but for this clause 45.8 or any breach by Project Co or any of its Associates of this Deed or the relevant insurance policy).

45.9 Third party claim under indemnity

- (a) **(Management of Claims):** Subject to clause 45.9(b) and 45.9(c), if a Claim is made against an Indemnified Person or an Indemnified IP Party, in respect of which Project Co is required to indemnify the relevant Indemnified Person or Indemnified IP Party in accordance with this Deed, the State must:
 - (i) to the extent that the State's insurers in connection with such a Claim agree, as soon as is reasonably practicable after it becomes aware of the Claim:
 - A. notify Project Co of the alleged Claim;
 - B. give Project Co the option to defend the Claim; and

- C. provide Project Co (at Project Co's expense) with reasonable assistance in negotiating, defending or otherwise taking action or proceedings in respect of that Claim; and
- (ii) not settle or compromise the Claim without the prior written consent of Project Co (which cannot be unreasonably withheld or delayed), and Project Co will be deemed to be acting reasonably if Project Co refuses to provide its consent as a result of restrictions or obligations under any Insurance policy to which that Claim relates.
- (b) **(Urgent proceedings):** If interlocutory proceedings are commenced against the State on an urgent basis, the State may initially defend such proceedings, but as soon as practicable after commencement of the proceedings, the State must give Project Co the option to conduct the defence of such proceedings.
- (c) **(Other matters):** Clauses 45.9(a)(i)B and 45.9(a)(i)C do not apply to any Claim which:
 - (i) the State (acting reasonably) considers should be conducted by the State for public policy reasons; or
 - (ii) would prevent the continued development or operation of the Project or continued conduct of the Project Activities,
 and the State, to the extent reasonably practicable, must consult in good faith with Project Co with respect to such Claim.
- (d) **(Management of Claims by the State):** If the State is managing a Claim for which Project Co is required to indemnify an Indemnified Person or an Indemnified IP Party, the State must:
 - (i) give Project Co prior notice before agreeing to any compromise or settlement of that Claim; and
 - (ii) use reasonable endeavours to consult in good faith with Project Co prior to agreeing to any such compromise or settlement.
- (e) **(Management of Claims by Project Co):** If Project Co is managing a Claim in accordance with clause 45.9(a)(i)B, Project Co must:
 - (i) give the State prior notice before agreeing to any compromise or settlement of that Claim; and
 - (ii) use reasonable endeavours to consult in good faith with the State prior to agreeing to any such compromise or settlement.

45.10 Continuing obligation

- (a) **(Indemnities):** Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties.
- (b) **(Enforcement):** It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity under this Deed.
- (c) **(Payment):** A party must pay on demand any amount it must pay under an indemnity in this Deed.

45.11 Exclusion of Consequential or Indirect Loss – Project Co

- (a) **(No liability of Project Co):** Subject to clause 45.11(b), but notwithstanding any other provision of the State Project Documents, neither Project Co nor any of its Associates has any Liability to the State or any of its Associates for any

Consequential or Indirect Loss incurred or sustained by the State or any of its Associates:

- (i) as a result of any act or omission of Project Co or any of its Associates;
or
 - (ii) due to any breach of a State Project Document by Project Co or any of its Associates.
- (b) **(Exceptions to no Project Co liability):** The exclusion of Liability of Project Co and its Associates under clause 45.11(a) does not apply to Liability:
- (i) for which Project Co or its Associates are insured under any Insurances that have been effected and maintained as required by this Deed or Liability for which Project Co or its Associates would have been insured under such Insurances if:
 - A. this clause 45.11 did not exist; and
 - B. Project Co and its Associates had:
 - 1) effected and maintained the relevant Insurances as required by this Deed;
 - 2) complied with the relevant Insurances;
 - 3) submitted a claim under the relevant Insurances where there was a legitimate entitlement to do so; and
 - 4) taken reasonable steps to pursue the claim;
 - (ii) for which Project Co recovers pursuant to an indemnity under any Project Documents;
 - (iii) arising from any criminal act or fraud on the part of Project Co or any of its Associates;
 - (iv) arising from any wilful misconduct on the part of Project Co or any of its Associates;
 - (v) arising from any loss of or damage to property or injury to, illness or death of any person;
 - (vi) in respect of a deductible or excess under any Insurance;
 - (vii) in respect of any reduction of any Monthly Service Payment as a consequence of the application of the Performance Regime or the Payment Schedule in accordance with this Deed;
 - (viii) expressly imposed on Project Co or any of its Associates under any of the Project Documents to pay the State any of the following amounts:
 - A. any State Refinancing Share of Refinancing Gain under clause 41.6;
 - B. any interest under clause 36.5;
 - C. any amounts payable under clause 36.4, 41.7 or 58.10;
 - D. any amounts expressly stated to be payable as a debt due and payable under the State Project Documents;

- E. any amounts payable by Project Co to an Indemnified IP Party under clause 45.5;
 - F. without limiting clause 45.11(b)(v), any amounts payable by Project Co to the State or an Indemnified Person under clause 45.2(c);
 - G. any amounts payable under and calculated in accordance with the Performance Regime or the Payment Schedule;
 - H. any amounts payable under and calculated in accordance with the Change Compensation Principles; or
 - I. any amounts payable under and calculated in accordance with the Termination Payments Schedule;
- (ix) imposed on Project Co under clause 40.8(d) (Sharing of Savings) to pay or allow to the State any share of Savings;
 - (x) in respect of any statutory fine or civil penalty arising from any breach of Law by Project Co or any of its Associates;
 - (xi) arising from abandonment of the whole or a substantial part of the Delivery Phase Activities or the Services by Project Co or any of its Associates; or
 - (xii) in respect of costs incurred by the State in rectifying Defects for which Project Co is liable under this Deed.

45.12 Exclusion of Consequential or Indirect Loss – State

- (a) **(No liability of State):** Subject to clause 45.12(b), but notwithstanding any other provision of the State Project Documents, neither the State nor any of its Associates has any Liability to Project Co or any of its Associates or any Group Member (whether in contract, tort or otherwise), in respect of Consequential or Indirect Loss incurred or sustained by Project Co, its Associates or any Group Member:
 - (i) as a result of any act or omission of the State or any of its Associates; or
 - (ii) due to any breach of a State Project Document by the State or any of its Associates.
- (b) **(Exceptions to the no State liability):** The exclusion of Liability of the State and its Associates in clause 45.12(a) does not apply to:
 - (i) Liability arising from any criminal act or fraud on the part of the State or its Associates;
 - (ii) Liability arising from any wilful misconduct on the part of the State (in its capacity as a party to this Deed) or its Associates in connection with the Project;
 - (iii) Liability arising from any loss of or damage to property or injury to, illness or death of, any person caused or contributed to by the State or its Associates;
 - (iv) Liability expressly imposed on the State under any of the State Project Documents to pay to Project Co any of the following amounts:
 - A. any Monthly Service Payment;
 - B. any interest under clause 36.5;

- C. any amounts payable under and calculated in accordance with the Change Compensation Principles (including any Financing Delay Costs or Prolongation Costs); or
- D. any amounts payable in accordance with the Termination Payments Schedule; or
- (v) Liability imposed on the State under clause 40.8(d) to pay or allow Project Co any share of Savings;
- (vi) Liability for which the State or its Associates have recovered under any Insurances; or
- (vii) payment of any excess or deductible payable by the State under clause 46.10(b).

46. Insurance

46.1 Delivery Phase Insurances

Project Co must effect and maintain, or cause to be effected and maintained:

- (a) **(Insurance Schedule):** the Insurances at the times, in the manner and on the terms specified in this clause 46 and the Insurance Schedule; and
- (b) **(Additional insurance):** any additional insurance required by Law or which a prudent owner and operator would maintain when carrying out activities of a similar nature to the Project Activities.

46.2 General insurance requirements

Project Co must or where relevant, must procure that its Subcontractors:

- (a) **(Reputable Insurers):** effect all Insurances with Reputable Insurers;
- (b) **(Premiums):** punctually pay all premiums and other amounts payable in connection with the Insurances, and give the State copies of receipts for payment of premiums if and when requested by the State;
- (c) **(No alteration):** not alter, extend, discontinue or cancel any Insurance, or allow any Insurance to lapse, where this would result in the relevant Insurance not meeting the requirements of this Deed, without the prior approval of the State;
- (d) **(Not prejudice):** not do or permit, or omit to do, anything which prejudices any Insurance;
- (e) **(Rectify):** promptly rectify anything which might, if not rectified, prejudice any Insurance;
- (f) **(Fully disclose):** fully and promptly disclose all material information to all relevant insurers (and any persons acting on their behalf) relating to the Insurances;
- (g) **(Comply):** comply at all times with the terms of each Insurance;
- (h) **(State recovery):** do everything reasonably required by the State or any of its Associates to whom the benefit of any Insurance extends, to enable the State or its Associates (as the case may be) to claim, and to collect or recover, money due under that Insurance; and

- (i) **(Notice of cancellation)**: notify the State of any amendment or cancellation of an Insurance, within 30 Business Days of Project Co becoming aware of the amendment or cancellation.

46.3 Terms of Insurances

Project Co must ensure that each of the Insurances:

- (a) **(Terms)**: contains terms that, if not specified in the Deed are:
 - (i) acceptable to the State, acting reasonably; and
 - (ii) to the effect that the relevant insurer:
 - A. does not require the State or its Associates to exhaust indemnities given by Project Co, its Associates or any Group Member to the State or its Associates under any State Project Document, before the insurer pays proceeds in respect of any claim under the Insurance;
 - B. will not impute to any Insured any knowledge or intention or a state of mind possessed or allegedly possessed by any other Insured;
 - C. in the case of Insurances under which the State or its Associates are also Insureds, agrees that the interests of the Insured include the entire assets of the Project and waives any rights of subrogation which it may have against any Insured;
 - D. in the case of liability insurances, agrees to treat each Insured as a separate Insured as though a separate contract of insurance had been entered into with each of the Insured, without increasing the deductibles or reducing the overall limit of indemnity;
 - E. agrees that no reduction in limits or coverage affecting the Project or the Relevant Infrastructure will be made during the period of insurance, except under the circumstances and to the extent permitted by the *Insurance Contracts Act 1984* (Cth) and with not less than 20 Business Days prior notice to the State and Project Co; and
 - F. in the case of the Public and Products Liability Insurance during the Operating Phase, the relevant insurer agrees to waive any rights of contribution it may have against the insurers for Project Co, the State and the Operator which but for this waiver would be required to indemnify those parties under other liability insurance policies; and
- (b) **(Objectives of Project)**: is appropriate given the nature and objectives of the Project and the responsibilities and entitlements of the various Insureds in connection with this Deed.

46.4 Insurances primary

- (a) **(Enforceability of rights under indemnities)**: The State is not obliged to make a claim or institute proceedings against any insurer under the Insurances before enforcing any of its rights or remedies under the indemnities referred to in this Deed or generally.

- (b) **(Project Co's obligations not affected):** Other than as expressly stated in this Deed, Project Co is not relieved from, and remains fully responsible for, its obligations under this Deed, regardless of whether the Insurances respond or fail to respond to any claim and regardless of the reason why any Insurance responds or fails to respond.

46.5 Notification and making of claims

Project Co must, in relation to any Insurances other than workers compensation or motor vehicle Insurances:

- (a) **(Notification):** promptly notify the State of any occurrence that may give rise to a claim in connection with the Project under any Insurance, except where an Insured's right of indemnity under the relevant Insurances would be prejudiced by giving such notice;
- (b) **(Subsequent developments):** keep the State informed of subsequent developments concerning the occurrence under clause 46.5(a);
- (c) **(Pursue claims):** subject to clause 46.5(d), diligently pursue any claim which it has under any Insurance which has arisen in connection with the Project; and
- (d) **(State consent):** not compromise, settle, prosecute or enforce any claim of the type referred to under clause 46.5(a) under any Insurance without the prior consent of the State (which must not be unreasonably withheld).

46.6 Operating Phase Insurances

- (a) **(Project Co to provide):** No less than 60 Business Days prior to the Date for Technical Completion and prior to the date on which any Insurance is due to be effected or renewed during the Operating Phase (as detailed in the Insurance Schedule), Project Co must provide the State with copies of the proposed Operating Phase Insurances for the State to review in accordance with the Review Procedures.
- (b) **(Terms and evidence):** If Project Co is unable to provide copies of the Operating Phase Insurances to the State in accordance with clause 46.6(a), it must:
 - (i) make the terms of such Insurances available to the State's insurance broker to review confidentially on behalf of the State in accordance with the Review Procedures; and
 - (ii) provide the evidence in respect of that Insurance required under clause 46.7(b) to 46.7(d).
- (c) **(Acknowledgement):** The parties acknowledge and agree that:
 - (i) the terms and requirements specified in the Insurance Schedule for the Operating Phase Insurances are a reflection of the insurance market at Financial Close;
 - (ii) if prior to the Date of Commercial Acceptance and throughout the Operating Phase, either party considers (acting reasonably) that the terms relating to an Operating Phase Insurance set out in the Insurance Schedule are no longer a reflection of the terms of the insurance that an operator of facilities similar to the Correctional Complex providing services similar to the Services and exercising Best Industry Practices would procure and maintain, then that party may send a written notice to the other party advising it of the same and the parties must promptly confer in good faith and acting reasonably with a view to reaching agreement on the replacement terms or requirements (as applicable); and

- (iii) if the parties do not reach agreement on any replacement terms or requirements in accordance with clause 46.6(c)(ii) within 5 Business Days after the date on which a written notice was first given under that clause, either party may refer the matter to dispute resolution in accordance with clause 50.

46.7 Evidence of Insurances

Whenever reasonably requested by the State, Project Co must give the State evidence satisfactory to the State that the Insurances have been procured and continue to be maintained in accordance with this Deed, including:

- (a) **(Policies)**: certified copies of each insurance policy, or if Project Co is unable to provide certified copies of an insurance policy, Project Co must make the terms of such Insurances available to the State's insurance broker to review confidentially on behalf of the State in accordance with the Review Procedures;
- (b) **(Certificate)**: signed certificates of currency;
- (c) **(All requirements)**: confirmation that all the requirements of the Insurances specified in the Insurance Schedule are included in the Insurances; and
- (d) **(Deductibles)**: details of deductibles, terms of coverage, erosion and reinstatement of limits that the State reasonably requires,

to enable the State to satisfy itself that all of the insurance requirements of the Project under this Deed are being complied with.

46.8 State may effect Insurances

- (a) **(State may effect insurance)**: The State may procure or effect and maintain the relevant Insurances and pay the relevant premiums in connection with those Insurances:
 - (i) if Project Co fails to provide evidence satisfactory to the State within 20 Business Days of a request under clause 46.7; or
 - (ii) in the event of any default by Project Co or its Associates in obtaining or maintaining Insurances in accordance with this clause 46.
- (b) **(Costs to be recoverable from Project Co)**: Without limiting any other remedies of the State under this Deed or at Law, the costs reasonably incurred by the State in connection with taking action in accordance with clause 46.8(a) will be a debt due and payable by Project Co to the State.

46.9 Proportionate liability

Project Co must ensure that all relevant liability policies of Insurance which are effected on a project specific basis, do not reduce or exclude the insurance cover in connection with liabilities governed by Part 4 of the *Civil Liability Act 2002 (NSW)* or any corresponding legislation of another Australian jurisdiction, by reason of the manner in which that legislation operates or does not operate, as the case may be, in light of any of the provisions of this Deed and the obligations undertaken by Project Co in connection with it.

46.10 Deductibles

- (a) **(Payment of claims)**: Subject to clause 46.10(b), Project Co must pay or bear all amounts by way of deductibles or excesses which apply to a claim made under any Insurances.
- (b) **(Loss or damage)**: Where the event that is insured under any Insurances is loss or damage referred to in clause 44.3(e) or is caused by a Compensable Extension

Event or a Compensable Intervening Event for which Project Co is entitled to relief in accordance with this Deed, the State will pay the related deductible or excess.

46.11 Application of Insurance proceeds

All proceeds of any Insurance (except business interruption policies) must be applied:

- (a) **(Repair)**: towards replacement or repair of the Relevant Infrastructure or the Site;
- (b) **(Liability)**: to discharge the relevant Liability or Claim, or make good the relevant Liability; or
- (c) **(To the State)**: to the State or to such account as the State may reasonably direct.

46.12 Benchmarking of Insurance Component of Monthly Service Payment

- (a) **(Quotes)**: Three months prior to each Insurance Review Date, Project Co must obtain separate quotes from three Reputable Insurers for annual premium costs of obtaining each Benchmarked Insurance (with the insurance broker's fee component identified separately in each quote).
- (b) **(Selection of quote)**: The State will select one quote for each Benchmarked Insurance (**(Quoted Insurance Component)**), which shall, for the avoidance of doubt, include each component of the Insurance Component), and that quote will form the basis for benchmarking the Insurance Component relating to that Benchmarked Insurance.
- (c) **(Adjustment)**: On each Insurance Review Date, if the total Quoted Insurance Component for each Benchmarked Insurance (as specified in the quote selected by the State in accordance with clause 46.12(b)) is greater or less than the total Insurance Component (Indexed to the relevant Insurance Review Date) for that Benchmarked Insurance at the then most recent of:
 - (i) the anticipated Operational Commencement Date (being, for the avoidance of doubt, the total Insurance Component shown in the Financial Model immediately prior to the anticipated Operational Commencement Date); or
 - (ii) the last Insurance Review Date on which an adjustment to the relevant Insurance Component occurred under this clause 46.12,(as applicable), the total Insurance Component relating to that Benchmarked Insurance will be adjusted by the amount by which the total Quoted Insurance Component for that Benchmarked Insurance:
 - (iii) exceeds the total Insurance Component relating to that Benchmarked Insurance; or
 - (iv) is less than the total Insurance Component relating to that Benchmarked Insurance,as determined in accordance with clause 46.12(c)(i) or 46.12(c)(ii) as applicable, provided that any increase or decrease in the cost of obtaining the Benchmarked Insurance which is directly attributable to Project Co's or its Associates' performance of the Services which has resulted in claims on the relevant Benchmarked Insurance will be disregarded.
- (d) **(Mitigation)**: Project Co must, and must procure that its Subcontractors, use all reasonable endeavours to:
 - (i) mitigate cost increases; and

- (ii) maximise cost savings,
- in respect of the Benchmarked Insurances.

47. Uninsurable Risks

47.1 Risks become Uninsurable

- (a) **(Uninsurable Risk):** If Project Co considers that a risk has, or is likely during the Term to, become an Uninsurable Risk:
 - (i) Project Co must notify the State within 5 Business Days of when Project Co becomes aware, or ought to have become aware, that the risk has, or is likely during the Term to, become an Uninsurable Risk;
 - (ii) the parties must meet in good faith within 20 Business Days of Project Co's notification to agree whether the risk is an Uninsurable Risk; and
 - (iii) if the parties are unable to agree within the period referred to in clause 47.1(a)(ii), either party may refer the matter for expert determination in accordance with clause 52.
- (b) **(Parties to meet):** If it is agreed by the parties or determined by an expert in accordance with clause 52, that a risk is an Uninsurable Risk, then the parties must meet to discuss the means by which the Uninsurable Risk should be managed (including considering the possibility of self-insurance by either party).

47.2 No obligation to insure

If the parties agree, or an expert determines in accordance with clause 52, that a risk is or has become an Uninsurable Risk, then:

- (a) **(No requirement to insure):** for so long as the risk remains an Uninsurable Risk, Project Co is not required to procure insurance against that risk; and
- (b) **(Reduction payable to State):** any reduction in insurance premium as a consequence of that risk being Uninsurable will be a debt due and payable to the State.

47.3 Agreed Uninsurable Risks resulting in loss or damage

- (a) **(Loss or damage):** If an Agreed Uninsurable Risk gives rise to loss or damage to the Relevant Infrastructure, the State may exercise its rights under clause 44.2 and the remainder of clause 44 will apply save that:
 - (i) if the State elects to repair or rebuild the Relevant Infrastructure this will be a Change Compensation Event; or
 - (ii) where the State elects not to repair or rebuild, and the whole or a substantial part of the Relevant Infrastructure is damaged or destroyed:
 - A. this will be deemed to be a Force Majeure Termination Event; and
 - B. the State must issue a Force Majeure Termination Notice in accordance with clause 49.3.
- (b) **(Amount payable):** Subject to clause 47.3(c), the maximum amount which the State must pay Project Co if clause 47.3(a)(i) applies, is an amount that is equal to:

- (i) for a Day 1 Uninsurable Risk, an amount that is equal to the insurance proceeds that would have been payable under any of the Insurances had the event been insurable under those Insurances; and
- (ii) for an Uninsurable Risk, an amount equal to the insurance proceeds that would have been payable had the relevant Insurance continued to be available on the previous terms of that Insurance,

less any component of the insurance proceeds that would have been payable which is attributable to the loss of equity return or loss of profit component.

- (c) **(Exclusion):** If clause 47.3(a)(i) applies, and the State directs Project Co in accordance with clause 44.3(c), the amount payable by the State in accordance with clause 44.3(c) is excluded from the maximum amount referred to in clause 47.3(b).

47.4 Review of insurance markets

- (a) **(Project Co to review market):** Project Co must review and test the insurance market vigilantly and no less than once every 3 years to ascertain whether an Agreed Uninsurable Risk has become insurable, and determine whether, and if so what, insurance terms as to premium, deductible and coverage are available in connection with that risk, from Reputable Insurers.
- (b) **(Notification):** If upon such review it is found that an Agreed Uninsurable Risk is no longer uninsurable (the **Newly Insurable Risk**), then Project Co will promptly notify the State and provide the State with details of the new insurance and any other information the State reasonably requests and the additional cost of insuring the Newly Insurable Risk (calculated pursuant to clause 46.12 if applicable).
- (c) **(Election):** At any time after receipt of the information provided to the State under clause 47.4(b), the State may direct Project Co in writing to procure the insurance in connection with the Newly Insurable Risk in accordance with clause 46 and:
 - (i) Project Co will promptly procure the insurance in connection with that risk in accordance with the other provisions of clause 46;
 - (ii) any relevant additional Insurance Component will be:
 - A. determined at the time the State is notified under clause 47.4(b) that an Agreed Uninsurable Risk is no longer uninsurable;
 - B. subject to clause 46.12 (where applicable);
 - C. payable in accordance with Schedule 16; and
 - (iii) such Newly Insurable Risk will no longer be an Agreed Uninsurable Risk.
- (d) **(Non-election):** If the State does not direct Project Co in writing to procure insurance in connection with a Newly Insurable Risk, the Newly Insurable Risk will remain an Agreed Uninsurable Risk and the State will not be liable to Project Co for the costs of any insurance taken out in respect of such Newly Insurable Risk.

Part J - Default, Termination and Disputes

48. Major Default

48.1 Meaning of remedy or cure

- (a) **(Meaning of remedy or cure):** Where the word 'remedy' or 'cure' or any other grammatical form of those words is used in this clause 48, it means to cure or redress the relevant breach or Major Default, or overcome its consequences so that:
- (i) there ceases to be any continuing detrimental effect of that breach or Major Default;
 - (ii) any prior detrimental effect is rectified; and
 - (iii) the State and its Associates are in the position they would have been in had the relevant breach or Major Default not taken place.
- (b) **(Major Default deemed to be capable of remedy or cure):** The parties acknowledge and agree that the events identified in each of the following paragraphs of the definition of Major Default will, for the purposes of this clause 48, be deemed to be capable of cure, notwithstanding that the relevant Major Default may not, as a matter of fact, be capable of cure:
- (i) paragraph (a) (late Technical Completion); and
 - (ii) paragraph (b) (late Commercial Acceptance).

48.2 Notice of Major Default

- (a) **(Project Co's obligations):** Project Co must:
- (i) promptly notify the State upon the occurrence of a Major Default; and
 - (ii) immediately take steps to mitigate, minimise or avoid the effects, consequences or duration of the Major Default.
- (b) **(Major Default Notice):** If:
- (i) Project Co notifies the State of a Major Default under clause 48.2(a); or
 - (ii) the State considers that a Major Default has occurred,
- the State may give Project Co a notice in writing **(Major Default Notice):**
- (iii) stating that a Major Default has occurred;
 - (iv) identifying and providing details of the Major Default; and
 - (v) if the Major Default:
 - A. is capable of remedy stating a date by which Project Co must remedy the Major Default, which must allow for a reasonable period of time to remedy the Major Default in the circumstances, unless the Major Default relates to:
 - 1) an Essential Service, in which case the period of time to remedy the Major Default must be as soon as possible and in any event must not exceed 24 hours; or

- 2) during the Operating Phase, an Insolvency Event occurring in relation to the Operator, in which case the time to remedy must not exceed 1 Month or such longer period approved by the State (in its absolute discretion);
 - B. is not capable of remedy, stating any reasonable requirements of the State in connection with that Major Default and a date by which Project Co must comply with those requirements (which must allow for a reasonable period of time to comply with the State's requirements in the circumstances); or
 - C. is not capable of remedy and the State has formed the view (acting reasonably) that there are no reasonable requirements that can be met by Project Co to overcome the consequences of, or compensate the State for, the Major Default, a statement to that effect along with its reasons for forming that view.
- (c) **(Remedy):** The remedy of a Major Default may include (where the State requires) replacing the Operator, if:
- (i) the Operator is responsible for the Major Default; and
 - (ii) the cure period under the Operator Subcontract has expired,
- and Project Co must comply with the requirements of this clause 48 requiring such a replacement, within three months of notice being given by the State and, where the State requires such a replacement, diligently pursuing a replacement Operator and implementing all reasonable measures to perform the Services in accordance with this Deed.
- (d) **(Unreasonable requirements):** If Project Co (acting in good faith) does not agree with a Major Default Notice, or any part of it, it must:
- (i) promptly notify the State, including the reasons why; and
 - (ii) if Project Co does not agree with the period of time stated in the Major Default Notice, specify the period of time which it believes is reasonable.
- (e) **(State to act in good faith):** The State must in good faith consider Project Co's notice under clause 48.2(d) and (acting reasonably):
- (i) make any changes to the Major Default Notice that it considers reasonable as a consequence of Project Co's notice; and
 - (ii) notify Project Co of those changes (if any).
- (f) **(Major Default not capable of remedy or cure):** If after considering Project Co's notice under clause 48.2(d), the State maintains the view (acting reasonably) that there are no reasonable requirements that can be met by Project Co to overcome the consequences of, or compensate the State for, the Major Default, the State must notify Project Co of this determination and the Major Default will be deemed to be a Default Termination Event.
- (g) **(Project Co not satisfied):** If Project Co is not satisfied with:
- (i) the changes (if any) made by the State under clause 48.2(e); or
 - (ii) the State's determination under clause 48.2(f),

then:

- (iii) Project Co may refer the matter to expert determination in accordance with clause 52; and
- (iv) if clause 48.2(f) applies, the Major Default will not be deemed to be a Default Termination Event unless and until determined by expert determination in accordance with clause 52,

and Project Co must act in accordance with the Major Default Notice while the matter is being determined in accordance with clause 52.

48.3 Project Co to provide remedy program and comply with Major Default Notice

(a) **(Remedy program):** If the State gives a Major Default Notice to Project Co, then notwithstanding its rights under clause 48.2(d) to 48.2(g), Project Co must within 10 Business Days:

- (i) where the Major Default is capable of remedy, unless the relevant Major Default is a failure to pay money which must be remedied immediately, give the State a program to remedy the Major Default in accordance with the terms of the Major Default Notice (which may include a plan to replace the Subcontractor causing the Major Default); and
- (ii) where the Major Default is not capable of remedy, give the State a program to prevent the Major Default from recurring and complying with any reasonable requirements of the State set out in the Major Default Notice (which may include a plan to replace the Subcontractor causing the Major Default),

for review by the State in accordance with the Review Procedures.

(b) **(Content of remedy program):** Any program provided to the State under clause 48.3(a) must include:

- (i) each task to be undertaken, the date by which each task is to be completed and the additional resources and personnel (if applicable) to be applied:
 - A. in respect of clause 48.3(a)(i), to remedy the Major Default; or
 - B. in respect of 48.3(a)(ii), to prevent the Major Default from recurring; and
- (ii) any temporary measures that will be undertaken while the Major Default is being cured in order to ameliorate the impact of the Major Default.

(c) **(Compliance):** Notwithstanding the fact that it may have exercised its rights under clause 48.2(d) to 48.2(g), Project Co must comply with any program provided under clause 48.3(a) in the form approved by the State in accordance with the Review Procedures.

(d) **(Maximum remedy period):** Subject to the Financiers Tripartite Deed and clause 48.4(a), the maximum period of time (including any extension under clause 48.4(b)) which Project Co may be given to remedy a Major Default will be:

- (i) where the applicable Major Default occurs during the Delivery Phase, 12 Months in the aggregate from the date of the applicable Major Default Notice; and

- (ii) where the applicable Major Default occurs during the Operating Phase, 6 Months in the aggregate from the date of the applicable Major Default Notice.

48.4 Extension of remedy program

- (a) **(Impact of Relief Event):** If Project Co is prevented from carrying out its obligations in accordance with clause 48.3 as a direct result of a Relief Event for which Project Co is entitled to an extension of time or relief (as applicable) in accordance with this Deed, then the program to remedy or comply (including the time to remedy the Major Default or comply with the State's requirements), the periods identified in clause 48.3(d), and the time set out in the Major Default Notice, must be extended:
 - (i) to reflect the period Project Co is prevented from carrying out its obligations in accordance with the remedy program by that Relief Event; or
 - (ii) without limiting clause 44, in respect of loss or damage caused by that Relief Event, for the period from the commencement of that loss or damage until the earlier of the date that the necessary repairs or rebuilding have been completed, or ought reasonably to have been completed,provided that:
 - (iii) the period of extension granted under this clause 48.4(a) must not exceed:
 - A. during the Delivery Phase, the period of extension of time granted under clause 38.5 or 38.6; or
 - B. during the Operating Phase, the period of relief granted under the Change Compensation Principles,(as applicable) for that Relief Event; and
 - (iv) Project Co demonstrates to the State's satisfaction (acting reasonably) that Project Co has diligently pursued and, to the extent reasonably possible, continues to diligently pursue the program agreed or determined under clause 48.3.
- (b) **(Extension of Major Default Notice):** Subject to clauses 48.3(d) and 48.4(d), if Project Co:
 - (i) is not able to, where the Major Default is capable of remedy, remedy the Major Default or, where the Major Default is not capable of remedy, comply with the reasonable requirements of the State in respect of the Major Default within the timeframe stated in the Major Default Notice; and
 - (ii) Project Co has been diligently pursuing the remedy of that Major Default or compliance with any reasonable requirements of the State (as the case may be),

Project Co may request that the State extend the time stated in the Major Default Notice and the State will grant an extension for such period as the State determines is required (acting reasonably) to either enable Project Co to remedy the Major Default or comply with any reasonable requirements of the State.

- (c) **(Request for further information):** The State may request, and Project Co must provide, any further information reasonably required by the State to enable the State to determine an extension under clause 48.4(b).
- (d) **(Limitation):** Project Co is only entitled to one extension in accordance with clause 48.4(b) in connection with the same Major Default.

48.5 Effect of curing

If a Major Default occurs and is cured by any person, any rights in respect of that Major Default which have not been exercised prior to it being cured, may not thereafter be exercised.

49. Termination

49.1 Sole basis

- (a) **(Sole basis):** Clauses 3.4 and this clause 49 set out the sole basis at Law or otherwise upon which the State is entitled to terminate, rescind or accept a repudiation of this Deed.
- (b) **(No limitation):** Subject only to clauses 49.1(a) and 36.3(d):
 - (i) nothing in clauses 3.4 or this clause 49 in any way prejudices or limits any other rights or remedies of the State, whether under this Deed or any other State Project Document or otherwise at Law, and whether against Project Co or otherwise, in relation to any Default Termination Event, Major Default or breach of any State Project Document; and
 - (ii) the termination of this Deed on any basis, and any payment of the relevant Termination Payment, will not in any way prejudice or limit either party's Liability to the other in respect of the events giving rise to the termination.
- (c) **(No right to terminate):** Subject to clause 49.3 but notwithstanding any other provision of this Deed or any rights Project Co has at Law or otherwise but for this clause 49.1(c), Project Co acknowledges that it has no right under this Deed, at Law, or otherwise, to terminate this Deed.

49.2 Voluntary Termination

- (a) **(Voluntary termination notice):** The State may:
 - (i) at any time and in its sole and absolute discretion, terminate this Deed by giving Project Co not less than 60 Business Days' notice; and
 - (ii) thereafter, at its absolute discretion, complete any uncompleted part of the Project either itself or by engaging others to do so.
- (b) **(Date of termination):** Termination of this Deed under clause 49.2(a) will take effect upon the date specified in the notice given under clause 49.2(a).

49.3 Termination for Force Majeure

- (a) **(Force Majeure Termination Event notice):** Subject to clause 49.3(c), if a Force Majeure Termination Event occurs (or is deemed to occur), then either party may terminate this Deed by giving notice to the other party.
- (b) **(Date of termination):** Termination of this Deed for a Force Majeure Termination Event will take effect upon the date specified in the notice given under clause 49.3(a).

- (c) **(Restrictions on termination):** Project Co is not entitled to terminate this Deed under clause 49.3(a) during the period Project Co is able to recover (or, but for any breach by Project Co or any of its Associates of a State Project Document or the relevant Insurances, would have been able to recover) under the advance loss of profits Insurance (applicable to the Works) or the consequential loss cover section of the industrial special risks Insurance or other business interruption Insurance (in respect of the Operating Phase) for the relevant Force Majeure Termination Event.

49.4 Default Termination Event

- (a) **(Rights):** If any Default Termination Event occurs, the State may, without limiting any rights or remedies it has under this Deed or at Law (other than rights of termination), elect to, subject to the Financiers Tripartite Deed:
- (i) terminate this Deed by giving written notice to Project Co; or
 - (ii) exercise its rights under clause 42.3 to cure or attempt to cure the Default Termination Event.
- (b) **(Date of termination):** Termination of this Deed for a Default Termination Event will take effect upon the date specified in the notice given under clause 49.4(a).

49.5 Assistance

Project Co will use its best endeavours to assist the State in the exercise of the State's rights in accordance with this clause 49.

49.6 Payment on termination

- (a) **(Payment):** Subject to clause 49.6(b), if the State has terminated this Deed in accordance with this clause 49, no later than the Termination Payment Date:
- (i) where the Termination Payment is a positive amount, the State must pay to Project Co; and
 - (ii) not used,
- as a debt due and payable, the relevant Termination Payment, being:
- (iii) for Voluntary Termination, the Voluntary Termination Payment;
 - (iv) for a termination for a Force Majeure Termination Event, the Force Majeure Termination Payment; or
 - (v) for termination for a Default Termination Event, the Default Termination Payment,
- in accordance with the Termination Payments Schedule.
- (b) **(Project Co obligations):** The State's obligation to pay a Termination Payment under clause 49.6(a) is subject to Project Co having delivered up the vacated Site and the Relevant Infrastructure to the State in accordance with clause 37.3(a) and this clause 49.6. In addition, if Project Co has not satisfied the other obligations in accordance with clause 37 on or before the Termination Payment Date, the State may withhold a portion of the Termination Payment equivalent to [REDACTED] of the forecast cost of satisfying those obligations (such portion to be determined by the State, acting reasonably) until such time as those obligations are satisfied by Project Co.
- (c) **(State's rights):** If the State is not satisfied that Project Co has satisfied its obligations in clause 49.6(b), Project Co will be Liable to the State for the amount that is reasonably necessary to cover the expected costs of performing those

obligations (including reasonable contingencies) in addition to any Termination Payment payable by Project Co in accordance with this clause 49.6 and the Termination Payments Schedule.

- (d) **(Payment obligations cease):** Upon termination under this clause 49, the State's future obligations under State Project Documents to pay the Monthly Service Payment and any CDPD Amount will cease.

49.7 Novation of liabilities to the State

- (a) **(State's election):** Where this Deed is terminated and, prior to the payment of any Termination Payment in accordance with clause 49.6 and the Termination Payments Schedule, the Project Co Entities have any Debt outstanding, the State may elect to assume (or have its nominee assume) some or all of the Liability for that Debt that would otherwise have been payable by the Project Co Entities, and to the extent the State so elects by notice to Project Co:
- (i) Project Co must ensure that Liability is novated to the State (or its nominee); and
 - (ii) the amount of the Termination Payment which the State would otherwise be obliged to pay will be reduced by:
 - A. the amount of the Liability; and
 - B. the amount of any costs of terminating the Finance Documents which would otherwise have been taken into account in determining the Termination Payment, but which are not incurred by reason of the novation.
- (b) **(Finance Documents):** Project Co must ensure that the Project Co Entities are permitted, in accordance with the terms of the Finance Documents, to procure the novation of its debt obligations in accordance with this clause 49.7.

49.8 Waiver

If this Deed is terminated in accordance with this Deed, then:

- (a) **(Liability):** subject to clause 49.8(b):
- (i) Project Co waives (and must ensure that Finance Co waives) any right it might otherwise have to make any Claim against the State or any of its Associates; and
 - (ii) the State and each of its Associates will have no further Liability to Project Co or any of its Associates,
- by reason, or as a result, of the termination or the circumstances relating to the termination, or otherwise arising out of or in connection with the Project Documents, the Site, the Project Activities or the Project more generally other than any Claim previously notified to the State in accordance with this Deed which is not otherwise due and payable under this Deed;
- (b) **(Exclusive entitlement):** Project Co's sole and exclusive entitlement to make a Claim against the State following termination of this Deed will be in connection with its rights to a Termination Payment; and
- (c) **(Wrongful termination):** if the State terminates this Deed for a Default Termination Event and it is subsequently determined that such termination was wrongful (including if the State has terminated this Deed for a deemed Default Termination Event under clause 48.2(f) and it is subsequently determined that the State had no right to terminate this Deed on that basis), then, unless the parties agree otherwise,

such exercise shall be deemed to have been a voluntary termination in accordance with clause 49.2 and Project Co's sole rights in such circumstances will be those set out in this clause 49.6(a)(iii).

49.9 Additional rights and obligations on Termination

The additional rights and obligations of the parties on a termination of this Deed are set out in clause 37.

50. Dispute Resolution procedure

50.1 Procedure

- (a) **(Resolution procedure):** Unless a State Project Document provides otherwise, any dispute between the State and Project Co arising in connection with:
- (i) any State Project Document or the Project Activities (including questions concerning this Deed's existence, meaning, validity or termination); or
 - (ii) any decision of the Independent Certifier or report of the Handover Reviewer which is not stated in this Deed to be final and binding on the parties,
- (each a **Dispute**) must be resolved in accordance with this clause 50 and clauses 51 to 53.
- (b) **(Procedure):** Subject to clause 50.2, the procedure that is to be followed to resolve a Dispute is as follows:
- (i) first, the Dispute must be the subject of negotiation as required by clause 51;
 - (ii) secondly, if the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 51(c)(i), within 10 Business Days (or such longer period as the Executive Representatives have agreed in writing) after the expiration of that period:
 - A. the parties may agree that the Dispute will be referred to an expert for determination under clause 52;
 - B. where the Dispute is expressed in this Deed to be a Dispute which may be referred to an expert under clause 52, either party may refer the Dispute to an expert for determination under clause 52; or
 - C. otherwise either party may refer the Dispute to arbitration under clause 53; and
 - (iii) thirdly, if:
 - A. the Dispute has been referred to expert determination in accordance with clause 52 and a determination is not made by the expert within 20 Business Days after the expert's acceptance of appointment (or such longer period as the parties and the expert may agree in the relevant Expert Determination Agreement); or
 - B. the Dispute is referred to expert determination and a notice of dissatisfaction is given under clause 52.4(a),

then the Dispute must be referred to arbitration under clause 53.

- (c) **(Disputes involving Finance Co):** The parties acknowledge and agree that any dispute between the State (on the one hand) and Project Co and/or Finance Co (on the other hand) arising in connection with the Receivables Purchase Deed or the Payment Direction Deed (as applicable), must be resolved in accordance with clauses 50 to 53 as if it were a Dispute between the State and Project Co.

50.2 Selection of resolution process

Where this Deed provides that either party 'may' refer a Dispute to expert determination in accordance with clause 52:

- (a) **(Negotiations):** the parties must first follow the process set out in clause 51 before either party refers the matter for expert determination in accordance with clause 52;
- (b) **(Expert Determination):** the use of the term 'may' means that if the parties have failed to resolve the Dispute in accordance with clause 51 or determined the way in which the Dispute will be resolved and a party elects to further pursue the resolution of the Dispute, it must do so in accordance with clause 52; and
- (c) **(Arbitration):** subject to clause 52.4, if a party has referred a Dispute for expert determination in accordance with clause 52, neither party may refer the Dispute to arbitration (other than in accordance with clause 52.4), or take any steps to enjoin or otherwise restrain the referral of the Dispute to an expert.

51. Senior Negotiations

- (a) **(Notification):** If a Dispute arises then a party may give notice to the other party requesting that the Dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of the State and Project Co (**Executive Representatives**).
- (b) **(Contents of Notice):** A notice under clause 51(a) must:
 - (i) state that it is a notice under this clause 51; and
 - (ii) include or be accompanied by particulars of the matters the subject of the Dispute.
- (c) **(Attempt to resolve Dispute):** If a Dispute is referred for resolution by negotiation under clause 51(a), then:
 - (i) the Executive Representatives must meet and attempt in good faith to resolve the Dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 51(a) is received (or such later date as the parties may agree); and
 - (ii) any agreement reached between the Executive Representatives will be reduced to writing, signed by or on behalf of each party and will be contractually binding on the parties.

52. Expert determination

52.1 Expert determination

If:

- (a) **(Dispute unresolved by Executive Representatives):** a Dispute which has been referred to the Executive Representatives for negotiation in accordance with clause

51(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 51(c)(i); and

- (b) **(Referral to expert):** within 10 Business Days after the expiration of the period for negotiation referred to in clause 51(c)(i) either:
- (i) the parties agree that the Dispute be referred to an expert for determination in accordance with this clause 52; or
 - (ii) where the Dispute is expressed in this Deed to be a Dispute which may be referred to an expert under clause 52, either party refers the Dispute to an expert for determination under clause 52,

then those parts of the Dispute which remain unresolved will be referred to an expert for determination under this clause 52.

52.2 Selection of expert

- (a) **(Exchange of lists of three preferred experts):** Within 10 Business Days after the date on which a Dispute is referred to an expert for determination under clause 52.1, if the State and Project Co are unable to agree on an expert to determine the Dispute, the State and Project Co must exchange lists of three persons (in order of preference) who, if appointed, would satisfy the requirements of clause 52.2(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists):** Any person that appears on both lists under clause 52.2(a) will be appointed as the expert to determine a Dispute and if more than one person appears on both lists the person given the highest order of priority by the party that gave the notice under clause 51(a) will be appointed.
- (c) **(Appointment if no person appears on both lists):** If no person appears on both lists, the party which gave the notice under clause 51(a) must procure the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 52.2(a) within 10 Business Days of the exchange of lists under clause 52.2(a).
- (d) **(Appropriate skills):** It is the intention of the parties that the expert appointed to determine a Dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment):** Neither party will be entitled to challenge the appointment of an expert under this clause 52.2 on the basis that the expert does not satisfy the requirements of clause 52.2(d).
- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Deed will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2010 (NSW)*.
- (g) **(Agreement):** Within 10 Business Days of the expert being agreed, deemed or nominated, the State and Project Co must enter into an agreement with the expert on substantially the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

52.3 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, in accordance with the terms of the Expert Determination Agreement.

52.4 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on the State and Project Co unless:
 - (i) the expert determination includes:
 - A. payment of compensation and the amount claimed, or subsequently determined by the expert, to be payable is equal to or greater than \$1,000,000 (Indexed); or
 - B. an extension of a Date for Completion or rejection of an extension to a Date for Completion and the period of the extension that was claimed in the notice under clause 51(a) is more than 5 Business Days; and
 - (ii) within 10 Business Days of receipt of the determination, a party gives notice to the other party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 53.
- (b) **(Amendment to determination):** Upon submission by any party, the expert may amend the determination to correct:
 - (i) a clerical mistake;
 - (ii) an error from an accidental slip or omission;
 - (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (iv) a defect in form.

52.5 Liability of expert

- (a) **(Liability of expert):** The parties agree:
 - (i) that the expert will have no liability in connection with the expert determination, except in the case of fraud on the part of the expert; and
 - (ii) to indemnify the expert against any Claim or Liability in connection with the determination, (except in the case of fraud on the part of the expert) in which case a Claim may be made against the expert by any party to the Dispute.
- (b) **(Engagement):** The State and Project Co will jointly engage the expert services in connection with the expert determination proceedings and each party will seek a separate Tax Invoice equal to its share of the costs of the expert.

52.6 Costs

The State and Project Co must:

- (a) **(Proceedings):** bear their own costs in connection with the expert determination proceedings; and
- (b) **(Cost apportionment):** pay an equal portion of the costs of the expert.

52.7 Proportional Liability

To the extent permitted by Law, the expert will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause

52.7, have applied to any Dispute referred to expert determination in accordance with this clause 52.

53. Arbitration

53.1 Reference to Arbitration

- (a) **(Dispute):** If:
- (i) a Dispute:
 - A. which has been referred to the parties' Executive Representatives for negotiation in accordance with clause 51 remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 51(c)(i); and
 - B. is not a Dispute which the parties have agreed to refer to or must be referred to an expert for determination in accordance with clause 52; or
 - (ii) in the case of a Dispute which is or must be referred to an expert for determination in accordance with clause 52:
 - A. a determination is not made within 30 Business Days after the expert's acceptance of the appointment; or
 - B. a notice of dissatisfaction is given in accordance with clause 52.4,
- then the State or Project Co may notify the other that it requires the Dispute to be referred to arbitration.
- (b) **(Referral):** Upon receipt by the other party of a notice under clause 53.1(a), the Dispute will be referred to arbitration.

53.2 Arbitration

- (a) **(ACICA Rules):** Arbitration in accordance with this clause 53 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) subject to this clause 53.
- (b) **(Seat):** The seat of the arbitration will be Sydney, New South Wales.
- (c) **(Language):** The language of the arbitration will be English.

53.3 Appointment of arbitrator

The parties will endeavour to agree on the person to be appointed as arbitrator, but if no such agreement is reached within 10 Business Days of the Dispute being referred to arbitration in accordance with clause 53.1(b), the arbitrator will be appointed by the Australian Centre for International Commercial Arbitration.

53.4 General Principles for conduct of arbitration

- (a) **(Conduct of arbitration):** The parties agree that:
- (i) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
 - (ii) any arbitration conducted in accordance with this clause 53 will not necessarily mimic court proceedings of the seat of the arbitration or the

place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and

- (iii) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 53.4(a)(i) and 53.4(a)(ii).
- (b) **(Evidence in writing)**: All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery)**: The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration.
- (d) **(Oral hearing)**: The oral hearing must be conducted as follows:
 - (i) any oral hearing must take place in Sydney, New South Wales and all outstanding issues must be addressed at the oral hearing;
 - (ii) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 53.4(a) when determining the duration of the oral hearing;
 - (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (iv) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
 - (v) not less than 28 days prior to the date fixed for oral hearing each party must give notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross examination;
 - (vi) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set pursuant to clause 53.4(d)(ii);
 - (vii) a party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross-examination; and
 - (viii) each party is expected to put its case on significant issues in cross examination of a relevant witness called by the opposing party or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the opposing party may know the nature of and basis for the challenge to the written evidence of a witness.
- (e) **(Experts)**: Unless otherwise ordered each party may only rely upon one expert witness in connection with any recognised area of specialisation.

53.5 Civil Liability Act 2002 (NSW)

- (a) **(Part 4)**: The powers conferred, and restrictions imposed, on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on an arbitrator appointed in accordance with this clause 53.

- (b) **(Determination):** The arbitrator has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (or any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to the arbitrator.

53.6 Proportional liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 53.6, have applied to any Dispute referred to arbitration in accordance with this clause 53.

53.7 Continue to perform

Notwithstanding the existence of a Dispute, each party must continue to perform its obligations in accordance with the State Project Documents.

53.8 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of New South Wales, Australia.

53.9 Interlocutory relief

This clause 53 does not prevent a party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that party's reasonable opinion, that action is necessary to protect that party's rights.

53.10 Jurisdiction of courts

Without limiting clauses 50 to 53, each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed.

Part K - Corporate obligations

54. Representations and warranties

54.1 State's representations and warranties

The State represents and warrants for the benefit of Project Co that:

- (a) **(Power to execute)**: it has the power to execute, deliver and carry out its obligations under the State Project Documents and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) **(Validity)**: each State Project Document constitutes a valid and legally binding obligation on it in accordance with its terms; and
- (c) **(Legality)**: the execution, delivery and performance of each State Project Document does not violate any Law to which the State is subject.

54.2 Project Co's representations and warranties

Project Co represents and warrants for the benefit of the State that:

- (a) **(Incorporation)**: each Project Co Entity is duly incorporated in Australia and is existing under Australian Law;
- (b) **(Power to execute)**: each Project Co Entity has the capacity and power to execute, deliver and perform its obligations under the Project Documents to which it is a party and all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
- (c) **(Legality)**: the execution, delivery and performance of each Project Document to which it or Finance Co is a party does not violate any Law, document or agreement to which it or Finance Co is a party or which is binding on it or Finance Co or any of its or Finance Co's assets;
- (d) **(Validity)**: each of the Project Documents to which it or Finance Co is a party constitutes a valid and legally binding obligation on it or Finance Co (as applicable), enforceable in accordance with its terms;
- (e) **(No trust relationship)**: except as stated in this Deed, neither Project Co Entity is the trustee or Responsible Entity of any trust nor does any Project Co Entity hold any property subject to or impressed, by any trust;
- (f) **(No subsidiaries)**: neither Project Co Entity has any subsidiaries;
- (g) **(No tax consolidation)**: neither Project Co Entity is part of any tax consolidation arrangement contemplated by the *Income Tax Assessment Act 1997* (Cth) or GST grouping arrangement contemplated by the GST Law, except with the consent of the State;
- (h) **(No trading)**: neither Project Co Entity has traded since its incorporation, other than for the purposes of entering into the Project Documents and has no liabilities other than those that have arisen in connection with the Project Documents;
- (i) **(Residency)**: it is a resident in Australia and has not transferred any of its business outside of Australia;
- (j) **(No liability)**: it does not hold any property and has not incurred any liability other than for the purposes of the Project;

- (k) **(Information true and correct):** all information that has been provided to the State in connection with the Project Documents is true, accurate and correct in all material respects and Project Co is not aware of any material facts or circumstances that have not been disclosed to the State and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed with Project Co;
- (l) **(No other security interests):** none of its assets are subject to any Security Interest other than a Permitted Security Interest;
- (m) **(No immunity):** it does not (in any capacity) have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (n) **(No default):** it is not in default of its material obligations under any Project Document to which it is expressed to be a party;
- (o) **(No knowledge of other proposals):** prior to the date of this Deed, it had no knowledge of any part of the proposal by any other proponent for the Project and has not directly or indirectly communicated any part of its proposal for the Project to any other proponent; and
- (p) **(No arrangement):** it has not entered into any contract or arrangement or arrived at any understanding with any other proponent in relation to the Project to the effect that it will pay money to or confer any benefit upon any other proponent as a result of entering into this Deed or providing its proposal for the Project.

54.3 Repetition of representation and warranties

Each representation and warranty given by Project Co under this Deed:

- (a) **(Date of Deed):** is made on the date of this Deed; and
- (b) **(Repetition):** other than those set out in clauses 54.2(o) and 54.2(p), will be deemed to be repeated each day during the period from the date of this Deed to the Expiry Date,

with reference to the facts and circumstances then subsisting.

55. Benefits held on trust for its Associates

- (a) **(Benefit of indemnities):** The State holds on trust for:
 - (i) each Indemnified Person and each Indemnified IP Party each indemnity and release given by Project Co under this Deed in favour of the Indemnified Person or Indemnified IP Party (as the case may be); and
 - (ii) each of its Associates and the NSW Government and its Associates, each right in this Deed to the extent that such right is expressly stated to be for the benefit of the State's Associates, NSW Government or NSW Government Associates.
- (b) **(Project Co acknowledgement):** Project Co acknowledges the existence of such trusts, and consents to:
 - (i) the State exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of the relevant parties; and
 - (ii) the relevant parties exercising rights in relation to, or otherwise enforcing the indemnities, releases and those rights as if they were a party to this Deed.

56. Project Co general undertakings

- (a) Project Co must:
- (i) **(Dispute proceedings):** (and must ensure that Finance Co) immediately upon becoming aware that any litigation, arbitration, administration, adjudication or mediation proceedings, which may adversely affect the Project or Project Co's or a Key Subcontractor's ability to perform its obligations under the Project Documents, have been commenced or threatened, give the State written notice of such litigation, arbitration, administrative, adjudication or mediation proceedings; and
 - (ii) **(Restrictions):** not (and must ensure that Finance Co does not):
 - A. change or cease its business or start any other business other than that to be carried on by it or Finance Co (as applicable) under the Project Documents;
 - B. cease to be resident in Australia or transfer in whole or in part its undertaking, business or trade outside Australia;
 - C. acquire or hold any property or incur any liability other than for the purposes of the Project;
 - D. enter into contracts with, or assume or permit to subsist any liability in favour of, other Consortium Members, the Equity Investors or any of their respective Associates; or
 - E. engage in any tax consolidation arrangement contemplated by the *Income Tax Assessment Act 1997* (Cth) or GST grouping arrangement contemplated by the GST Law,without the State's prior consent.
- (b) **(State consent):** The State must not unreasonably withhold its consent under clause 56(a)(ii) if the relevant transaction is on arm's length commercial terms.

57. Assignment and amendments

57.1 Assignment, amendments and other dealings by Project Co Entities

- (a) **(Restrictions on Project Co):** Except as expressly permitted by this Deed, the Financiers Tripartite Deed or the State Security, Project Co must not (and must ensure that Finance Co does not):
- (i) enter into any financing agreements (including in respect of present or contingent indebtedness, deferred purchase or leasing arrangements or similar obligations, but excluding indebtedness incurred in the ordinary course of carrying out the Project) other than the Finance Documents;
 - (ii) assign, novate, mortgage, charge, create or allow to exist any security interest over, make or permit any material amendment to or, waive, terminate, surrender, rescind or accept repudiation of any Project Document or enter into any agreement or arrangement which affects the operation or interpretation of any Project Document; or
 - (iii) lease, license, transfer, sell, dispose of, part with possession of, mortgage, charge or otherwise deal with the whole or any part of the Site or the Relevant Infrastructure,

without the State's prior consent (each an **Amendment** for the purposes of this clause 57).

- (b) **(Exceptions):** Clause 57.1(a) does not apply in respect of:
- (i) a Refinancing which is implemented in accordance with clause 41;
 - (ii) an event or circumstance described in paragraphs (d) to (h) of the definition of 'Refinancing';
 - (iii) a Change in Control, which is to be dealt with in accordance with clauses 58.2 to 58.8; or
 - (iv) a Key Subcontract or Significant Subcontract.
- (c) **(Notice of intended Amendment):** If any Project Co Entity requires an Amendment, Project Co must submit to the State a written request seeking its consent. Such a request must set out:
- (i) the proposed Amendment and the reasons for it;
 - (ii) the response or anticipated response of any other party to the Project Documents regarding the proposed Amendment;
 - (iii) the response or anticipated response of any assignee or incoming party of the Project Documents to the proposed Amendment; and
 - (iv) copies of any documents relevant to Project Co's request.
- (d) **(State to advise):** Subject to clause 57.1(f), the State must advise Project Co, within:
- (i) 15 Business Days of receiving its request under clause 57.1(c) if it requires further information from Project Co regarding the proposed Amendment, in which case Project Co must provide the additional information sought by the State within a further period of 10 Business Days after receiving the State's request for further information; and
 - (ii) 10 Business Days of receiving its request under clause 57.1(c) or the additional information requested by the State under clause 57.1(d)(i), whether:
 - A. it consents to the proposed Amendment; or
 - B. the proposed Amendment is unacceptable to it and the reasons why the proposed Amendment is unacceptable.
- (e) **(Failure to respond):** If the State fails to respond for any reason within the relevant period specified under clause 57.1(d)(ii) in relation to a proposed Amendment in respect of a Project Document, which is not a State Project Document, Project Co:
- (i) may send a reminder notice; and
 - (ii) if the State fails to respond to the reminder notice within 10 Business Days, the State will be deemed to have not consented to the requested Amendment.
- (f) **(State consent):** The State will not withhold its consent to a requested Amendment where the requested Amendment will not have a material adverse effect on:
- (i) the ability of any Project Co Entity to perform, and observe its respective obligations under any Project Document to which it is a party; or

- (ii) the rights or Liability of the State under any State Project Document, or the ability or capacity of the State to exercise its rights or perform its obligations under a State Project Document.

57.2 Amendment of State Project Document

Except as otherwise expressly provided in the State Project Documents, no amendment to any State Project Document is valid or binding on a party unless made in writing and executed by the State and all other parties to the relevant State Project Document.

57.3 Assignment by the State

- (a) **(Project Co consent required):** Subject to clause 57.3(b), the State may not sell, transfer or assign or otherwise dispose of all or any part of its interest in the State Project Documents without the prior consent of Project Co.
- (b) **(No consent required):** The State may sell, transfer, novate, assign or otherwise deal with or dispose of all or any part of its obligations, liabilities, rights or interests under the State Project Documents without the Project Co Entities' consent, if the proposed transferee is:
 - (i) the State of New South Wales (including the Crown in right of the State of New South Wales);
 - (ii) a Minister on behalf of the Crown in right of the State of New South Wales;
 - (iii) any other person acting on behalf of the State of New South Wales (or the Crown in right of the State of New South Wales) where the State of New South Wales (including the Crown in right of the State of New South Wales) remains bound by the obligations and liabilities of, and has the benefit of the rights and interests of, the State under the State Project Documents (other than the PAFA Act Deed Poll of Guarantee); or
 - (iv) an entity described in paragraph (a) of the definition of 'Authority', which is not an entity as referred to in clause 57.3(b)(i), (ii) or (iii) above, and the obligations of which are supported by a guarantee from the State of New South Wales (including the Crown in right of the State of New South Wales) on terms no less favourable in substance than those contained in the PAFA Act Deed Poll of Guarantee,

(State Nominee).
- (c) **(State sale, transfer, assignment or disposal):** If the State elects to sell, transfer or assign or otherwise dispose of all or any part of its interest in the State Project Documents in a manner permitted under clause 57.3(b):
 - (i) Project Co consents (and must procure Finance Co to consent) to that sale, transfer, assignment or disposal;
 - (ii) Project Co must (and must procure Finance Co to) promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to the State and the State Nominee) to give effect to that sale, transfer, assignment or disposal; and
 - (iii) from the date of such sale, transfer, assignment or disposal, all references to 'the State' in this Deed will be deemed to include reference to the State Nominee in place of the State.

57.4 Copies of Finance Documents

Subject to clause 41.4, Project Co must deliver to the State, a certified complete copy of each Finance Document entered into by any Project Co Entity and each amendment to, or waiver, variation or change of any provision of, the Finance Documents, in each case within 5 Business Days after its execution.

57.5 Financiers' securities

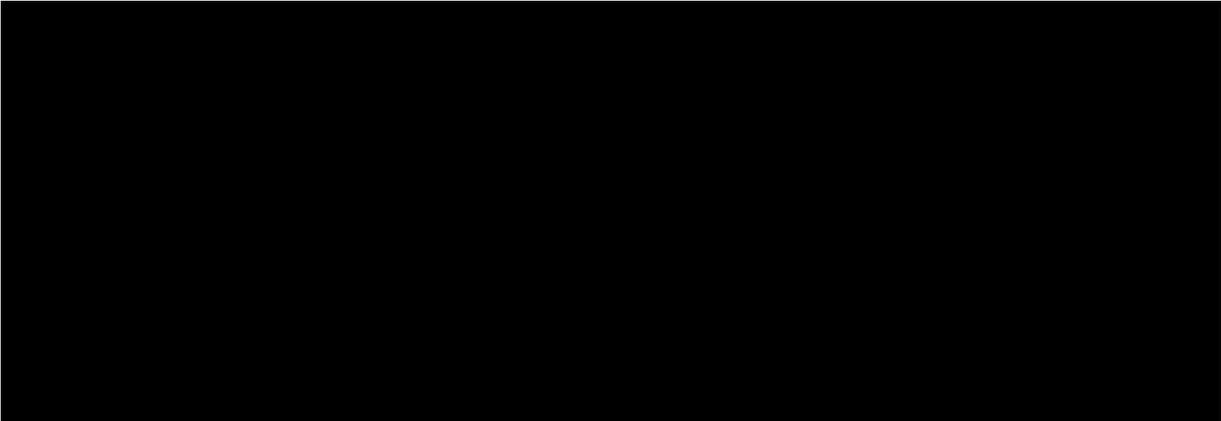
Each Project Co Entity may mortgage or charge its interest under the Project Documents to secure its obligations to any Financier (or the trustee or agent for any Financier) under the Finance Documents, if, and for so long only as, the Financier (or the trustee or agent for the Financier) is a party to the Financiers Tripartite Deed.

58. Change in Control

58.1 Initial status of ownership

Project Co represents and warrants that, as at the date of this Deed and at Financial Close, each Project Co Entity will be indirectly and beneficially owned and Controlled as set out in the Ownership Schedule.

58.2



58.3 Notification of changes in control / management

- (a) **(Notification):** Project Co must give the Commissioner written notice immediately if Project Co becomes aware of a change of control or change of management of a Project Co Entity or the Operator.
- (b) **(Definitions):** For the purpose of this clause 58.3 only:
 - (i) a change of control of an entity occurs where:
 - A. an entity that Controls (as that term is defined in the Corporations Act) ceases to Control (as that term is defined in the Corporations Act) that entity; or
 - B. an entity that does not Control (as that term is defined in the Corporations Act) an entity comes to Control that entity (as that term is defined in the Corporations Act); and
 - (ii) change of management means the appointment, resignation or termination of:
 - A. an officer of a Project Co Entity or the Operator; or
 - B. the General Manager.

58.4 Restrictions on Changes in Control

Subject to clause 58.8, Project Co must not and must ensure that each Group Member does not at any time, permit or suffer any Change in Control of a Consortium Member without the State's prior consent which must be requested by notice from Project Co to the State (unless such Change in Control is a Permitted Change in Control).

58.5 Notice to State

Any notice under clause 58.4 seeking the consent of the State to a Change in Control must include:

- (a) **(Nature of proposed change):** the extent and nature of the proposed Change in Control, including the identity and address of each person proposed to acquire Control; and
- (b) **(Necessary information):** all other information necessary for the State to determine:
 - (i) whether to consent to the Change in Control; or
 - (ii) the probity or other investigations (if any) the State wants to undertake in respect of the persons to whom clause 58.5(a) refers.

58.6 State's right to withhold consent

Subject to clauses 58.2 and 58.9, the State may only refuse to consent to a proposed Change in Control that is not a Permitted Change in Control if the State is of the opinion (acting reasonably) that:

- (a) **(Grounds for State refusal):** the proposed Change in Control:
 - (i) is against the public interest;
 - (ii) would adversely affect the ability or capability of the Consortium Member to carry out its obligations in accordance with any Project Document;
 - (iii) would result in a Probity Event;
 - (iv) would, result in a Consortium Member being Controlled by an entity that:
 - A. is not a reputable Entity or person to properly carry out the obligations of the relevant Consortium Member under the relevant Project Documents;
 - B. is an unsuitable Entity or person, having regard to the activities or business of that entity or person, and their compatibility with the obligations of the relevant Consortium Member under the Project Documents; or
 - C. has an interest or duty which conflicts or may conflict in a material way with the interests of the State; or
 - D. does not have a sufficient level of financial, managerial or technical expertise or capacity to deliver the Project;
 - (v) would have a material adverse effect on the Project;
 - (vi) without limiting clause 58.6(a)(iv), would result in a Key Subcontractor no longer:
 - A. having sufficient expertise and ability; or

- B. being of sufficiently high financial and commercial standing, to properly carry out the obligations of the relevant Key Subcontractor under the relevant Project Documents;
- (vii) would increase the Liability of, or risks accepted by the State under the State Project Documents or in any other way in connection with the Project; or
- (viii) would result in a new Controlling Entity that is not Solvent and reputable; or
- (b) **(Trust)**: in respect of a change in the manager, trustee or Responsible Entity of any Group Member that is a trust, is such that the proposed manager, trustee or Responsible Entity no longer:
 - (i) has sufficient expertise or ability; or
 - (ii) is of sufficiently high financial and commercial standing, to properly carry out the obligations of the relevant manager, trustee or Responsible Entity under the relevant Project Documents.

58.7 Consent to a Change in Control

The State must advise Project Co, within 15 Business Days (or such longer period as the State reasonably requests given the nature of the proposed Change in Control) of receiving Project Co's request for consent in accordance with clause 58.4 or clause 58.9, whether:

- (a) **(Consent)**: it consents to the Change in Control;
- (b) **(Unacceptable)**: it does not consent to the Change in Control in which case it must provide reasons for doing so in accordance with clause 58.6; or
- (c) **(Further information)**: it requires further information from Project Co regarding the Change in Control, in which case Project Co must provide the additional information sought by the State within a further period of 10 Business Days, after which the State must respond in terms of clause 58.6 or clause 58.7 within 10 Business Days after the State receives that additional information.

58.8 Permitted Changes in Control

Project Co may effect, permit, suffer or allow a Permitted Change in Control at any time without the State's prior consent, provided that Project Co provides notice to the State of the proposed Permitted Change in Control:

- (a) **(Notice)**: subject to clause 58.8(b), as soon as reasonably practicable and, in any event, not less than 5 Business Days prior to the Permitted Change in Control; or
- (b) **(Shares)**: in relation to a Permitted Change in Control which relates to a transfer of shares or other interests which are listed on a recognised stock exchange, as soon as reasonably practicable.

58.9 On-market acquisitions

If:

- (a) **(Change in Control)**: a Change in Control occurs due to the transfer of shares or other interests which are listed on a recognised stock exchange; and
- (b) **(Prior consent not possible)**: the consent of the State is required under this Deed but could not have been obtained prior to the Change in Control,

that consent must be sought immediately after the Change in Control, and Project Co must procure that the Controlling Entity ceases to have the Control which resulted in the Change in Control within 60 Business Days after receiving any notice under clause 58.6 that the State withholds its consent to the Change in Control.

58.10 Costs relating to a Change in Control

Project Co must pay the State its costs (including legal and financial advisers' fees) reasonably incurred in relation to considering or consenting to a proposed Change in Control.

59. Financial Model

59.1 Updating the Base Case Financial Model at Financial Close

- (a) **(Base Case Financial Model)**: The parties acknowledge that the Base Case Financial Model is attached as Attachment 1.
- (b) **(Financial Close Adjustment Protocol)**: The parties agree that the Base Case Financial Model has been prepared on an indicative basis prior to the date of this Deed, and must be updated at Financial Close in accordance with the Financial Close Adjustment Protocol.
- (c) **(Financial Close Financial Model)**: The Base Case Financial Model will be:
 - (i) updated by the State in accordance with the Financial Close Adjustment Protocol; and
 - (ii) initialled by the parties,at Financial Close and will then become the Financial Close Financial Model.

59.2 Status of the Financial Model

The parties acknowledge and agree that:

- (a) **(Not actual performance)**: the Financial Model:
 - (i) may not reflect the actual financial performance or the projected performance or budgets of the Project or any Project Co Entity; and
 - (ii) is purely a model to be used in order to determine Forecast Debt and process Model Variation Events and Termination Payments; and
- (b) **(Errors or omissions)**: the State must not be adversely affected by any ambiguities, discrepancies, inconsistencies, conflicts, errors or omissions in the Financial Model.

59.3 Varying the Financial Model

- (a) Subject to clause 59.3(b), the parties must vary the Financial Model in accordance with this clause 59 upon the occurrence of any of the following events (each a **Model Variation Event**):
 - (i) **(CDPD Amount)**: on payment of the CDPD Amount in accordance with clause 35 and the CDPD Adjustment Protocol;
 - (ii) **(Refinancing)**: a Refinancing;
 - (iii) **(Change Compensation Event)**: a Change Compensation Event which results in a permanent adjustment to the Monthly Service Payment in accordance with this Deed (a **CCE Model Variation Event**);

- (iv) **(Prior to Commercial Acceptance)**: the date that is one Month prior to the date that Project Co reasonably expects to achieve Commercial Acceptance (as set out in the latest Delivery Phase Program); and
 - (v) **(Agreed Events)**: any other event which Project Co and the State agree to be a Model Variation Event.
- (b) **(Delivery Phase)**: The Financial Model does not need to be varied for a CCE Model Variation Event that occurs in the Delivery Phase (a **Delivery Phase CCE Model Variation Event**) in accordance with clause 59.3(a)(iii) unless and until:
- (i) the aggregate value of all Delivery Phase CCE Model Variation Events (as set out in the Change Response provided in connection with each relevant Delivery Phase CCE Model Variation Event) that have occurred since the Financial Model was last varied in accordance with clause 59.3(a)(iii), exceeds [REDACTED]
 - (ii) the value of any one Delivery Phase CCE Model Variation Event (as set out in the Change Response provided in connection with the relevant Delivery Phase CCE Model Variation Event) exceeds [REDACTED] or [REDACTED]
 - (iii) the Delivery Phase CCE Model Variation Event relates to an Extension Event, in which case the Model Output Schedule will be updated in accordance with section 3.3(a)(ii) of the Payment Schedule.

59.4 Principles for variations to the Financial Model

When a Model Variation Event occurs, the parties must vary the Financial Model, as necessary, by taking into account only the amounts:

- (a) **(Deed)**: determined in accordance with this Deed;
- (b) **(Agreement)**: agreed between the State and Project Co; or
- (c) **(Dispute resolution)**: determined in accordance with clause 50.

59.5 Procedures for variations to the Financial Model

Any variations to the Financial Model to take account of a Model Variation Event must be made as follows:

- (a) **(Project Co proposal)**: Project Co must propose the variation by notice to the State within 15 Business Days of the Model Variation Event occurring, giving:
 - (i) a varied Financial Model incorporating all adjustments relevant to the Model Variation Event and full details of the assumptions and calculations used;
 - (ii) an instruction manual outlining how to use the varied Financial Model, which is acceptable to the State, acting reasonably;
 - (iii) a proposed financial close protocol (if applicable) outlining the interest rate setting procedures and model solving procedures for adjusting the varied Financial Model to incorporate updated interest rates;
 - (iv) a revised Model Output Schedule; and
 - (v) a certificate from an auditor acceptable to the State confirming that an independent audit of the varied Financial Model has been completed and that:

- A. the calculations in the varied Financial Model have been checked and are in all material respects internally consistent and mathematically correct;
 - B. formulae applied across time periods in the varied Financial Model are consistent;
 - C. the varied Financial Model allows changes to assumptions and input data to correctly flow through to the results and outputs;
 - D. any macros in the varied Financial Model that govern the calculation of the varied Financial Model operate appropriately;
 - E. the assumptions and input data used in the varied Financial Model are consistent with all recent supporting Project Documents;
 - F. the calculations of any relevant ratios and financial covenants in the varied Financial Model have been checked and correctly reflect the definitions contained in the Finance Documents;
 - G. the varied Financial Model correctly incorporates the relevant structural features in the Debt term sheets such as reserve accounts, lock up provisions, default provisions, cash flow waterfall and amortisation;
 - H. the accounting assumptions, calculations and outputs (including financial statements) from the varied Financial Model are in accordance with Australian Accounting Standards Board (AASB) standards; and
 - I. the income taxation assumptions, calculations and outputs from the varied Financial Model are in accordance with Australian taxation laws.
- (b) **(Review):** the review of the varied Financial Model and the proposed financial close protocol (if applicable) must be undertaken in accordance with the Review Procedures;
- (c) **(Amendment):** once the variations to the Financial Model and the proposed financial close protocol, as applicable, are agreed or are determined in accordance with clause 50, Project Co must promptly amend the varied Financial Model and the proposed financial close protocol (if applicable) accordingly and resubmit this to the State. Project Co must also submit a certificate from an auditor acceptable to the State in accordance with clause 59.5(a)(v) in respect of the updated varied Financial Model if requested to do so by the State;
- (d) **(Varied Financial Model):** once agreed, the varied Financial Model (as adjusted in accordance with the proposed financial close protocol, if applicable) will be the Financial Model for the purposes of this Deed;
- (e) **(Audit Certificate):** if the varied Financial Model is adjusted under 59.5(d) in accordance with the proposed financial close protocol, Project Co must submit to the State a certificate from an auditor acceptable to the State confirming that an independent audit of the Financial Model has been completed in accordance with clause 59.5(a)(v); and
- (f) **(Updated Model Output Schedule):** whenever the Financial Model is updated, the Model Output Schedule must be updated to reflect the updated Financial Model.

59.6 Access to information

Without limiting clause 59.5(a), Project Co must provide the State and any other authorised representatives of the State with:

- (a) **(Electronic copies):** full access to electronic copies of the varied Financial Model, updated Model Output Schedule and proposed financial close protocol (if applicable);
- (b) **(Log of changes):** a log of all changes that have been made to the Financial Model and Model Output Schedule;
- (c) **(Calculations):** all supporting calculations; and
- (d) **(Other information):** any other information reasonably requested by the State,

for a Model Variation Event, including reasonable access to any financial modeller (including Project Co's and Finance Co's financial modeller) with ability to access that information, and relevant passwords or other access information.

59.7 Custody of Financial Model

The Financial Model must be held from Financial Close for the Term by the State on the basis that it must be released to Project Co for the purposes of:

- (a) varying the Financial Model and Model Output Schedule on the occurrence of Model Variation Events;
- (b) the calculation of Termination Payments; and
- (c) the determination of any Dispute in accordance with clauses 50 to 53.

60. Records and Accounts

60.1 Accounting records

- (a) **(Proper books of account):** Project Co must keep proper books of account, records and documents, financial and all other accounts and records it has relating to the Project (**Accounts and Records**) at its offices, and must ensure that each other Group Member, the D&C Subcontractor (during the Delivery Phase) and the Operator (during the Operating Phase) does likewise.
- (b) **(Annual audit):** Project Co must have its accounts audited annually on both an unconsolidated basis and on a consolidated basis (to the extent that Project Co is part of a consolidated entity, within the meaning of the Corporations Act) and must ensure that each other Group Member, the D&C Subcontractor (on a consolidated basis only) and the Parent Guarantor in respect of the D&C Subcontractor (up to the commencement of the CDPD Period and on a consolidated basis only) and the Operator and the Parent Guarantor in respect of the Operator does likewise.
- (c) **(Accounting principles):** Project Co must ensure that its Accounts and Records are prepared in accordance with the Corporations Act and generally accepted Australian accounting principles and practices consistently applied, and fairly represent its operations and financial condition or consolidated financial position (as the case may be) and must ensure that each other Group Member does likewise.
- (d) **(Availability of accounting records):** Project Co must ensure that its Accounts and Records are available to the State and any person authorised by the State at any time during Business Hours (subject to receiving 2 Business Days' notice from the State) during the Term for examination, audit, inspection, transcription and copying, and must ensure that each other Group Member does likewise.

- (e) **(Availability of accounting records if Deed is terminated):** Without limiting its obligations in accordance with clause 37, if this Deed is terminated, Project Co must give to the State and its Associates access to all of its Accounts and Records which are necessary for the carrying out of the Project Activities, and must ensure that each other Group Member does likewise for the purpose of inspection, copying or auditing.
- (f) **(Access to group members' accounting records):** The State must give Project Co access to any Accounts and Records given to it by a Group Member for a period of 7 years after the date they are given.

60.2 Cost to complete information

Project Co must give to the State the same information required to be given to any Financier in accordance with the Finance Documents in relation to the costs to complete construction of the Works, at such times as are required in accordance with the Finance Documents, and must ensure that each other Group Member does likewise.

60.3 Financial statements

- (a) **(Audited financial statements):** As soon as practicable (and in any event not later than 120 days) after the close of each Financial Year, Project Co must give to the State certified copies of the consolidated (if applicable) and unconsolidated audited financial statements for the previous Financial Year for Project Co and each Group Member and, if requested by the State, the D&C Subcontractor (during the Delivery Phase) and the Operator (during the Operating Phase).
- (b) **(Cashflow and profit and loss statements):** Not later than 30 days after the end of each Quarter, Project Co must give to the State certified copies of cashflow and profit and loss statements, and, if requested by the State, must ensure that each Group Member does likewise.

60.4 Records

- (a) **(General):** Project Co must keep and maintain Records including information in respect of the Output Specification as required by the State.
- (b) **(Compliance):** To demonstrate compliance with the Output Specification, Records must:
 - (i) incorporate the detail; and
 - (ii) meet the standards,
required by the State.
- (c) **(Availability of Records):** Project Co shall make all Records available to the State for inspection, audit, copying or any other purpose.

60.5 Other information

Project Co must give to the State the following information:

- (a) **(Copies):** copies of all documents or information given or received by any Group Member to or from the Australian Securities & Investments Commission or Australian Stock Exchange Limited, promptly after the information is first given or received;
- (b) **(Counterparty changes):** details of any changes to the Counterparty Details within 20 Business Days after the change;

- (c) **(Material changes)**: details of any material change in the financial condition of any Project Co Entity (since its incorporation) or any other Group Member, the Equity Investors, or a Key Subcontractor (since the date of their last audited accounts) which would prejudice the ability of any Project Co Entity to perform its obligations under the Project Documents; and
- (d) **(Other information)**: such other information relating to the Project as the State may reasonably require from time to time, including any information reasonably requested by the State to enable the State to comply with applicable Legislation (including the *State Records Act 1998* (NSW) in relation to Records, the Correctional Complex, the Inmates and other users of the Services (including former Inmates)).

60.6 Project Co Material

Project Co must maintain a document management system for all Project Co Material and Project Information that:

- (a) **(Requirements)**: is in accordance with any requirements set out in the Design Requirements or Services Requirements;
- (b) **(Safe and secure)**: is safe and secure and compatible with the State's document management systems as advised by the State;
- (c) **(Access)**: enables the State and its Associates (including any nominee) to quickly and easily retrieve, review and utilise Project Co Material; and
- (d) **(Distribution)**: tracks the distribution of all Project Co Material.

61. Intellectual Property Rights

61.1 Warranties

Project Co warrants to the State that:

- (a) **(No infringement of rights)**: no Intellectual Property Rights or Moral Rights or other rights of any person will be infringed or breached:
 - (i) in undertaking the Project Activities; or
 - (ii) by:
 - A. the Use of any Developed IP; or
 - B. the Use of any other Project Co Material, Project Co Background IP or the Relevant Infrastructure as permitted or contemplated by this Deed,

by the State, its Associates or any person nominated or authorised by the State; and
- (b) **(Ownership of rights)**: it owns all Intellectual Property Rights in the Project Co Material or, to the extent that it does not, it has the authority to grant the assignments and licences in this clause 61 and none of:
 - (i) the Use of any Developed IP by the State, its Associates or any person nominated or authorised by the State;
 - (ii) the Use of any other Project Co Material, Project Co Background IP or the Relevant Infrastructure by the State, its Associates or any person

nominated or authorised by the State as permitted or contemplated by this Deed; or

- (iii) the possession of any of that Project Co Material,

will give rise to any Liability on the part of the State, its Associates or any person nominated or authorised by the State, including to pay any compensation (including any royalty) to any person, or give rise to a right entitling any person to make a Claim against the State, its Associates or any person nominated or authorised by the State for any attribution or acknowledgment or rectification in relation to the Developed IP, Project Co Background IP or other Project Co Material.

61.2 Background IP

- (a) Project Co acknowledges and agrees that:
 - (i) **(Ownership)**: the State, its Associates or their respective head licensors (as the case may be) are and remain the owner of all State Background IP; and
 - (ii) **(Rights)**: neither Project Co nor any of its Associates has (under this Deed or otherwise) any title, entitlement to, or rights in relation to, any State Background IP or the Intellectual Property Rights in any State Background IP,

except to the extent provided in this clause 61.

- (b) The State acknowledges and agrees that:
 - (i) **(Ownership)**: Project Co, its Associates or their respective head licensors (as the case may be) are and remain the owner of all Project Co Background IP; and
 - (ii) **(Rights)**: neither the State nor any of its Associates has (under this Deed or otherwise) any title, entitlement to, or rights in relation to, any Project Co Background IP or the Intellectual Property Rights in any Project Co Background IP,

except to the extent provided in this clause 61.

61.3 Developed IP

- (a) **(Developed IP)**: All rights (including Intellectual Property Rights) in the Developed IP vest in the State at the time of creation, and at each and every stage of its development as Developed IP, and Project Co irrevocably assigns to the State all right, title and interest (including Intellectual Property Rights) in all Developed IP with effect from the time of creation, development or production of that Developed IP.
- (b) **(Assigned to State)**: Project Co must:
 - (i) ensure, where necessary, that it secures the right to vest the Developed IP in accordance with clause 61.3(a); and
 - (ii) do all such things and sign such documents (and cause its Associates to also do so if and when required),

to ensure that all Developed IP is assigned to the State, including as the State may require from time to time in order to perfect or record the assignments under clause 61.3(a).

- (c) **(Worldwide licence):** The State grants to Project Co a non-exclusive, royalty-free, non-transferable, worldwide licence to Use the Developed IP:
- (i) for the purposes of carrying out the Project Activities; and
 - (ii) for any other purpose, provided that:
 - A. no Confidential Design Information is disclosed;
 - B. no Personal Information is disclosed; and
 - C. the State has given its prior written consent, which consent must not be unreasonably withheld where the Developed IP does not disclose the identity of the Project or the Correctional Complex or any information that may disclose the identity of Inmates or other users of the Services (including former Inmates),

(subject always to Project Co's obligations of confidence in clause 62 unless otherwise agreed by the State in writing).
- (d) **(Sub-licence):** The licence granted to Project Co under clause 61.3(c) includes the right on the part of Project Co to grant a sub-licence to each of its Associates engaged in the performance of the Project Activities.
- (e) **(Patent):** Project Co may procure the registration or patent of any registrable or patentable Developed IP, but in doing so, must not conflict with or derogate from the vesting of the Developed IP in accordance with clause 61.3(a).

61.4 Project Co licence for Project Co Background IP

Project Co:

- (a) hereby grants to the State and its Associates;
- (b) without limiting Project Co's obligations under clause 61.8, must procure that each of its Associates legally entitled to do so grants to the State and its Associates (with effect from the date the relevant Material comes into existence); and
- (c) must do all things necessary to give effect to the grant to the State and its Associates of,

a world-wide, perpetual, irrevocable, non-exclusive, transferable, royalty-free licence (including the right to sub-licence) to Use the Project Co Background IP for the purposes of any of the following:

- (d) the Project (including, where this Deed is terminated, to complete any Project Activities which have not been carried out, or have not been carried out in accordance with the applicable State Project Documents, as at the date of termination);
- (e) the exercise of the rights of the State or its Associates in accordance with the State Project Documents (including its step-in rights in accordance with clause 42);
- (f) the operation, maintenance, repair and alteration of the Relevant Infrastructure on and from the Expiry Date;
- (g) for any purpose arising out of or in connection with the Site; and
- (h) in connection with other correctional centres in New South Wales.

61.4A Proprietary Software

- (a) Before using any Proprietary Software, Project Co must procure licences for the State and the State's Associates to Use that Proprietary Software in accordance with clause 61.4A(b).
- (b) The licences to Use the Proprietary Software must give the State and the State's Associates the same rights as those specified in clause 61.4, except that clause 61.4(h) does not apply.

61.5 Other third party software

- (a) **(Obligation):** Notwithstanding this clause 61, to the extent that any item of Project Co Material is commercially available off-the-shelf third party software that is not Proprietary Software, the obligation of Project Co is to (at the State's option):
 - (i) license that item of Project Co Material to the State and the State's Associates, if Project Co is legally able to do so, and on the terms of the licence granted to Project Co or its Associates by the third party licensor (and Project Co must use all reasonable endeavours to procure the consent of that licensor to grant that licence to the State and the State's Associates); or
 - (ii) procure (at the State's cost) a licence of that item of Project Co Material from the third party licensor to the State and the State's Associates on terms acceptable to the State (acting reasonably).
- (b) **(Inability to licence):** If, despite using all reasonable endeavours to do so, Project Co is unable to license (or, if applicable, procure a licence of) any Project Co Material owned by a third party to the State and the State's Associates, as required under clause 61.5(a), Project Co must:
 - (i) consult with the State; and
 - (ii) do all things reasonably necessary to obtain for the State's benefit such rights or arrangements as the State requires for any purpose under, or contemplated by, any State Project Document or for the Relevant Infrastructure and its use or the Project more generally.

61.6 Project Co Material and Relevant Infrastructure

Without limiting Project Co's other obligations under this Deed with respect to the delivery of any Project Co Material, Project Co Background IP or the Relevant Infrastructure, Project Co will provide all documentation, information and assistance and materials as the State may from time to time reasonably require in connection with the Use of any of Project Co Material, Project Co Background IP and the Relevant Infrastructure.

61.7 Use of State Background IP

- (a) **(Licence):** The State grants to Project Co and its Associates a non-transferable, non-exclusive, royalty-free licence to Use the State Background IP, but only to the extent necessary to carry out the Project Activities, which licence will terminate automatically on termination or expiry of this Deed.
- (b) **(No sub-licence):** The licence granted by the State under clause 61.7(a) is not sub-licensable to any third party, except where that third party is an Associate of Project Co and is undertaking Project Activities, in which case the sub-licence is only for those Project Activities.
- (c) **(State request):** At the request of the State, Project Co must immediately deliver the original and all copies of State Background IP to the State.

61.8 Moral rights

Project Co must, unless otherwise agreed in writing with the State in relation to a particular case, procure from every person who is an author for the purposes of Part IX of the *Copyright Act 1968* (Cth) of Material forming part of the Project Co Material, a written consent in the form of the Moral Rights Consent which is valid and effective under the *Copyright Act 1968* (Cth) and signed by that person by which that person irrevocably and unconditionally consents to the State, its Associates, any person nominated or authorised by the State (including sub-licensees), Project Co and its Associates (**Beneficiaries**):

- (a) (**Exercise of rights**): using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to the Material anywhere in the world in whatever form any of the Beneficiaries thinks fit, including the making of any distortions, additions or alterations to the Material or any adaptation thereof, or to any part of the Material in a manner which, but for the consent, infringes or may infringe that person's Moral Rights in the Material; and
- (b) (**No identification**): taking any action referred to in clause 61.8(a) without making any identification of the author of the Material.

61.9 Escrow

- (a) (**Escrow Agent**): Not less than 90 days prior to the anticipated Date of Technical Completion:
 - (i) the State will, by notice in writing to Project Co, nominate the Escrow Agent who will be either:
 - A. Assurex Escrow Pty. Limited (or a Related Body Corporate);
or
 - B. Iron Mountain Incorporated (or a Related Body Corporate);
and
 - (ii) Project Co must provide the State with all information required to complete the Escrow Deed, including any information requested by the State (acting reasonably).
- (b) (**Execution of Escrow Deed**): Project Co:
 - (i) authorises the State to complete the Escrow Deed by inserting any particulars necessary to complete the Escrow Deed; and
 - (ii) must:
 - A. subject to receipt from the State of the completed Escrow Deed, execute and procure that the D&C Subcontractor, the Operator and the Electronic Security Provider executes the Escrow Deed; and
 - B. return to the State 6 original executed counterparts executed by Project Co, the D&C Subcontractor, the Operator and the Electronic Security Provider as soon as reasonably practicable, and in any event prior to the Operational Commencement Date.
- (c) (**Delivery**): If Project Co fails to discharge its obligations in clause 61.9(b) by the Operational Commencement Date, Project Co must immediately deliver, or procure immediate delivery by the D&C Subcontractor, the Operator or the Electronic Security Provider of, the Escrow Material to the State, and the licence granted under clause 61.9(f) applies.

- (d) **(Custody):** Subject to clause 61.9(c), the Escrow Material must be held in escrow by the Escrow Agent on the terms of the Escrow Deed.
- (e) **(Costs):** The costs of the Escrow Agent must be borne equally by Project Co and the State in accordance with the Escrow Deed.
- (f) **(Licence):** Upon release to the State of the Escrow Material in accordance with clause 61.9(c) or the Escrow Deed, Project Co grants or must procure that the D&C Subcontractor, the Operator or the Electronic Security Provider grants to the State and the State's Associates (such grant to be effective upon release) a world-wide, perpetual, irrevocable, non-exclusive, transferable, royalty-free licence (including the right to sub-license) to Use the Escrow Material for the purposes of any of the following:
 - (i) the Project (including, where this Deed is terminated, to complete any Project Activities which have not been carried out, or have not been carried out in accordance with the applicable State Project Documents, as at the date of termination);
 - (ii) the exercise of the rights of the State or its Associates in accordance with the State Project Documents (including its step-in rights in accordance with clause 42);
 - (iii) the operation, maintenance, repair and alteration of the Relevant Infrastructure on and from the Expiry Date;
 - (iv) for any purpose arising out of or in connection with the Site; and
 - (v) except in the case of Proprietary Software, in connection with other correctional centres in New South Wales.

62. Confidential Information and disclosure

62.1 Confidential Information and disclosure by the State

- (a) **(Disclosure):** Subject to clause 62.1(b), the State and any Authority may disclose any information in connection with the Project, including Project Information.
- (b) **(Requirements):** The State may only disclose the Commercially Sensitive Information:
 - (i) in accordance with Laws or for the enforcement of any criminal law;
 - (ii) in accordance with clause 62.6;
 - (iii) where disclosure is in the course of the official duties of a minister, the Treasurer, the Premier or the Attorney General;
 - (iv) to satisfy the disclosure requirements of the NSW Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW);
 - (v) to satisfy the requirements of Parliamentary accountability;
 - (vi) to any Associate of the State to the extent necessary for the purpose of the Project provided they agree to maintain the confidentiality of any Commercially Sensitive Information;
 - (vii) in annual reports of the State or the NSW Government;
 - (viii) in accordance with policies of the State or the NSW Government or any Authority;

- (ix) for any tender process required to be conducted under the Termination Payments Schedule; or
- (x) where the Commercially Sensitive Information is any part of the Design Deliverables, the Design Requirements or the Services Requirements, for the purpose of conducting any tender process required by the terms of this Deed.

62.2 Confidential Information and disclosure by Project Co

- (a) **(Confidentiality obligation):** Subject to clauses 62.2(b) and clause 62.4(b), Project Co must (and must procure Finance Co to) treat as secret and confidential all Confidential Information and must not, and must procure that its Associates do not, without the prior written consent of the State make public or disclose to any person any Confidential Information.
- (b) **(Disclosure of Confidential Information):** Without limiting Project Co's obligation under clause 62.2(a) and subject to clause 62.2(c), Project Co may disclose Confidential Information:
 - (i) to its Associates to the extent necessary for the purpose of undertaking the Project;
 - (ii) to any prospective financier or equity investor of the Project, subject to the State having been provided necessary information in respect of the proposed parties and having carried out any Probity Investigation that the State considers necessary; or
 - (iii) in accordance with clause 62.4.
- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, Project Co must ensure that the person to whom the information is disclosed enters into a confidentiality deed with Project Co to keep the Confidential Information, confidential in accordance with this clause 62.
- (d) **(Permitted disclosure):** Project Co may disclose Confidential Information and will not be required to seek the State's consent to a disclosure, announcement or statement under clause 62.2(a) or 62.3(a) where the disclosure, announcement or statement is:
 - (i) required by Law, provided that it:
 - A. notifies the State of the requirement to make that disclosure; and
 - B. takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
 - (ii) required to obtain legal or other advice from its advisers, provided that the relevant adviser is under a duty of confidentiality;
 - (iii) required to be made to a court in the course of proceedings to which Project Co is a party; or
 - (iv) required by a relevant recognised stock exchange, subject to:
 - A. the disclosure, announcement or statement does not refer to the State's or any of its Associates' involvement in the Project; and

- B. Project Co having used all reasonable endeavours to obtain the State's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant recognised stock exchange.

62.3 Public announcements by Project Co

Subject to clause 62.2(d), Project Co must:

- (a) **(State's prior consent)**: not (and must ensure that Finance Co does not) make any public disclosures, announcements or statements in relation to the Project or the State's or any of the State's Associates' involvement in the Project, without the State's prior consent;
- (b) **(Terms and conditions)**: comply (and must ensure that Finance Co complies) with any terms and conditions the State imposes and must use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Project or the State's or any of the State's Associates' involvement in the Project before the relevant disclosure, announcement or statement is made; and
- (c) **(Copies to be provided)**: as soon as practicable, give (and must ensure that Finance Co gives) to the State a copy of any public disclosure, announcement or statement agreed to or approved by the State in accordance with this clause 62.3 or for which the State's consent or approval was not required in accordance with clause 62.4.

62.4 Information public or known

Notwithstanding anything in this clause 62, either party may disclose information in connection with the Project (including any Confidential Information) if:

- (a) **(Already available)**: the party can demonstrate that the relevant information is already generally available and in the public domain otherwise than as a result of breach of this clause 62; or
- (b) **(Already in possession)**: the relevant information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party.

62.5 Disclosure by the State under GIPA Act

- (a) Notwithstanding the other provisions of this clause 62, the parties acknowledge that:
- (i) **(Documents to be published)**: the Project Documents and information concerning the Project Documents will be published on the State's contracts register in accordance with Division 5 of Part 3 of the GIPA Act; and
- (ii) **(Availability of Project Documents)**: the State may make the Project Documents (other than the Key Subcontracts) or any of them available to any person.
- (b) The parties acknowledge that:
- (i) **(Notification)**: the State will notify Project Co of any proposed disclosure of Commercially Sensitive Information by the State under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;
- (ii) **(Consultation)**: following notification by the State in accordance with clause 62.5(b)(i), the State will take reasonable steps to consult with

Project Co before disclosing Commercially Sensitive Information, including under the GIPA Act;

- (iii) **(Objection):** if, following:
 - A. notification by the State in accordance with clause 62.5(b)(i); or
 - B. consultation between the State and Project Co in accordance with clause 62.5(b)(ii),

Project Co objects to disclosure of some or all of the Commercially Sensitive Information, Project Co must provide details of any such objection within five Business Days after the date Project Co received notification from the State or the date on which the consultation process concluded (as relevant);

- (iv) **(Disclosure):** the State may take into account any objection received from Project Co pursuant to clause 62.5(b)(iii) in determining whether the Commercially Sensitive Information identified by Project Co should be disclosed; and
- (v) **(State's obligations):** nothing in this clause 62.5 will limit or otherwise affect the discharge of the State's obligations under the GIPA Act.

62.6 Personal Information

Project Co must:

- (a) **(Collection):** not (and must ensure that Finance Co does not) collect any Personal Information except in accordance with the Design Requirements and Services Requirements, all Laws and Policies;
- (b) **(Disclosure):** not (and must ensure that Finance Co does not) disclose any Personal Information to any person other than as is necessary to provide the Services or to comply with Laws, and then only in accordance with the Design Requirements and Services Requirements, all Laws and Policies; and
- (c) **(Retention):** keep, and make (and must ensure that Finance Co keeps and makes) available to the State on request, records detailing the recipient of any Personal Information that any Project Co Entity has disclosed, the date of disclosure and the Personal Information that has been disclosed.

62.7 Confidential Design Information

Project Co must:

- (a) **(Access):** only provide (and must ensure that Finance Co only provides) access to Confidential Design Information to Relevant Persons who:
 - (i) are not Uncleared Personnel, are permitted to receive Confidential Design Information in accordance with clause 62.2 and, where required by the State, have satisfied any Probity Investigation under clause 63.2; and
 - (ii) require access to that Confidential Design Information to carry out the Delivery Phase Activities or perform the Services;
- (b) **(Limited portion):** where it is necessary to grant access to Confidential Design Information in accordance with clause 62.7(a), grant (and must ensure that Finance Co grants) access to the most limited portion of the Confidential Design Information possible; and

- (c) **(Records):** keep, and make (and must ensure that Finance Co keeps and makes) available to the State on request, records detailing the recipient of any Confidential Design Information, the date of disclosure and the Confidential Design Information that has been disclosed.

62.8 Privacy

Without limiting any obligations in respect of privacy set out in the Design Requirements or the Services Requirements, Project Co agrees to (and will procure Finance Co to), and will ensure that any Subcontract contains terms which require the Subcontractor to, be bound by the Privacy Legislation with respect to any act done, or practice engaged in, by it in connection with this Deed or with the Subcontract (as the case may be), in the same way as the State would be bound by the Privacy Legislation in connection with that act or practice had it been directly done or engaged in by the State.

63. Probity Events and Probity Investigations

63.1 Probity Event

- (a) **(Notice):** Project Co must give notice to the State immediately upon becoming aware that a Probity Event has occurred or is likely to occur.
- (b) **(Contents of notice):** The notice under clause 63.1(a), must, at a minimum, describe the Probity Event, when the Probity Event occurred, or is likely to occur, and the circumstances giving rise to the Probity Event.
- (c) **(Meeting):** Promptly, and in any case no later than 5 Business Days after the State:
 - (i) receives a notice under clause 63.1(a); or
 - (ii) becomes aware of a Probity Event,the State and Project Co must meet to agree a course of action to remedy or otherwise address the Probity Event and the timeframe in which that will occur.
- (d) **(Compliance):** Project Co must comply with any agreement made in accordance with clause 63.1(c) in the agreed timeframe.
- (e) **(Failure to agree):** If the State and Project Co fail to agree to a course of action in accordance with clause 63.1(c) (including where Project Co fails to meet with the State in accordance with clause 63.1(c)), Project Co must, at its cost, take any action required by the State to remedy the Probity Event in accordance with any timeframe determined by the State.

63.2 Probity Investigation

- (a) **(Requirement for Probity Investigation):** Project Co agrees that the State may, or may require Project Co at any time to, conduct a Probity Investigation in respect of a Relevant Person, a Consortium Member, a Group Member or any person who is proposed to become a Relevant Person, a Consortium Member or a Group Member.
- (b) **(Promptly):** Where the State requires Project Co to conduct a Probity Investigation in accordance with clause 63.2(a), Project Co must conduct the Probity Investigation promptly.
- (c) **(Consents required for Probity Investigation):** Project Co must procure all consents necessary to enable Project Co or the State to conduct any Probity Investigation.

- (d) **(No appointment without consent):** Project Co must not appoint a person to the position of Relevant Person unless the State has given approval following any Probity Investigation that it elects to conduct or any other investigation the State reasonably requires.

63.3 State costs of Probity Events and Probity Investigation

- (a) **(State Costs):** Subject to clause 63.3(b), Project Co must bear all costs incurred by the State in connection with a Probity Event or Probity Investigation that led to a Probity Event.
- (b) **(Project Co not liable):** Project Co will not be liable for the State's costs of any further Probity Investigation required by the State in respect of a Probity Event in relation to which an initial Probity Investigation has been undertaken.

64. Notices and bar to Claims

64.1 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(In writing):** must be in writing;
- (b) **(Addressed):** must be addressed as specified in the Contract Particulars (as the case may be), or as otherwise notified by that party to each other party from time to time;
- (c) **(Signed):** must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(Form of delivery):** must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in the Contract Particulars;
- (e) **(Taken to be received):** are taken to be received by the addressee at the address set out in the Contract Particulars:
- (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) subject to clause 64.1(f), in the case of prepaid post, on the fourth Business Day after the date of posting to an address within Australia and on the tenth Business Day after the date of posting by airmail to an address outside Australia;
 - (iii) in the case of email, the first to occur of:
 - A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - B. the time that the communication enters an information system which is under the control of the addressee; or
 - C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day; and

- (f) **(Notices sent by post):** if sent by post from within Australia, must be sent using the 'priority' postal service offered by Australia Post (or any other postal service provider that assumes any or all of the functions of Australia Post) or other such similar service.

64.2 Notices of Claims

- (a) **(Liability):** Subject to clause 64.2(b):
- (i) the State and its Associates will not be liable upon any Claim that Project Co is entitled to make against the State or its Associates; and
 - (ii) Project Co is absolutely barred from making any Claim against the State or any of its Associates,

under any State Project Document or otherwise arising in connection with the Project Documents, the Relevant Infrastructure or the Project unless Project Co gives the State the notices required by clause 64.3 and, if applicable, clause 64.4.

- (b) **(Notice requirements):** Where any provision of this Deed contains specific notice requirements (including a requirement to submit or update a Change Notice):
- (i) the State and its Associates will not be liable upon any Claim that Project Co is entitled to make against the State or its Associates; and
 - (ii) Project Co is absolutely barred from making any Claim against the State or any of its Associates,

arising out of, or in connection with, the event or circumstance to which the relevant provisions of this Deed, or any other Project Document, entitling Project Co to make a Claim against the State or its Associates apply, unless Project Co has complied with the specific notice requirements (including any requirement to update a Change Notice) set out in those relevant provisions.

64.3 Prescribed notices

The required notices referred to in clause 64.2(a) are:

- (a) **(Intention to submit claim):** a written notice from Project Co in which Project Co:
- (i) states that it intends to submit a Claim; and
 - (ii) identifies the event on which the Claim will be based,
- which notice must be given to the State within 20 Business Days of the earlier of:
- (iii) the date on which Project Co first became aware; and
 - (iv) the date on which Project Co ought reasonably to have become aware,
- of the event on which the Claim is based; and
- (b) **(Claim):** a formal written notice from Project Co to the State setting out the Claim, including:
- (i) detailed particulars concerning the event on which the Claim is based;

- (ii) the legal basis for the Claim, whether based on a term of the State Project Documents or otherwise, and if based on a term of the State Project Documents, clearly identifying the specific term;
- (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
- (iv) details of the amount claimed and how it has been calculated,

which notice must be given to the State within 10 Business Days of giving the notice under clause 64.3(a).

64.4 Continuing events

If the event upon which the Claim under clause 64.3(b) is based, or the consequences of that event, are continuing, Project Co must continue to give the information required by clause 64.3(b) every 20 Business Days after the notice under clause 64.3(b) was submitted, until after the event or consequences of the event have ceased.

64.5 Notice to Financiers

Project Co acknowledges that the State may provide to the Financiers a copy of any notice from:

- (a) Project Co to the State; or
- (b) the State to Project Co,

in connection with the State Project Documents or the Project.

64.6 Power of attorney

Project Co irrevocably:

- (a) **(Appointment)**: appoints the State, and the State's nominees from time to time, jointly and severally, as its attorneys with full power and authority:
 - (i) with effect from the end of the Operating Phase, to execute any assignment or novation contemplated by clauses 37.1(a)(vii) or clause 49.7;
 - (ii) to exercise the State's rights in accordance with clause 42; and
 - (iii) to undertake Project Co's obligations in accordance with clause 49.7; and
- (b) **(Ratification of action)**: agrees to ratify and confirm whatever action is taken by the attorney appointed by Project Co under clause 64.6(a).

65. PPSA

Project Co acknowledges and agrees that:

- (a) **(State's rights)**: if and to the extent that the State at any time forms a belief on reasonable grounds that the State is, or will become, a secured party with respect to a Security Interest arising under this Deed, the State may at Project Co's expense take all steps that the State considers advisable to:
 - (i) perfect, protect, record, register, amend or remove the registration of, the State's Security Interest in any relevant personal property that is the subject of this Security Interest (**Relevant Personal Property**); and

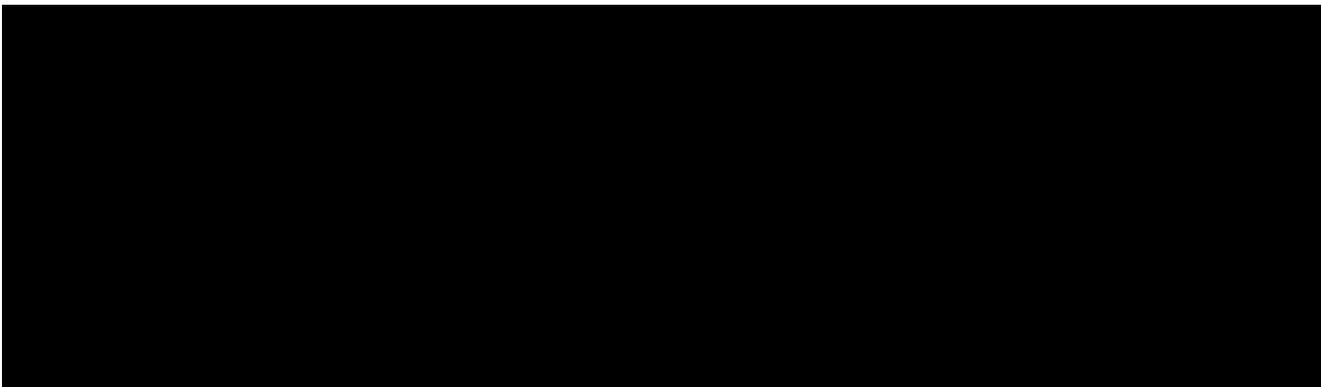
- (ii) better secure the State's position in respect of the Relevant Personal Property under the PPSA;
- (b) **(Project Co's Associates to assist the State)**: it will do, and ensure that each Project Co Associate does, all things reasonably necessary to assist the State to take the steps described in clause 65(a);
- (c) **(waiver of right to receive any verification statement)**: it irrevocably and unconditionally waives, and will ensure that each Project Co Associate irrevocably and unconditionally waives, its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interests of the State in the Relevant Personal Property;
- (d) **(excluded PPSA sections)**: if, and only if, the State is or becomes a secured party in relation to Relevant Personal Property, and to the extent only that Chapter 4 of the PPSA would otherwise apply to an enforcement of a Security Interest in Relevant Personal Property, Project Co and the State agree, and Project Co will ensure that each Project Co Associate agrees, that, pursuant to section 115 of the PPSA, the following provisions of the PPSA do not apply in relation to those Security Interests to the extent, if any, mentioned in section 115, section 117, section 118, section 120, subsection 121(4), section 125, section 129, section 130, subsection 132(3)(d), subsection 132(4), section 142, and section 143;
- (e) **(no disclosure)**: subject to section 275(7) of the PPSA, it will not, and it will ensure that each Project Co Associate does not, disclose the contents of this Deed, the amount or performance obligation secured by the State's Security Interest in Relevant Personal Property and the other information mentioned in section 275(1) of the PPSA pursuant to section 275(4) of the PPSA;
- (f) **(Project Co to notify the State)**: other than in relation to Security Interests arising in the ordinary course of the Project Activities and Security Interests described in section 12(d) of the PPSA of which a Project Co Entity is the grantor (but only where the interest does not secure payment or performance of an obligation) it must immediately notify the State if Project Co or Project Co Associate becomes aware of any person other than the State taking steps to register, or registering, a financing statement in relation to Relevant Personal Property; and
- (g) **(removal of registered security interest)**: it must arrange, and ensure that each Project Co Associate arranges, for the removal or cessation of any registration of any Security Interest that affects the priority of the State's interest in Relevant Personal Property.

For the purposes of this clause 65, 'registration', 'secured party', 'verification statement', 'financing statement', 'personal property' and 'financing change statement' each have the meaning given to those terms in the PPSA.

Executed as a deed.

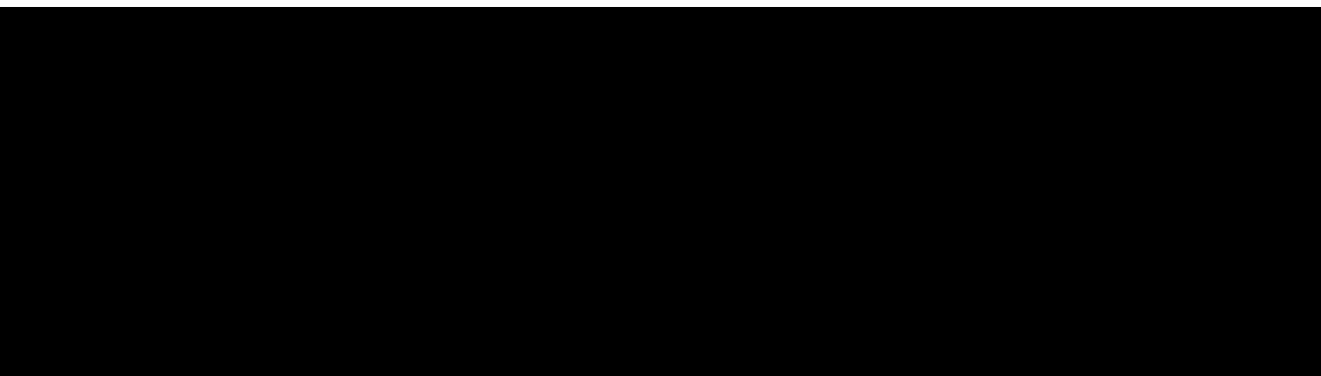
Infrastructure NSW

Signed sealed and delivered by **David Riches**
as authorised delegate of the Chief Executive
Officer of **Infrastructure NSW** pursuant to section
13(1) of the Infrastructure NSW Act 2011 in the
presence of:



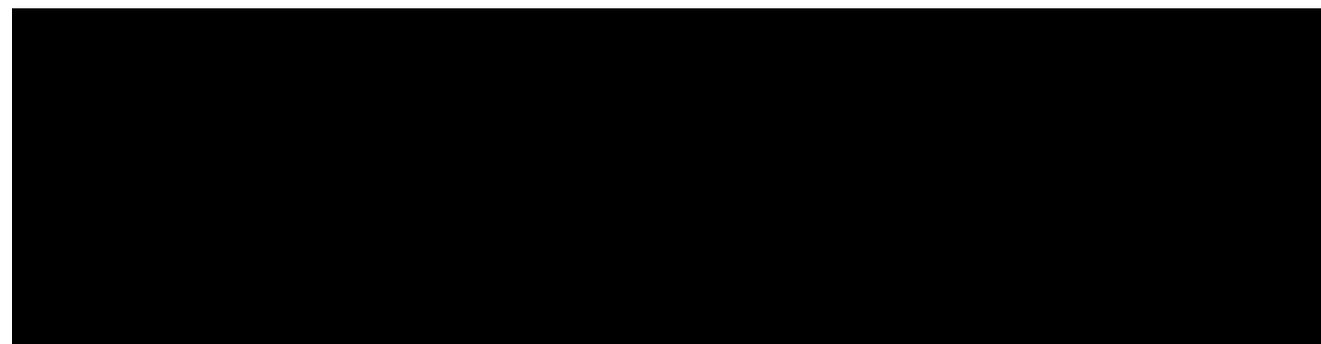
Minister for Corrections

Signed sealed and delivered by **David Elliott,**
in his capacity as the Minister for Corrections,
on behalf of the Crown in right of the State of New
South Wales in the presence of:



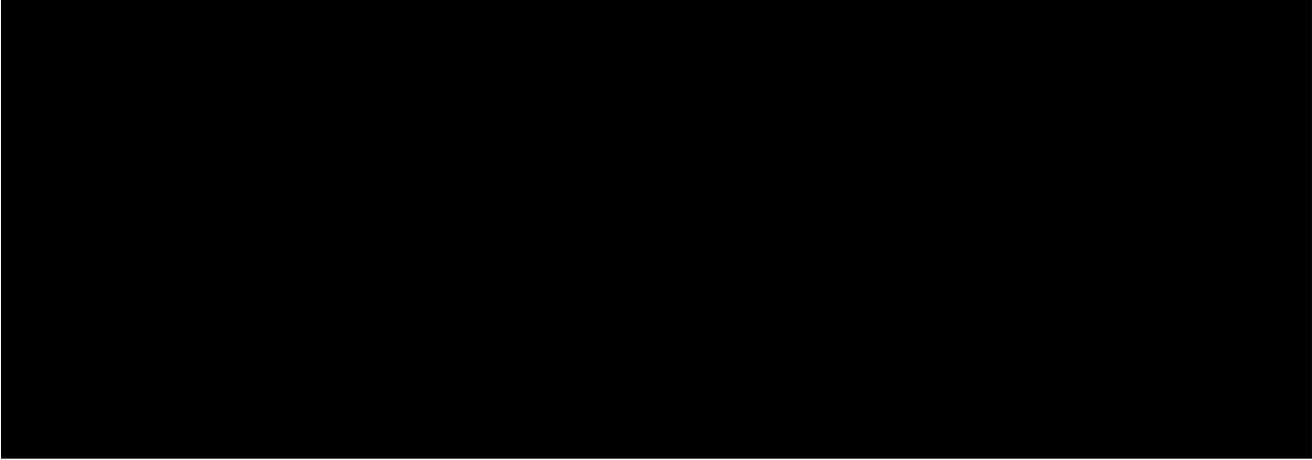
Commissioner of Corrective Services

Signed sealed and delivered by the
Commissioner of Corrective Services in the
presence of:

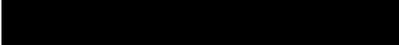
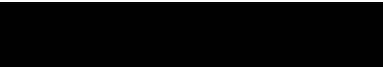
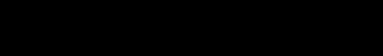


Project Co

Executed by NORTHERNPATHWAYS PTY LIMITED AS TRUSTEE FOR THE NORTHERNPATHWAYS PROJECT TRUST in accordance with Section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

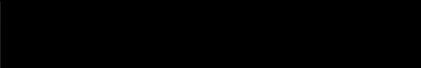
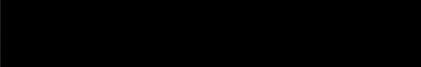
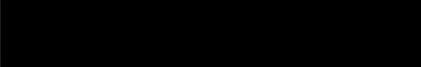
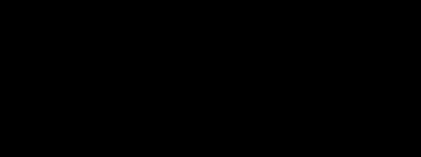
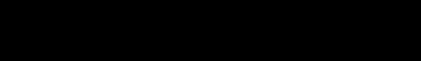


Schedule 1 — Contract Particulars

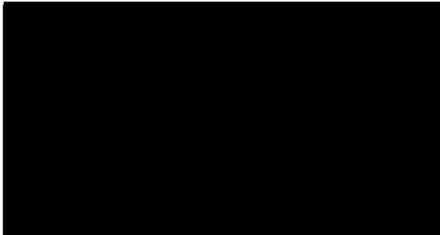
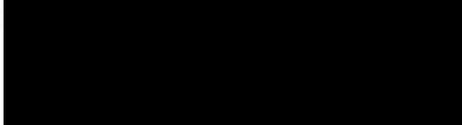
Item	Subject	Particulars
Clause 1 — Definitions and interpretation		
1.	Change in Law (<i>Paragraph (f) of the definition of 'Change in Law'</i>)	Nil
2.	Change in Policy (<i>Paragraph (h) of the definition of 'Change in Policy'</i>)	<ol style="list-style-type: none"> 1. The Australian Building and Construction Commission or the Building Code 2013 (Cth), 'Supporting Guidelines for Commonwealth Funding Entities' (1 February 2013). 2. 'Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction' (July 2013).
3.	Compensable Extension Event (<i>Paragraph (h)(i)(C) of the definition of 'Compensable Extension Event'</i>)	See Attachment 2 of this Schedule
4.	Condition Precedent Deadline (<i>Definition of 'Condition Precedent Deadline'</i>)	30 June 2017
5.	D&C Subcontractor (<i>Definition of 'D&C Subcontractor'</i>)	<p>Name: John Holland Pty Ltd (ABN 11 004 282 268)</p> <p>Address: Level 3, 65 Pirrama Road, Pyrmont, NSW 2009</p> <p>Phone: </p> <p>Email: </p>
6.	Date for Commercial Acceptance (<i>Definition of 'Date for Commercial Acceptance'</i>)	30 June 2020
7.	Date for Technical Completion (<i>Definition of 'Date for Technical Acceptance'</i>)	31 March 2020
8.	Design Subcontractor (<i>Definition of 'Design Subcontractor'</i>)	<p>Name: Perumal Pedavoli Pty Limited (ABN 39 000 971 924)</p> <p>Address: P.O Box 636, Glebe, NSW 2037</p> <p>Phone: </p> <p>Email: </p>

Item	Subject	Particulars														
9.	Designated Investor (<i>Definition of 'Designated Investor'</i>)	<table border="1"> <tr> <td data-bbox="857 244 991 280">Name:</td> <td data-bbox="991 244 1444 510" rowspan="3">[Redacted]</td> </tr> <tr> <td data-bbox="857 376 975 412">Address:</td> </tr> <tr> <td data-bbox="857 468 943 504">Email:</td> </tr> <tr> <td data-bbox="857 521 949 557">Name:</td> <td data-bbox="991 521 1444 936" rowspan="4">[Redacted]</td> </tr> <tr> <td data-bbox="857 707 975 743">Address:</td> </tr> <tr> <td data-bbox="857 799 954 835">Phone:</td> </tr> <tr> <td data-bbox="857 862 943 898">Email:</td> </tr> <tr> <td data-bbox="857 952 949 987">Name:</td> <td data-bbox="991 952 1444 1263" rowspan="4">[Redacted]</td> </tr> <tr> <td data-bbox="857 1043 975 1079">Address:</td> </tr> <tr> <td data-bbox="857 1135 954 1171">Phone:</td> </tr> <tr> <td data-bbox="857 1198 943 1234">Email:</td> </tr> </table>	Name:	[Redacted]	Address:	Email:	Name:	[Redacted]	Address:	Phone:	Email:	Name:	[Redacted]	Address:	Phone:	Email:
Name:	[Redacted]															
Address:																
Email:																
Name:	[Redacted]															
Address:																
Phone:																
Email:																
Name:	[Redacted]															
Address:																
Phone:																
Email:																
10.	Employee Checks (<i>Definition of 'Employee Checks'</i>)	Refer to the Output Specification.														
11.	Employee Requirements (<i>Definition of 'Employee Requirements'</i>)	Refer to the Output Specification.														
12.	Key People (<i>Definition of 'Key People'</i>)	<table border="1"> <tr> <td data-bbox="857 1518 938 1554">Role:</td> <td data-bbox="991 1518 1444 1554">Project Co Representative</td> </tr> <tr> <td data-bbox="857 1581 949 1617">Name:</td> <td data-bbox="991 1581 1444 1877" rowspan="4">[Redacted]</td> </tr> <tr> <td data-bbox="857 1644 975 1680">Address:</td> </tr> <tr> <td data-bbox="857 1736 954 1771">Phone:</td> </tr> <tr> <td data-bbox="857 1798 943 1834">Email:</td> </tr> <tr> <td data-bbox="857 1888 938 1924">Role:</td> <td data-bbox="991 1888 1444 1924">Operational Readiness Coordinator</td> </tr> <tr> <td data-bbox="857 1980 949 2016">Name:</td> <td data-bbox="991 1980 1444 2049">[Redacted]</td> </tr> </table>	Role:	Project Co Representative	Name:	[Redacted]	Address:	Phone:	Email:	Role:	Operational Readiness Coordinator	Name:	[Redacted]			
Role:	Project Co Representative															
Name:	[Redacted]															
Address:																
Phone:																
Email:																
Role:	Operational Readiness Coordinator															
Name:	[Redacted]															

Item	Subject	Particulars
		<p>Address: [REDACTED]</p> <p>Phone: [REDACTED]</p> <p>Email: [REDACTED]</p> <hr/> <p>Role: General Manager</p> <p>Name: [REDACTED]</p> <p>Address: [REDACTED]</p> <p>Phone: [REDACTED]</p> <p>Email: [REDACTED]</p>
13.	Key Planning Approval (<i>Definition of 'Key Planning Approval'</i>)	The Stage 1 Development Consent
14.	Key Subcontracts and Key Subcontractors (<i>Definitions of 'Key Subcontracts' and 'Key Subcontractors'</i>)	<p>Role: D&C Subcontractor</p> <p>Name: John Holland Pty Ltd (ABN 11 004 282 268)</p> <p>Address: Level 3, 65 Pirrama Road, Pyrmont, NSW 2009</p> <p>Phone: [REDACTED]</p> <p>Email: [REDACTED]</p> <hr/> <p>Role: Operator</p> <p>Name: Serco Australia Pty Ltd (ABN 44 003 677 352)</p> <p>Address: Level 23, 60 Margaret St, Sydney, NSW 2000</p> <p>Phone: [REDACTED]</p> <p>Email: [REDACTED]</p>
15.	Accreditations which if Project Co fails to obtain and maintain amount to a Major Default (<i>Definition of 'Major Default'</i>)	<ul style="list-style-type: none"> • Australian Council on Healthcare Standards accreditation • EQUIP • Accreditation as a Registered Training Organisation

Item	Subject	Particulars
		<ul style="list-style-type: none"> • Accreditation under the National Safety and Quality Health Service Standards • Accreditation under the NSW Methadone Clinic Accreditation Standards • Accreditation of Community Prescribers • Accreditation under the Australian Health Service Safety and Quality Accreditation Scheme
16.	Licences which if Project Co fails to obtain and maintain amount to a Major Default (<i>Definition of 'Major Default'</i>)	Firearms permit
17.	Operational Readiness Co-ordinator (<i>Definition of 'Operational Readiness Co-ordinator'</i>)	Name:  Address:  Phone:  Email: 
18.	Operator (<i>Definition of 'Operator'</i>)	Name: Serco Australia Pty Ltd (ABN 44 003 677 352) Address: Level 23, 60 Margaret St, Sydney, NSW 2000 Phone:  Email: 
19.	Original Date for Commercial Acceptance (<i>Definition of 'Original Date for Commercial Acceptance'</i>)	30 June 2020
20.	Parent Guarantors (<i>Definition of 'Parent Guarantor'</i>)	D&C Subcontractor Name:  Address:  Phone: 

Item	Subject	Particulars
		Email: [REDACTED] Operator Name: [REDACTED] Address: [REDACTED] Phone: [REDACTED] Email: [REDACTED]
21.	Project Co Representative (<i>Definition of 'Project Co Representative'</i>)	Name: [REDACTED] Address: [REDACTED] Phone: [REDACTED] Email: [REDACTED]
22.	Project Objectives (<i>Definition of 'Project Objectives'</i>)	The Project will: <ol style="list-style-type: none"> 1. be a safe and secure correctional centre; 2. be a humane and ethically managed centre; 3. help reduce the risk of re-offending through (among other things) preparing inmates for reintegration into the community on release from the State's correctional centre network; 4. manage resources effectively and efficiently, enhancing value for money; 5. utilise effective governance arrangements; 6. produce strong economic and social benefits to the local Grafton region, the northern NSW region and the broader NSW community; 7. be a valuable physical asset for the duration of the Operating Phase and beyond; 8. be operated in such a way as to keep pace with best correctional practice over the term of its operational life; and

Item	Subject	Particulars																				
		9. be operated so that it links with the broader management strategies and operational needs of the State's correctional centre network.																				
23.	Security Trustee (<i>Definition of 'Security Trustee'</i>)	Name: CBA Corporate Services (NSW) Pty Limited Address:  Phone: Email:																				
24.	Significant Subcontracts (<i>Paragraphs (b) and (c) of the definition of 'Significant Subcontract'</i>)	<table border="0"> <tr> <td>Role:</td> <td>Electronic Security Provider</td> </tr> <tr> <td>Name:</td> <td>Saab Australia Pty Ltd (ABN 88 008 643 212)</td> </tr> <tr> <td>Address:</td> <td>21 Third Avenue, Mawson Lakes, South Australia 5095</td> </tr> <tr> <td>Phone:</td> <td></td> </tr> <tr> <td>Email:</td> <td></td> </tr> <tr> <td>Role:</td> <td>Health Services Provider</td> </tr> <tr> <td>Name:</td> <td>Serco Australia Pty Ltd (ABN 44 003 677 352)</td> </tr> <tr> <td>Address:</td> <td>Level 23, 60 Margaret St, Sydney, NSW 2000</td> </tr> <tr> <td>Phone:</td> <td></td> </tr> <tr> <td>Email:</td> <td></td> </tr> </table>	Role:	Electronic Security Provider	Name:	Saab Australia Pty Ltd (ABN 88 008 643 212)	Address:	21 Third Avenue, Mawson Lakes, South Australia 5095	Phone:		Email:		Role:	Health Services Provider	Name:	Serco Australia Pty Ltd (ABN 44 003 677 352)	Address:	Level 23, 60 Margaret St, Sydney, NSW 2000	Phone:		Email:	
Role:	Electronic Security Provider																					
Name:	Saab Australia Pty Ltd (ABN 88 008 643 212)																					
Address:	21 Third Avenue, Mawson Lakes, South Australia 5095																					
Phone:																						
Email:																						
Role:	Health Services Provider																					
Name:	Serco Australia Pty Ltd (ABN 44 003 677 352)																					
Address:	Level 23, 60 Margaret St, Sydney, NSW 2000																					
Phone:																						
Email:																						
25.	Site Data (<i>Definition of 'Site Data'</i>)	The data attached as the Annexure to the Site Data Undertaking																				
26.	State Representative (<i>Definition of 'State Representative'</i>)	During the Delivery phase: Project Director Name:  Address: 																				

Item	Subject	Particulars
		<p>Phone: [REDACTED]</p> <p>Email: [REDACTED]</p> <p>During the Operating phase: General Manager, Operational Performance Review Branch, Corrective Services, NSW Department of Justice</p> <p>Name: [REDACTED]</p> <p>Address: [REDACTED]</p> <p>Phone: [REDACTED]</p> <p>Email: [REDACTED]</p>
Clause 10.12 - Aboriginal participation (construction)		
27.	Standard of participation	As required by the NSW Government Aboriginal Participation Plan.
Clause 10.13 - Aboriginal participation (operations)		
28.	Standard of participation	Employment opportunities for people who identify as Aboriginal and Torres Strait Islander in connection with the Project, including working towards having Aboriginal and Torres Strait Islander people make up 8% of Staff (which at the date of this Deed is anticipated to be 45 people).
Clause 10.14 - Training and apprenticeships		
29.	Standard of participation	As required by 'PBD-2016-02 Construction Apprenticeships' issued by the NSW Procurement Board dated 30 March 2016 (including its attachments).
Clause 66.1 - Notices		
30.	Addresses	Must be addressed to the State Representative or the Project Co Representative (as the case may be at the addresses set out respectively in items 21 and 26).

Attachment 1 – Form of Site Data Undertaking

Site Data Deed Poll

This deed poll is made on the _____ day of _____ (Deed Poll)

By: Jacobs Group (Australia) Pty Ltd (ABN 37 001 024 095)
of _____ (Service Provider)

In favour of: NorthernPathways Pty Ltd (ACN 618 985 452) as trustee for the NorthernPathways Project Trust (ABN 36 175 930 685) of _____ (Project Co)

RECITALS

- A. Infrastructure NSW (ABN 85 031 302 516) (**iNSW**) is responsible for delivering the New Grafton Correctional Centre Project (**Project**).
- B. iNSW engaged the Service Provider to prepare, among other things, the documents annexed to this Deed Poll for the purposes of the Project (**Data**), and has entered into a contract with the Service Provider to achieve this (**Main Contract**).

THIS DEED POLL WITNESSES THAT THE SERVICE PROVIDER HEREBY COVENANTS, WARRANTS AND AGREES with and for the benefit of Project Co as follows:

1. As between Project Co and the Service Provider, the Service Provider acknowledges and agrees that:
 - (a) at the time that the Data was prepared, the Service Provider was not aware of the precise location within the site where the Project will be delivered; and
 - (b) in light of paragraph 1(a) above, the Service Provider has prepared the Data in a diligent manner and to the standard of skill and care expected of a professional services provider qualified, competent and experienced in the preparation of documents of the nature of the Data.
2. Any liability of the Service Provider to Project Co arising out of or in connection with this Deed Poll shall be included in the cap on liability in clause 10.4 of the Main Contract, and the Service Provider's liability to iNSW under clause 10.4 of the Main Contract shall be reduced by the amount of any such liability under this Deed Poll. In no circumstance will the liability of the Service Provider arising out of or in connection with:
 - (a) this Deed Poll; and
 - (b) the Main Contract;

exceed the amount in clause 10.4 of the Main Contract. For the avoidance of doubt, the liability of the Service Provider to both iNSW and Project Co is limited _____ and this limitation shall apply regardless of cause including the fault, breach of contract, tort (including negligence), breach of duty (statutory or otherwise) strict liability or otherwise of the Service Provider. Any and all releases, limitations and exclusions in favour of the Service Provider in this Deed Poll shall include in the aggregate the Service Provider's parent, affiliate and subsidiary companies and their directors, officers, employees, insurers, agents and representatives.

Furthermore, the Service Provider will not be liable to Project Co in any circumstances arising from or connected with this Deed Poll for any loss of revenue, loss of production, loss of product, loss of contract or opportunity, or loss of profit, or any indirect, special or consequential loss or damage, howsoever arising and whether in an action in contract, tort (including without limitation, negligence), in equity, product liability, under statute, or on any other basis, provided that costs of rectification work or redesign are not excluded losses.

3. The Service Provider is entitled to raise any set-off, counterclaim or defence in connection with the Service Provider's liabilities under this Deed Poll which the Service Provider would have had under the Main Contract.
4. This Deed Poll is governed by the laws of the State of New South Wales.
5. This Deed Poll may not be revoked or otherwise modified without the prior written consent of Project Co.
6. Where terms used in this Deed Poll are not defined in this Deed Poll but are defined in the Main Contract, those terms have the meaning given to them in the Main Contract.

Executed as a deed poll.

**Executed by Jacobs Group (Australia) Pty Ltd
(ABN 37 001 024 095)** in accordance with Section
127 of the *Corporations Act 2001*

Signature of director

Signature of director/company secretary

(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Annexure: Data

Attachment 2 – List of Stage 1 Development Consent Conditions for the purposes of Compensable Extension Event (h)(i)(C)

- Biodiversity – vegetation retention plan, consistent with endorsed BAR and BOS (condition: B18);
- Aboriginal Heritage – Aboriginal Cultural Heritage Management Plan (condition: B19);
- Contamination – Phase 2 contamination assessment and, if required, a Remediation Action Plan (condition: B21);
- Social and Economic Impacts – Social Impact Assessment (condition: B4);
- Wastewater Management – Full details of proposed wastewater management system (condition: B9);
- Surface and Ground Water Drainage – details of proposed stormwater management system (condition: B15);
- Traffic, Access and Carparking – Detailed assessment of traffic impacts and conditions relative to road access upgrades to be provided by INSW (conditions: B5 to B8);
- Health Risk Assessment (Biting Insects) – Health risk assessment addressing measures to address biting insects (condition: B22);
- Bushfire Protection – Bushfire protection measures complying with Planning for Bushfire Protection 2006 (condition: B17);
- Residential Amenity Impacts – details demonstrating consideration given to protection and minimisation of amenity impacts (condition: B3);
- Built Form – details indicating consistency with development principles and development parameters identified in EIS (condition: B2);
- Water Supply – details of proposed potable water supply system infrastructure (condition: B11);
- Landscaping – detailed landscaping plans identifying the species to be used in site buffer and other landscape areas (condition: B16);
- Ecologically Sustainable Development – demonstration of how principles of ESD have been incorporated (condition: B20);
- Telecommunications – provide details of proposed telecommunications (condition: B13); and
- Electricity – demonstrate adequate electricity infrastructure (condition: B14).

Schedule 2 — Conditions Precedent Schedule

	Condition Precedent	Benefiting Party	Party to satisfy
1.	<p>State Project Documents</p> <p>Each of the State Project Documents, each in form and substance satisfactory to the State, has been validly executed by all parties to them (other than the State) and delivered and at least one original counterpart of each of those documents has been provided to the State.</p>	State	Project Co
2.	<p>Other Project Documents</p> <p>The valid execution, delivery and provision to the State of a certified copy of each other Project Document, each in form and substance satisfactory to the State, together with evidence that all conditions precedent to such Project Documents have been satisfied or waived (other than any condition precedent that requires the satisfaction or waiver of the conditions precedent to this document).</p>	State	Project Co
3.	<p>Counterparty Details</p> <p>The State receiving the Counterparty Details.</p>	State	Project Co
4.	<p>Legal Opinions</p> <p>The State receiving legal opinions given for the benefit of the State, each in form and substance satisfactory to the State, from solicitors acting for each Consortium Member and Group Member as to:</p> <p>(a) the legal capacity and corporate power of that Consortium Member or Group Member to enter into and perform its obligations under the Project Documents to which it is a party;</p> <p>(b) the enforceability against the relevant Consortium Member or Group Member of the Project Documents to which it is a party; and</p> <p>(c) due execution by the Consortium Member or Group Member of the Project Documents to which it is a party.</p>	State	Project Co
5.	<p>Corporate structure</p> <p>The State receiving evidence that the corporate structure and the equity and/or subordinated debt arrangements between Project Co and its shareholders are in accordance with the Ownership Schedule and the information provided to the State</p>	State	Project Co

	Condition Precedent	Benefiting Party	Party to satisfy
	prior to the execution of this Deed.		
6.	<p>Authorised Officers</p> <p>The State receiving names and specimen signatures of the authorised officers of Project Co, including the Project Co Representative and any other person authorised to take action or give notices for or on behalf of Project Co under the State Project Documents.</p>	State	Project Co
7.	<p>Pre-Rate Set Satisfaction Notice</p> <p>The State receiving an original pre-rate set satisfaction notice, in form and substance satisfactory to the State, signed by the agent for the Financiers confirming that all initial conditions precedent to funding and drawdown of the facilities for the Project (including the satisfaction of conditions precedent under any other Project Documents) have been satisfied or waived in accordance with the terms of the Finance Documents, save for those specified in the notice which will be satisfied upon the occurrence of the agreed actions listed in the notice.</p>	State	Project Co
8.	<p>Finance Letter</p> <p>The State receiving an original letter from the Financiers signed by the Agent confirming that:</p> <p>(a) all financing is in place and ready for drawdown in accordance with the terms of the Facility Agreement;</p> <p>(b) all derivatives required under the Finance Documents are in place; and</p> <p>(c) all initial conditions precedent to funding and drawdown of the facilities for the Project have been satisfied or waived in accordance with the terms of the Finance Documents other than any condition precedent that requires the satisfaction or waiver of the conditions precedent to this Deed.</p>	State	Project Co

	Condition Precedent	Benefiting Party	Party to satisfy
9.	<p>Financial Close Financial Model</p> <p>The State receiving:</p> <p>(a) an electronic copy of the Financial Close Financial Model and the Model Output Schedule, in form and substance satisfactory to the State and a printed copy of that Model Output Schedule signed or initialled by Project Co;</p> <p>(b) a letter, in form and substance satisfactory to the State, confirming that the Financial Close Financial Model is identical to the Base Case Financial Model except as updated in accordance with the Financial Close Adjustment Protocol or as otherwise set out in the letter; and</p> <p>(c) an audit report on the Financial Close Financial Model, in form and substance satisfactory to the State, from an auditor acceptable to the State.</p>	State	Project Co
10.	<p>Delivery Phase Insurances</p> <p>Project Co delivering to the State in respect of the Insurances referred to in, and required to be taken out prior to Financial Close and maintained as detailed in, clause 46 and Schedule 22 of this Deed:</p> <p>(a) certified copies of the fully subscribed and executed policies relating to such Insurances in form and substance satisfactory to the State; and</p> <p>(b) certificates from an insurance broker as to the currency of all such Insurances and confirming that the State or its Associates are insureds under the policy (to the extent this is required under this document),</p> <p>or such other evidence as is required by the State.</p>	State	Project Co
11.	<p>Tax Ruling</p> <p>A certified copy of a private binding ruling from the Australian Taxation Office confirming section 820-39(3) of the <i>Income Tax Assessment Act 1997</i> (Cth) applies to Finance Co.</p>	State	Project Co
12.	<p>FIRB Approval</p> <p>A certified copy of the approval from the Foreign Investments Review Board advising that there is no objection under the <i>Foreign Acquisitions and Takeover Act 1975</i> (Cth) to the ownership of the</p>	State and Project Co	Project Co

	Condition Precedent	Benefiting Party	Party to satisfy
	Project Co or its interests in the Project Activities (if applicable), which is unconditional or includes conditions that are acceptable to the State (in its absolute discretion).		
13.	Other requirements Project Co delivering to the State any other opinion, certificate or other document that the State reasonably requests.	State	Project Co
14.	Approvals The State, as the Applicant, has submitted the Stage 2 Development Application to the Development Consent Authority.	State and Project Co	State
15.	PAFA Act approval The Minister's recommendation and the Treasurer's approvals under section 20 of the PAFA Act, and any approval of the Treasurer under section 22B of the PAFA Act, having been obtained.	State and Project Co	State

Schedule 4 — Programming Requirements

1. Interpretation of this Schedule

The following capitalised terms used in this Schedule have the meanings given to them in the proprietary computer software known as "Primavera P6" or higher Primavera project management software, produced by Primavera Systems, Inc:

- (a) Activity;
- (b) Activity ID;
- (c) Actual Dates;
- (d) Calendar;
- (e) Constraint;
- (f) Critical;
- (g) Critical Path;
- (h) Critical Path Network;
- (i) Early;
- (j) Float;
- (k) Free;
- (l) Lag;
- (m) Late;
- (n) Lead;
- (o) Logic;
- (p) Logic Link;
- (q) Milestone;
- (r) Network;
- (s) Percent Complete;
- (t) Planning Unit;
- (u) Predecessor;
- (v) Remaining Duration;
- (w) Successor; and
- (x) Total Float.

2. Delivery Phase Program

2.1 Form of the Delivery Phase Program

The Delivery Phase Program must be prepared in accordance with the detailed requirements set out in this Deed, including this Schedule, and otherwise in accordance with any other requirements reasonably requested by the State or the Independent Certifier.

2.2 Content of the Delivery Phase Program

The Delivery Phase Program must:

- (a) identify and be a single point of reference for all construction activities that comprise the Delivery Phase Activities;

- (b) contain the information specified in and otherwise satisfy the requirements of this Schedule;
- (c) contain sub-programs identifying all Project Activities from the date of this Deed to 12 Months after the Date of Commercial Acceptance, including:
 - (i) **(construction sub-program)**: all Delivery Phase Activity milestones and all construction activities (including on- and off-Site Activities) including:
 - A. **(Approvals)**: any Approvals which must be obtained in relation to the Delivery Phase Activities;
 - B. **(Delivery Phase Sites)**: all site establishment activities for the Delivery Phase Sites;
 - C. **(remediation works)**: all remediation works that are the responsibility of Project Co;
 - D. **(procurement)**: design, documentation, tendering and awarding of all subcontract packages;
 - E. **(mobilisation)**: mobilisation activities for all trade packages; and
 - F. **(adjacent projects and adjacent sites)**: works that interface with adjacent projects and sites;
 - (ii) **(design development sub-program)**: all Milestones, Activities and other key dates in the conduct of the Design Development Process, including:
 - A. all meetings with the SMU User Group;
 - B. all Design Development Presentations (as defined in the Design Development Schedule);
 - C. the review of Design Packages (as defined in Schedule 8 - Design Development Schedule) by the State; and
 - D. completion of all relevant Design Stages (as defined in Schedule 8 - Design Development Schedule);
 - (iii) **(Equipment sub-program)**: all Equipment related activities, including selection, procurement, manufacture, installation, commissioning and testing;
 - (iv) **(Completion sub-program)**: those activities set out in the:
 - A. Operational Readiness Plan;
 - B. Technical Completion Plan; and
 - C. Commercial Acceptance Plan (including all operational readiness activities);
 - (v) **(financing sub-program)**: all activities in respect of the financing of the Project and all other material commercial arrangements, including the achievement of any conditions precedent or conditions subsequent, the provision of all performance securities including bank guarantees, performance guarantees, parent company guarantees, timing of various tranches of financing and dates for Insurance renewals;
 - (vi) **(security systems sub-program)**: all Milestones, Activities and other key dates relating to the security systems for the Correctional Complex; and
 - (vii) **(operators program)**: all Milestones, Activities and other key dates relating to the operational commissioning of all sections of the Correctional Complex; and
- (d) include any other information reasonably requested by the State or the Independent Certifier.

3. General requirements for the preparation of the Delivery Phase Program

3.1 Software system

- (a) Project Co must prepare the Delivery Phase Program by using a recognised specialist proprietary programming computer software system which has been approved in advance by the State.
- (b) Any references to the provision of an electronic copy of a document produced by computer software means an electronic copy of that document in the format of the software in which the document was originally created, configured so as to allow the person to whom the electronic copy is provided to access and amend the information contained therein in the same manner as could the original creator(s) of that document.
- (c) Without limiting the general nature of this section 3, the State approves the use of the proprietary computer software known as:
 - (i) "Primavera P6" or higher project management software, produced by Primavera Systems, Inc; and
 - (ii) "Microsoft Project" (2010 or higher), produced by Microsoft Corporation.

3.2 Initial Construction Management Plan

The Delivery Phase Program must reflect the requirements of the initial Construction Management Plan attached at Attachment 2 to this Deed.

3.3 Form of Delivery Phase Program generally

The Delivery Phase Program must:

- (a) (**actual progress**): at all times reflect the actual progress of the Delivery Phase Activities being undertaken;
- (b) (**Works activities**): identify activities and the planned timing of the staging of the Works;
- (c) (**State dates**): identify all activities that involve the State, including the dates for:
 - (i) any submission of documents, samples, prototypes or other items to the State or Independent Certifier by Project Co (including any revisions or resubmissions); and
 - (ii) any review, comment, outcomes or actions required to be performed by the State, the State Representative, Project Co or the Independent Certifier,all of which must be consistent with the terms of the Project Documents;
- (d) (**site meetings**): identify the dates on which site meetings and subsequent site inspections will be held throughout the construction period;
- (e) (**clear and sufficient detail**): be clear and sufficiently detailed for the State to easily identify:
 - (i) the Critical Path for the execution of the Delivery Phase Activities;
 - (ii) the duration of and number of Activities;
 - (iii) the party responsible for each Activity and Milestone in connection with the Delivery Phase Activities or the Services;
 - (iv) all activities that involve the State, including the dates for any submission of documents, samples, prototypes or other items, to the State or Independent Certifier by Project Co (including any revisions or resubmissions);
 - (v) any review, comment, outcomes or actions required to be performed by the State, the State Representative, Project Co or the Independent Certifier (all of which must be consistent with the other terms of this Deed);
 - (vi) all Activities or Milestones that are dependent on external third party events, including the obtaining of Approvals (**Precursor Events**); and

- (vii) the nature of, time for completion of, and the identity of any third party responsible for completing, each Precursor Event;
- (f) (**Milestone**): contain a single overall start Milestone and a single overall finish Milestone;
- (g) (**Critical Path Network**): be in the form of a Critical Path Network that enables the Critical Path to be calculated automatically by the computer software;
- (h) (**days as Planning Unit**): use days as its Planning Unit (or such other period of time approved in writing by the State);
- (i) (**Calendars**): contain Calendars which enable planned working and non-working periods in the future to be identified, including all applicable public holidays, weekends, rostered days off or other non-working days;
- (j) (**Activities Logically Linked**): demonstrate that all Activities, apart from the start and finish Milestones, are Logically Linked;
- (k) (**labour resource histogram**): include a labour resource histogram consistent with the work depicted in the Delivery Phase Program. The labour resource histogram should be able to categorise the various trade resources and Project Co's own resources;
- (l) (**Activities**): clearly identify:
 - (i) Activities, their order, duration and interrelationship;
 - (ii) the durations and Total Float of all Activities;
 - (iii) all phases and sub-phases of the Delivery Phase;
 - (iv) the contingency allowed within the Delivery Phase Program for potential delays; and
 - (v) any other matters which may have a material effect on the time required to complete the Works;
- (m) (**staging and/or construction methodology**): show the proposed staging and/or construction methodology of the Delivery Phase Activities;
- (n) (**other information**): contain all other information reasonably requested by the State or Independent Certifier; and
- (o) (**prior State approval**): not contain, without prior approval by the State:
 - (i) any Constraints that fix the Early or Late start or finish dates of Activities or override the dates that would otherwise be automatically calculated in accordance with Critical Path Network Logic (except for the overall start Milestone, which may be fixed manually);
 - (ii) any Lags that extend beyond more than 50% of the duration of the Predecessor Activity of the Lag;
 - (iii) any Free Float Constraints or Total Float Constraints;
 - (iv) any other programming Activities or methodologies which have the effect of creating false Criticality or constraining the program from reacting dynamically to changes;
 - (v) any Logic Links containing negative Lags (except where a negative Lag is used to indicate the time for an action by the State);
 - (vi) Activities without finish Successors (except for the overall finish Milestone); or
 - (vii) Activities without start Predecessors (except for the overall start Milestone).

4. Updating the Delivery Phase Program

4.1 Updates to the Delivery Phase Program

Project Co must update and submit to the State Representative and the Independent Certifier for review in accordance with the Review Procedures updates of the Delivery Phase Program and all

sub-programs to accurately reflect the progress of the Delivery Phase Activities at the following intervals:

- (a) within 20 Business Days of Financial Close to reflect the date of Financial Close, the Date for Technical Completion (as at Financial Close) and the Original Date for Commercial Acceptance;
- (b) at least Monthly (no later than 10 Business Days prior to each meeting of the Project Control Group) to accurately reflect:
 - (i) the actual status and progress of the Delivery Phase Activities; and
 - (ii) any other changes to the activities, times, durations or other information contained in the Delivery Phase Program and any sub-programs;
- (c) within 5 Business Days of Project Co being:
 - (i) granted an extension to any Date for Completion; or
 - (ii) instructed to accelerate the Delivery Phase Activities, in accordance with this Deed; and
- (d) otherwise, within 5 Business Days of:
 - (i) deciding to depart in a material way from the then current Delivery Phase Program; or
 - (ii) any request by the State or Independent Certifier at any time,

and such updates must comply with this Schedule and the other requirements of this Deed and must not adjust any Date for Completion (unless an extension of time has been granted in accordance with this Deed).

4.2 Content and format of updated Delivery Phase Program

- (a) Project Co must submit to the State and the Independent Certifier the updated Delivery Phase Program in the following forms:
 - (i) 2 paper copies (which must be submitted on an A1 size sheet reduced to A3 and appropriately time scaled across the sheet so as to be legible and to detail the sequence, duration and interaction of design, procurement, construction and commissioning);
 - (ii) 1 electronic version in .pdf format; and
 - (iii) 1 electronic version in original, executable Microsoft Project or Primavera file format or other agreed software.
- (b) The updated Delivery Phase Program must:
 - (i) clearly identify the Percent Complete and the Remaining Duration of each Activity;
 - (ii) clearly identify the Activities that started and the Activities that finished during the reporting period and the dates on which those Activities started and finished;
 - (iii) be updated to the end of the previous reporting period using the software to record Actual Dates and the Percent Complete of Activities;
 - (iv) identify whether Project Co will not achieve Completion until after any Date for Completion; and
 - (v) incorporate and display the version of the Delivery Phase Program produced at the end of the previous reporting period as a baseline reflecting the actual status and progress of the Delivery Phase Activities.

4.3 Submission of report with any updated Delivery Phase Program

- (a) With each update of any Delivery Phase Program, Project Co must submit to the State and the Independent Certifier a written report reconciling the updated Delivery Phase Program with the version of the Delivery Phase Program produced for the previous reporting period.

- (b) The report referred to in paragraph (a) must as a minimum:
- (i) summarise the changes made to the Delivery Phase Program and any impacts those changes may have on key Activities and Milestones;
 - (ii) identify and explain, for Activities that are on the Critical Path, the reason for any changes to:
 - A. the duration of Activities since the previous reporting period;
 - B. the presence or absence of Logic Links or their Leads or Lags;
 - C. the presence or absence of program Activities or their Activity IDs; and
 - D. the timing of Activities;
 - (iii) summarise the material changes to any Activities;
 - (iv) identify the estimated timing for the achievement of key Project stages including the completion of each of the design and construction stages and any Date for Completion;
 - (v) the impact as at the date of the report, the estimated continuing impact and the estimated potential impact of any delaying events or circumstances;
 - (vi) contain any other information reasonably requested by the State or the Independent Certifier.

Schedule 5 — Change Compensation Principles

1. Definitions

In this Schedule:

Agreed Margin means the Delivery Margin, the Operator Margin, the Project Co Margin and, in respect of any Savings, the Savings Margin.

Base Costs means the Delivery Costs, Operator Costs and Project Co Costs in each case that are directly attributable to the relevant Change Compensation Event, but excluding all:

- (a) Prolongation Costs;
- (b) Financing Delay Costs;
- (c) Agreed Margin.

Change Compensation Event means each event described in Table 1 in Section 2.1.

Change Notice means the notice referred to in Section 8, including any updated Change Notice.

Change Notice Event has the meaning given to it in Section 8.1(b).

Change Notice Recipient has the meaning given to it in Section 8.1(b).

Change Notice Request has the meaning given to it in Section 8.2(a).

Change Response has the meaning given to it in Section 9.1(a)(ii).

Costs means:

- (a) all actual direct capital costs, preliminaries, operation and maintenance costs or external third party advisory costs properly and reasonably incurred, or which will be properly and reasonably incurred and in each case to the extent that they exceed the relevant amounts (if any) assumed in the then current Financial Model; or
- (b) in respect of any "Saving", all direct costs saved or which will be saved or ought reasonably to have been saved.

Delivery Costs means the additional Costs of:

- (a) during the Delivery Phase, the D&C Subcontractor or the Operator (to the extent it is performing Delivery Phase Activities); or
- (b) during the Operating Phase, the Subcontractor engaged by Project Co to carry out capital works the subject of a Change Compensation Event,

that are directly attributable to the relevant Change Compensation Event including scaffolding and craneage, but excluding all Agreed Margin, Prolongation Costs, Financing Delay Costs, Operator Costs and Project Co Costs.

Delivery Margin means:

- (a) during the Delivery Phase, the percentage that the D&C Subcontractor and the Operator (to the extent it is performing Delivery Phase Activities) may charge in accordance with Table 2 in Section 3.1 as Margin; and

- (b) during the Operating Phase:
 - (i) if the Operator is engaged by Project Co to carry out capital works the subject of a Change Compensation Event, the percentage that the Operator may charge in accordance with Table 2 in Section 3.1 as Margin; and
 - (ii) otherwise, the percentage that a Subcontractor engaged by Project Co to carry out capital works the subject of a Change Compensation Event (other than the Operator) may charge, as Margin, as determined through a competitive tender process in accordance with Section 4.

Financing Delay Costs means the incremental financing delay costs actually incurred, or which will be actually incurred, by any Project Co Entity under the Finance Documents that are directly attributable to a delay to the achievement of Commercial Acceptance by the Original Date for Commercial Acceptance caused by:

- (a) a Compensable Extension Event;
- (b) a Modification the subject of a Modification Order;
- (c) a Change in Mandatory Requirements the subject of a Modification Order;
- (d) the State requiring Project Co to repair or rebuild the Relevant Infrastructure under clause 44.3(e) or 47.3(a)(i); or
- (e) an Uninsured Force Majeure Event,

but excluding all financing delay costs that are attributable to delay caused by any other event (including any other Extension Event).

Margin means an amount on account of off-site overheads and administrative, corporate and other like costs and profit.

Notification Period means:

- (a) within the time specified in this Deed; or
- (b) if no time is specified in this Deed, within 20 Business Days,

or such longer period as is agreed to by the State, in writing, having regard to the extent and nature of the relevant event or circumstance and its effects and the information required to be included in the Change Notice.

Operator Costs means the net incremental Costs of the Operator that are directly attributable to implementing the recurrent elements of the relevant Change Compensation Event during the Operating Phase, including warranty costs and lifecycle costs, but excluding all Agreed Margin, Prolongation Costs, Financing Delay Costs, Delivery Costs and Project Co Costs.

Operator Margin means the percentage that the Operator may charge in accordance with Table 2 or Table 3 in Section 3.1 (as applicable) on its Delivery Costs or Operator Costs (as applicable), as Margin.

Project Co Costs means the net incremental Costs incurred by Project Co that are directly attributable to implementing the relevant Change Compensation Event, but excluding all Agreed Margin, Prolongation Costs, Financing Delay Costs, costs of project management services provided by Project Co, Delivery Costs and Operator Costs.

Project Co Margin means the percentage that Project Co may charge in accordance with Tables 2 or Table 3 in Section 3.1 (as applicable), as Margin.

Project Debt means.

- (a) principal repayments and interest on the actual Debt; and
- (b) scheduled principal repayments and interest on Debt as set out in the Financial Model;

Prolongation Costs means the net incremental Costs incurred, or which will be incurred, by Project Co or a Subcontractor that are directly attributable to a delay to the achievement of Commercial Acceptance caused by:

- (a) a Compensable Extension Event;
- (b) a Modification the subject of a Modification Order;
- (c) a Change in Mandatory Requirements the subject of a Modification Order;
- (d) the State requiring Project Co to repair or rebuild the Relevant Infrastructure under clauses 44.3(e) or 47.3(a)(i),

but excluding all Base Costs, Financing Delay Costs, Agreed Margin, any other Margin and Costs that are attributable to delay caused by any other event (including any other Extension Event).

Savings means the amount of any Costs of any Project Co Entity or a Subcontractor, together with the relevant Agreed Margin, avoided or otherwise reduced in accordance with this Schedule arising in connection with a Change Compensation Event.

Savings Margin means:

- (a) in the case of a Saving in Delivery Costs or Operator Costs, a margin of [REDACTED] and
- (b) in the case of a Saving in Project Co Costs, a margin of [REDACTED]

2. Change Compensation Events

2.1 Change Compensation Events

Table 1 sets out:

- (a) the Change Compensation Events for which either party may be entitled to compensation in accordance with this Schedule; and
- (b) the relevant sections of this Schedule that are to be used in calculating that compensation.

Table 1: Change Compensation Events and entitlements

Change Compensation Event	Clause	Agreed Margin entitlement	Relevant Sections for calculating compensation
Second Pre Agreed Modification Works	Clause 6.8 (<i>Working Hours Restriction</i>)	Agreed Margins are applicable	Sections 3.1 and 3.10 (for works)
Contamination Compensation Event	Clause 8.6 (<i>Project Co's entitlement to compensation for Remediation</i>)	Agreed Margins (other than Project Co Margin) are applicable	Section 3.1 (for remediation costs) Section 3.2 (for Prolongation Costs and Financing Delay Costs)
Facilitation Works	Clause 9.1(d)(ii)(A)	Agreed Margins are	Section 3.1 (for

Change Compensation Event	Clause	Agreed Margin entitlement	Relevant Sections for calculating compensation
(Power) Modification	<i>(Facilitation Works (Power) Modification)</i>	applicable	works)
Design Development Changes and Project Co initiated Modification sharing of Saving	Clauses 17.3 (<i>Design Development Changes</i>) and 40.8(d) (<i>Sharing of Savings</i>)	Agreed Margins are applicable when calculating share of Savings	Section 3.1 (for works or services costs or Savings (as applicable)) Section 3.5 (for determining share of Savings)
Deferral of Refurbishment Works	Clause 32.3(f) (Permanently deferred Refurbishment Works)	Agreed Margins are applicable when calculating share of Savings	Section 3.1 (for works or services costs or Savings (as applicable)) Section 3.5 (for determining share of Savings)
Omission of Reviewable Services	Clause 33.10 (<i>Failure to agree</i>)	Agreed Margins are applicable	Section 3.1 (for services costs or Savings (as applicable))
Compensable Extension Event as a result of delays to the Stage 2 Development Consent (in accordance with limb (h)(i) of the definition of Compensable Extension Event)	Clause 38.7 (<i>Entitlement to Costs</i>)	No Agreed Margins are applicable	Section 3.8 (for Prolongation Costs and Financing Delay Costs)
Compensable Extension Event as a result of an unforeseeable condition (in accordance with limb (h)(ii) of the definition of Compensable Extension Event)	Clause 38.7 (<i>Entitlement to Costs</i>)	No Agreed Margins are applicable	Sections 3.1 subject to Section 3.7 (for works or services costs or Savings (as applicable)) Section 3.8 (for Prolongation Costs and Financing Delay Costs)
Compensable Event as a result of an unforeseeable condition (in accordance with limb (d) of the definition of	Clause 38A (<i>Compensable Events</i>)	No Agreed Margins are applicable	Sections 3.1 subject to Section 3.7 (for works or services costs or Savings (as applicable))

Change Compensation Event	Clause	Agreed Margin entitlement	Relevant Sections for calculating compensation
Compensable Event)			
Compensable Extension Event other than: <ul style="list-style-type: none"> • Contamination Compensation Event; • Compensable Extension Event as a result of delays to the Stage 2 Development Consent (in accordance with limb (h)(i) of the definition of Compensable Extension Event); • Compensable Extension Event as a result of an unforeseeable condition (in accordance with limb (h)(ii) of the definition of Compensable Extension Event); or • Compensable Extension Event limb (j) (Facilitation Works) 	Clause 38.7 (<i>Entitlement to Costs</i>)	No Agreed Margins are applicable	Section 3.1 (for Works or services costs or Savings (as applicable)) Section 3.2 (for Prolongation Costs and Financing Delay Costs)
Compensable Extension Event limb (j) (Facilitation Works)	Clause 38.7 (<i>Entitlement to Costs</i>)	No Agreed Margins are applicable	Section 3.9 (for the costs of the Facilitation Works) Section 3.2 (for Prolongation Costs and Financing Delay Costs)
Compensable Event – Facilitation Works	Clause 38A (<i>Compensable</i>)	No Agreed Margins are	Section 3.9 (for the costs of the

Change Compensation Event	Clause	Agreed Margin entitlement	Relevant Sections for calculating compensation
(in accordance with limbs (a), (b) or (c) of the definition of Compensable Event)	<i>Events</i>)	applicable	Facilitation Works)
Acceleration	Clause 38.13 (<i>Acceleration</i>)	No Agreed Margins are applicable	Section 3.1 (for acceleration costs)
Force Majeure Event (during Delivery Phase)	Clause 38.14 (<i>Force Majeure during Delivery Phase</i>)	No Agreed Margins are applicable	Section 3.3 (for Financing Delay Costs)
Compensable Intervening Event (other than Contamination Compensation Event)	Clauses 39.6 (<i>Intervening Events other than Insured Risks or Force Majeure Events</i>) and 39.7 (<i>Intervening Event which is an Insured Risk</i>)	Agreed Margins are applicable	Section 3.1 (for works or services costs other than repair or rebuilding the Correctional Complex)
Force Majeure Event (during Operating Phase)	Clause 39.8 (<i>Intervening Event which is a Force Majeure Event</i>)	No Agreed Margins are applicable	Section 3.3 (for the amount necessary to enable Project Co to pay the Project Debt, Lifecycle Payment and for Services carried out)
Alternative method	Clause 39.9 (<i>Alternative arrangements</i>)	Agreed Margins are applicable	Section 3.1 (for workaround costs)
Modification (excluding any Minor Modification and any Modification proposed by Project Co)	Clause 40 (<i>Modifications</i>)	Agreed Margins are applicable	Section 3.1 (for works or services costs or Savings (as applicable)) Section 3.2 (for Prolongation Costs and Financing Delay Costs)
Change in Mandatory Requirements (due to a General Change in Law)	Clause 40.10 (<i>Change in Mandatory Requirements</i>)	No Agreed Margins are applicable	Sections 3.1 and 3.6 (for cost in modifying the Correctional Complex or the Services)
Change in Mandatory Requirements (due to	Clause 40.10 (<i>Change in</i>	No Agreed Margins are	Sections 3.1 and 3.6 (for cost in modifying

Change Compensation Event	Clause	Agreed Margin entitlement	Relevant Sections for calculating compensation
a Project-Specific Change in Law)	<i>Mandatory Requirements)</i>	applicable	the Works, Correctional Complex or the Services) Section 3.2 (for Prolongation Costs and Financing Delay Costs)
Change in Mandatory Requirements (due to a Change in Policy)	Clause 40.10 (<i>Change in Mandatory Requirements)</i>)	No Agreed Margins are applicable	Sections 3.1 and 3.6 (for cost in modifying the Works, Correctional Complex or the Services) Section 3.2 (for Prolongation Costs and Financing Delay Costs)
Minor Modification	Clause 40.12 (<i>Minor Modifications)</i>)	No Agreed Margins are applicable	Section 3.1 (for works or services)
Emergencies and Step-In by the State	Clause 42.2(c) (<i>Relief and Payment)</i>)	No Agreed Margins are applicable	Section 3.1 (for works or services)
Damage caused by the State or its Associates	Clause 44.3(e) (<i>Repairing or re-building)</i>)	Agreed Margins are applicable	Section 3.1 (for repairing or rebuilding) Section 3.2 (for Prolongation Costs and Financing Delay Costs)
Damage caused by Agreed Uninsurable Risk	Clause 47.3 (<i>Agreed Uninsurable Risks resulting in loss or damage)</i>)	Agreed Margins are applicable	Section 3.1 (for works or services costs or Savings (as applicable)) Section 3.2 (for Prolongation Costs and Financing Delay Costs)
Any other event deemed to be a Change Compensation Event		No Agreed Margins are applicable	Section 3.1 (for services costs or Savings (as applicable))

3. Methodology for calculating compensation

3.1 Compensation for Change Compensation Events

- (a) Subject to the specific requirements and restrictions otherwise set out in this Deed, the entitlement to compensation in respect of a Change Compensation Event will be calculated as follows:

$$P = C - D - I$$

where:

- P =** the amount payable to Project Co, where this is a positive amount, or the amount payable to the State, where this is a negative amount;
- C =** the amount of any Base Costs plus applicable Agreed Margin payable to Project Co in accordance with this Schedule;
- D =** the amount of any Savings; and
- I =** proceeds from any Insurances which respond to the Change Compensation Event or any other insurance proceeds or compensation received by, or that would have been received by, Project Co or any of its Associates in respect of the relevant Change Compensation Event but for any failure by Project Co or any of its Associates to effect and maintain any Insurances in accordance with clause 46 (*Insurance*) and Schedule 22 (*Insurance Schedule*) of this Deed, or to make or pursue a claim under any Insurances or to comply with any Project Documents or insurance policy.

- (b) (**Delivery Phase Activities and capital works**): Subject to sections 3.7 and 3.8, to the extent that Change Compensation Events involve Delivery Phase Activities or capital works during the Operating Phase, the amount of item "C" in the formula in Section 3.1(a) will be calculated as follows:

$$C = A + B + D + E$$

where:

- C =** the amount of any Base Costs plus applicable Agreed Margin payable;
- A =** the Delivery Costs;
- B =** the Agreed Margin for the respective Key Subcontractor (as applicable), in each case multiplied by its respective Delivery Costs;
- D =** Project Co Costs; and
- E =** the applicable Project Co Margin multiplied by "A".

Table 2: Agreed Margins for Delivery Phase Activities and capital works

Component	Agreed Margin		
	(Delivery Cost)	(Delivery Cost)	(Delivery Cost)
Project Co Margin (during the			

Component	Agreed Margin		
	(Delivery Cost)	(Delivery Cost)	(Delivery Cost)
Delivery Phase)			
Project Co Margin (during the Operating Phase)			
Delivery Margin (D & C Subcontractor)			
Delivery Margin (Operator)			
1. The above dollar thresholds are at Financial Close and will be Indexed thereafter.			

- (c) **(Recurrent works or services):** To the extent that Change Compensation Events involve recurrent works or services, the amount of item "C" in the formula in Section 3.1(a) will be calculated as follows:

$$C = A + B + D + E$$

where:

- C =** the amount of any Base Costs plus applicable Agreed Margin payable;
- A =** the Operator Costs;
- B =** the applicable Operator Margin multiplied by "A";
- D =** Project Co Costs; and
- E =** the applicable Project Co Margin multiplied by "A".

Table 3: Agreed Margins for recurrent works or services

Component	Agreed Margin		
	(Operator Cost)	(Operator Cost)	(Operator Cost)
Project Co Margin			
Operator Margin			
1. The above dollar thresholds are as at Financial Close and will be Indexed thereafter.			

3.2 Compensation for Financing Delay Costs and Prolongation Costs

Subject to the specific requirements and restrictions otherwise set out in this Deed, each Project Co Entity's entitlement to Prolongation Costs and Financing Delay Costs (as applicable) on the occurrence of those Change Compensation Events listed in Table 1 in Section 2.1 as entitling Project Co to compensation under this Section 3.2 and which Project Co is granted an extension of time will be calculated as follows:

$$P = A + B - I$$

where:

P = the amount payable to Project Co;

A = Prolongation Costs for each day for which Project Co is granted an extension of time to the Date for Commercial Acceptance for the relevant Change Compensation Event in accordance with this Deed;

B = Financing Delay Costs for each day for which Project Co is granted an extension of time to the Date for Commercial Acceptance for the relevant Change Compensation Event in accordance with this Deed, but not for any day that is earlier than the Original Date for Commercial Acceptance or later than whichever is the earlier of:

- (a) the revised Date for Commercial Acceptance resulting from that extension of time;
- (b) the Date of Commercial Acceptance; or
- (c) the date of termination of this Deed for any reason; and

I = any proceeds from any Insurances which responds to the relevant Change Compensation Event or any other insurance proceeds, damages or compensation received by, or that would have been received by, Project Co or any of its Associates in respect of the relevant Change Compensation Event but for any failure by Project Co or any of its Associates to effect and maintain any Insurances in accordance with clause 46 (*Insurance*) and Schedule 22 (*Insurance Schedule*) of this Deed, or to make or pursue a claim under any Insurances or to comply with any Project Documents or insurance policy.

If "P" is a negative number it is deemed to be "0".

3.3 Compensation for Force Majeure Event

Where clause 38.14(d) (*Uninsured Force Majeure Event*) or clause 39.8(c) (*Minimum Payment*) of this Deed applies, subject to the specific requirements and restrictions otherwise set out in this Deed, Project Co's entitlement to compensation in respect of a Change Compensation Event will be calculated as follows:

$$P = F + S + LP - I$$

where:

P = the amount payable to Project Co;

F = where clause 38.14(d) applies, the Financing Delay Costs for each day for which Project Co is granted an extension of time to the Date for Commercial Acceptance for the relevant Change Compensation Event in accordance with this Deed, but not for any day that is earlier than the Original Date for Commercial Acceptance or later than whichever is the earlier of:

- (a) the revised Date for Commercial Acceptance resulting from that extension of time;
- (b) the Date of Commercial Acceptance; or
- (c) the date of termination of this Deed for any reason; and

where clause 39.8(c) applies, the minimum amount necessary to enable Finance Co to pay the Project Debt;

- S** = for a Force Majeure Event which is an Intervening Event, the component of the Monthly Service Payment which is referable to those Services that Project Co continues to carry out under this Deed notwithstanding the Force Majeure Event, and in all other circumstances, "S" is "0";
- LP** = for a Force Majeure Event which is an Intervening Event, the amount of the Lifecycle Charge that otherwise would have been due and payable to Project Co by the State but for the suspension and in all other circumstances, "LP" is "0"; and
- I** = any proceeds from any Insurance policies which responds to the relevant Change Compensation Event, or any other insurance proceeds, damages or compensation received by, or that would have been received by, Project Co or any of its Associates in respect of the relevant Change Compensation Event but for any failure by Project Co or any of its Associates to:
- (A) effect and maintain any Insurances in accordance with clause 46 (*Insurance*) and Schedule 22 (*Insurance Schedule*) of this Deed;
 - (B) make or pursue a claim under any Insurances; or
 - (C) to comply with any Project Documents or insurance policy.

3.4 Minor Modifications

- (a) The parties acknowledge that:
 - (i) the process for a Minor Modification is intended to be streamlined and easy to administer for both parties;
 - (ii) the parties may, but are not obliged to, use the Change Notice and Change Response procedure set out in this Schedule for Minor Modifications; and
 - (iii) any amounts claimed or payable for a Minor Modification must be calculated in accordance with Section 3.1.
- (b) The parties will otherwise agree the form and content of documentation required to implement and pay for a Minor Modification so that, save where clause 40.12(f) (*Failure to agree*) of this Deed applies, the remainder of these Change Compensation Principles will not apply to a Minor Modification unless otherwise agreed by the parties.

3.5 Savings

For the purposes of Section 3.1, the amount of any Saving payable to the State in respect of:

- (a) Design Development Changes pursuant to clause 17.3(c) (*Design Development Changes*) of this Deed;
- (b) a Modification pursuant to clause 40.8(d) (*Sharing of Savings*) of this Deed; or
- (c) permanently deferred Refurbishment Works pursuant to clause 32.3(f) (*Permanently deferred Refurbishment Works*) of this Deed,

will be as agreed between the parties at the time, or if the parties are unable to agree within 20 Business Days of:

- (d) the State accepting the Design Development Change pursuant to clause 17.3(c) (*Design Development Changes*) of this Deed;

- (e) Project Co issuing the relevant Project Co Modification Proposal pursuant to clause 40.8(d) (*Sharing of Savings*) of this Deed; or
- (f) the Expiry Date in the case of permanently deferred Refurbishment Works pursuant to clause 32.3(f) of this Deed,

(as the case may be), the amount of Savings payable to the State will be [REDACTED]

3.6 Change in Mandatory Requirements

To the extent that:

- (a) a Change in Mandatory Requirements occurs for which Project Co is entitled to relief in accordance with this Deed; and
- (b) the Change in Mandatory Requirements effects a Reviewable Service,

(**Changed Reviewable Service**) then, the amount payable to Project Co pursuant to Section 3.1 in respect of the Changed Reviewable Service will be those Base Costs and Margin incurred, or to be incurred, until the commencement of the next Reviewable Services Term.

3.7 Unforeseeable Conditions

Where a Change Notice claims costs in respect of:

- (a) limb (h)(ii) of the definition of Compensable Extension Event; or
- (b) limb (d) of the definition of Compensable Event,

the amount of item "C" in the formula in Section 3.1(a) will be calculated as follows:

$$C = A$$

where:

C = the amount of any Base Costs; and

A = the Delivery Costs.

3.8 Stage 2 Development Consent delays

Where a Change Notice claims costs in respect of limb (h) of the definition of Compensable Extension Event, subject to the specific requirements and restrictions otherwise set out in this Deed, Project Co's entitlement to Prolongation Costs and Financing Delay Costs on the occurrence of those Change Compensation Events listed in Table 1 in Section 2.1 as entitling Project Co to compensation under this Section 3.8 and for which Project Co is granted an extension of time will be calculated as follows:

$$P = A + B - I$$

where:

P = the amount payable to Project Co;

A = Prolongation Costs for each day for which Project Co is granted an extension of time to the Date for Commercial Acceptance for the relevant Change Compensation Event in accordance with this Deed, up to a maximum daily amount of [REDACTED]

B = Financing Delay Costs for each day for which Project Co is granted an extension of time to the Date for Commercial Acceptance for the relevant Change Compensation Event in accordance with this Deed up to a maximum daily amount which will be as set out in the Financial Close Financial Model in the work sheet entitled "S2DC Delay Schedule" a

printout of which is signed by the State and Project Co at or immediately after Financial Close, but not for any day that is earlier than the Original Date for Commercial Acceptance or later than whichever is the earlier of:

- (A) the revised Date for Commercial Acceptance resulting from that extension of time;
- (B) the Date of Commercial Acceptance; or
- (C) the date of termination of this Deed for any reason; and

I = any proceeds from any Insurances which responds to the relevant Change Compensation Event or any other insurance proceeds, damages or compensation received by, or that would have been received by, Project Co or any of its Associates in respect of the relevant Change Compensation Event but for any failure by Project Co or any of its Associates to effect and maintain any Insurances in accordance with clause 46 (*Insurance*) and Schedule 22 (*Insurance Schedule*) of this Deed, to make or pursue a claim under any Insurances where there is a legitimate entitlement to do so or to comply with any Project Documents or insurance policy.

On the Conversion Date (as defined in the Facility Agreement), Project Co will pay to the State the amount determined in accordance with Section 4(a) of the Stage 2 Delay Protocol attached to this Schedule in Annexure 1, and provide account statements and supporting details as requested by the State to evidence the interest income amount.

3.9 Facilitation Works

Where a Change Notice claims costs in respect of:

- (a) limb (a), (b) or (c) of the definition of Compensable Event; or
- (b) limb (j) of the definition of Compensable Extension Event,

the amount of item "P" in the formula in this Section 3.9 will be calculated as follows:

$$P = A$$

where:

P = the amount payable to Project Co; and

where:

A = in respect of:

- (a) the Facilitation Works (Power), [REDACTED] per day for every day after [REDACTED] until the Facilitation Works (Power) are completed;
- (b) the Facilitation Works (Water), [REDACTED] per day for every day after [REDACTED] until the Facilitation Works (Water) are completed; or
- (c) the Facilitation Works (Roads), [REDACTED] per day for every day after [REDACTED] until the Facilitation Works (Roads) are completed.

3.10 Second Pre Agreed Modification Works

- Where a Change Notice claims costs in respect of the Second Pre Agreed Modification Works, the amount in item "P" in the formula in Section 3.1(a) cannot exceed [REDACTED]

4. Tender process during Operating Phase

- (a) The State may require Project Co to carry out, or procure that the relevant Key Subcontractor carries out, a tender process in respect of a Change Compensation Event in accordance with this Section 4 if, during the Operating Phase:
- (i) the relevant Change Compensation Event involves a capital cost component and the Delivery Costs are likely to exceed ██████ (Indexed); or
 - (ii) the State notifies Project Co that it does not accept or rejects a Change Notice issued by Project Co and that it requires Project Co to carry out a tender process in respect of the relevant Change Compensation Event.
- (b) If a tender process is required to be carried out in accordance with Section 4(a):
- (i) **(Tender Process)**: Project Co must, or if applicable must procure that the relevant Key Subcontractor, obtain a minimum of three separate quotes from experienced, independent and capable contractors reasonably acceptable to the State to carry out any work or services in respect of the Change Compensation Event;
 - (ii) **(Tender Process Material)**: Project Co must, and if applicable must procure that the relevant Key Subcontractor, permit the State to review all materials that are issued and submitted in the tender process and provide any other information that the State reasonably requires including such written consents as are required (including by Law) to carry out any Probity Investigations;
 - (iii) **(Selection Criteria)**: Project Co must ensure, and if requested by the State, demonstrate to the reasonable satisfaction of the State, that the Subcontractor it, or the relevant Key Subcontractor (as the case may be), intends to select and engage is the best choice having regard to the:
 - A. price quoted;
 - B. experience and capability of that Subcontractor; and
 - C. ability of the Subcontractor to carry out the work or the services in the manner required by this Deed;
 - (iv) **(Subcontracting requirements)**: the Subcontractor must meet the requirements in respect of Subcontractors set out in this Deed; and
 - (v) **(State not satisfied)**: if, following the conduct of the tender process, the State is not reasonably satisfied with the tenders, it may:
 - A. direct Project Co:
 - (I) not to accept; or
 - (II) if applicable, to procure that the relevant Key Subcontractor does not accept,
any tender offer;
 - B. except where expressly stated otherwise in this Deed, direct Project Co not to proceed with the relevant Change Compensation Event; or
 - C. instruct Project Co to proceed with the work or the services, but on another basis under this Schedule.

5. General principles for calculating compensation

The extent (if any) to which compensation will be payable by the State, for a Change Compensation Event, will be determined as follows (but without affecting any express limitations on or exclusions from the calculation of such compensation as set out in this Deed):

- (a) **(Overriding considerations):** the overriding considerations will be that:
 - (i) the State is receiving value for money; and
 - (ii) the compensation amount is fair and reasonable and is calculated in a manner that is transparent and reflects commercial arm's length arrangements;
- (b) **(Incremental cost):** changes in Base Costs are to be determined on an incremental basis where:
 - (i) in the case of an increase in Base Costs, only costs that would not be incurred but for the Change Compensation Event are to be taken into account;
 - (ii) in the case of a reduction in Base Costs, only savings that would not have accrued but for the Change Compensation Event are to be taken into account; and
 - (iii) Base Costs will be calculated net of any insurance proceeds, damages or compensation which Project Co or the Key Subcontractors receives or are entitled to receive as a result of the Change Compensation Event;
- (c) **(Mitigation):** calculation of Costs will:
 - (i) exclude any incremental Costs which would not have been incurred; and
 - (ii) include any Savings which would have been derived,

to the extent Project Co and its Associates fail to use all reasonable endeavours to mitigate the effects of any Change Compensation Event (including by putting in place temporary measures reasonably acceptable to the State's Representative);
- (d) **(Time value of money):** appropriate regard must be given to the time value of money and timing of cash flows by discounting or inflating them to reflect when they occur (if applicable);
- (e) **(Open Book Basis):** Project Co must and must procure that its Associates:
 - (i) provide all information referred to in this Schedule on an Open Book Basis (as defined below);
 - (ii) make available the appropriate personnel to explain the basis on which a particular calculation has been made; and
 - (iii) allow the State to review and undertake audits,

in order to enable the State to verify compliance with this Deed and make an accurate assessment of Costs and Savings;
- (f) **(Open Book Basis):** will include each Project Co Entity and Project Co's Key Subcontractors providing a breakdown of the calculation of all relevant preliminaries, labour, equipment, materials, subcontract, finance and other Costs and Margins of Project Co and its Associates in a clear and transparent manner and other information reasonably requested by the State including reasonably available source documents required to verify such calculation;

- (g) **(No double counting)**: no amounts will be double counted and no costs will be payable more than once; and
- (h) **(Margins)**: except where Project Co is expressly entitled to be paid an Agreed Margin, the State will not pay or otherwise compensate Project Co (or any Key Subcontractor) for any Margin (or loss of Margin) in respect of a Change Compensation Event.

6. Form and timing of compensation

- (a) **(Change Compensation Event)**: If a Change Compensation Event:
 - (i) results in an amount owing from Project Co to the State, the State will deduct such amount from the Monthly Service Payments payable to Project Co after the relevant Change Compensation Event, or if there are insufficient subsequent Monthly Service Payments payable to Project Co to cover the amount of the Change Compensation Event or if the Change Compensation Event occurs during the Delivery Phase, such amount will be a debt due and payable by Project Co to the State;
 - (ii) results in an amount owing from the State to Project Co that is not financed by any Project Co Entity in accordance with Section 6(b), the State will pay such amount to Project Co:
 - A. subject to paragraph B, in accordance with the payment arrangements set out in the approved Change Notice which could include a lump sum payment, monthly in arrears, a series of milestone payments or an adjustment to the Monthly Service Payment (or a combination of these methods); or
 - B. in respect of Financing Delay Costs, monthly in arrears on the date which the State would have paid the Monthly Service Payment relating to those days of delay had Commercial Acceptance not been delayed by the relevant Change Compensation Event; or
 - (iii) results in an amount owing from the State to Project Co that is financed by any Project Co Entity in accordance with Section 6(b), the State will pay such amount to Project Co by way of an increase in the Monthly Service Payment.
- (b) **(Reasonable endeavours to obtain funding)**: Where the State requests Project Co to obtain funding for a Change Compensation Event, Project Co must (and must procure Finance Co to) use all reasonable endeavours to obtain such funding, including by:
 - (i) using any Savings resulting from other Change Compensation Events which have resulted in amounts being available under the Finance Documents;
 - (ii) using any standby facility that may be available to any Project Co Entity;
 - (iii) arranging for additional funding under the Finance Documents and from other sources (if permitted under the Finance Documents); and
 - (iv) arranging other funding obtained on commercial terms for any Project Co Entity by the State (without any obligation on the State to make any such arrangements).
- (c) **(Unable to obtain funds)**: Where Project Co, having used all reasonable endeavours, is unable to obtain funding or funding that is on terms which are satisfactory to the State, the State will pay the relevant amounts in accordance with Section 6(a)(ii).
- (d) **(Adjustment to Securitised Licence Structure)**:
 - (i) If:
 - A. a Change Compensation Event:

- (I) occurs prior to the Date of Commercial Acceptance; and
- (II) will result in a reduction in the cost of undertaking the Works or other Delivery Phase Activities (calculated in accordance with these Change Compensation Principles) in respect of which debt finance was to have been provided under the Finance Documents,

and as a result of that Change Compensation Event, a corresponding reduction in the debt finance procured by Finance Co under the Finance Documents and reflected in the Securitised Licence Structure is required; or

- B. prior to the Date of Commercial Acceptance, the parties otherwise agree pursuant to clause 36A.1(c)(ii) of the Project Deed to any arrangement that results in a reduction in the debt finance procured by Finance Co under the Finance Documents and reflected in the Securitised Licence Structure,

then in each case Project Co must also calculate the decrease (which only represents the reduction in the debt finance procured by Finance Co under the Finance Documents as a result of that Change Compensation Event) to:

- C. the Completion Price and Completion Payments required to be paid by the State to Project Co; and
- D. the Licence Fees payable by Project Co under the Tenure Document (as determined in accordance with the Tenure Document),

such that the amount payable by Finance Co for the Initial Receivables under the Receivables Purchase Deed as a result of that Change Compensation Event is reduced by an amount which is equal to the decrease in the Completion Price and Completion Payment in respect of that Change Compensation Event.

- (ii) If the State has requested Project Co to finance a Change Compensation Event, Project Co must also calculate the amount (which only represents the amount payable to Project Co under section 3.1 of this Schedule plus the amounts payable by Project Co or Finance Co (as applicable) to the Financiers in respect of the relevant Change Compensation Event) of:

- A. the Securitised Modification Payments required to be paid by the State to Project Co; and
- B. the increase to the Licence Fees payable by Project Co under the Tenure Document (as determined in accordance with the Tenure Document),

such that the Receivables Purchase Payments for Additional Receivables payable by Finance Co in respect of that Change Compensation Event under the Receivables Purchase Deed will equal the Securitised Modification Payment in respect of that Change Compensation Event.

7. Annual review of ongoing compensation

- (a) **(Annual review):** If compensation for a Change Compensation Event has been made by an increase in the Monthly Service Payment, the amount of the compensation (other than any Project Co Entity's costs of financing the Change Compensation Event) will be subject to annual review at the end of each Operating Year in accordance with this Section 7 to reflect actual Base Costs incurred for the relevant Change Compensation Event for that Operating Year.
- (b) **(Adjustment to Monthly Service Payment):** To the extent that the ongoing net Costs or net Savings arising as a consequence of any Change Compensation Event differs from the then existing compensation made through the Monthly Service Payment, the Monthly Service Payment will be adjusted accordingly over the balance of the Term.

- (c) (**Time of review**): Within one month prior to the end of each Operating Year, Project Co must undertake and provide to the State a review of the amount of ongoing net Costs or net Savings arising as a consequence of the Change Compensation Event incurred, paid or accrued for which compensation has been made through the Monthly Service Payment over the Term.
- (d) (**State review and Disputes**): The State must, within 20 Business Days of receipt of a review undertaken in accordance with Section 7(c), notify Project Co of any matter within that review with which the State does not agree, and any Dispute on the extent of any adjustment of compensation may be referred by either party for resolution in accordance with clause 50 (*Dispute Resolution procedure*) of this Deed.

8. Change Notice

8.1 Change Notice and State Response

- (a) Each Change Notice must be prepared in accordance with and comply with this Schedule.
- (b) If:
 - (i) an event or circumstance is expressed in this Deed to be a Change Compensation Event (other than a Minor Modification);
 - (ii) Project Co is entitled or required to submit a Change Notice to the State in accordance with this Deed in respect of an event or circumstance; or
 - (iii) an amount is to be calculated in accordance with this Schedule (other than in respect of a Minor Modification),

(each a **Change Notice Event**), then, as a condition precedent to making a Claim in respect of such an event or circumstance, Project Co must prepare and submit to the State Representative or the Independent Certifier (as applicable) (each a **Change Notice Recipient**), a Change Notice which complies with Section 10 within the initial Notification Period.
- (c) Where the Change Notice Event continues beyond the issue of the initial Change Notice, Project Co must prepare and submit to the Change Notice Recipient an updated Change Notice within each further Notification Period following the initial Change Notice to the extent expressly set out in this Deed.
- (d) Any Change Notice or updated Change Notice submitted by Project Co to the State must at the same time be submitted by Project Co to the Independent Certifier, to the extent only that Project Co is required to submit a Change Notice to the Independent Certifier pursuant to this Deed.

8.2 State may request a Change Notice

- (a) Where:
 - (i) the State believes that a Change Compensation Event or any other event or circumstance for which Project Co is entitled or required to submit a Change Notice has occurred; and
 - (ii) Project Co has not submitted a Change Notice,

the State may in a notice entitled "Change Notice Request", request that Project Co prepare and submit a Change Notice in respect of the particular event (a **Change Notice Request**).
- (b) Project Co must prepare and submit a Change Notice within the Notification Period following receipt of the Change Notice Request.

8.3 Instruction to Proceed

- (a) If the State issues a Modification Order under clause 40.7(a) of this Deed:
- (i) the State will:
- A. determine (acting reasonably) all matters required to enable the Modification to be implemented including:
- (I) the cost effect of the Modification;
- (II) if the Modification is to be carried out during the Delivery Phase, the effect which the proposed Modification will have on the Delivery Phase Program (including any extension of time required to the Date for Completion); and
- (III) any relief which is required from Project Co's obligations under this Deed; and
- B. assume that funding for the Modification will be provided by the State unless the parties otherwise agree;
- (ii) Project Co must proceed with the Modification in accordance with the Modification Order.
- (b) Any Dispute in relation to a Modification Order issued by the State under clause 40.7(a) may be referred by Project Co to expert determination in accordance with clause 52 of this Deed.

9. Change Response

9.1 State to issue a Change Response

- (a) Unless otherwise expressly stated in this Deed, within 20 Business Days after receipt of a Change Notice (or such longer period as the State or the Change Notice Recipient, reasonably requires having regard to the nature of the Change Notice Event, the information required to be included in the Change Response, the content and quality of the Change Notice and whether the State requires an expert to verify an amount calculated by Project Co in the Change Notice), the Change Notice Recipient:
- (i) may request from Project Co any further information that the Change Notice Recipient reasonably requires in order to assess the Change Notice in accordance with this Schedule, in which case the relevant Change Notice Recipient will not be required to issue a Change Response until 20 Business Days after receipt from Project Co of all such further information reasonably requested;
- (ii) must advise Project Co, in a notice entitled 'Change Response', that the Change Notice Recipient:
- A. accepts the Change Notice (and in the case of a Modification the subject of a Modification Proposal submitted under clauses 38.3 (*Change Notice*), 40.8 (*Modifications proposed by Project Co*) or 40.9 (*Directions*) of this Deed, the Change Response must be entitled 'Modification Order'), in which case Project Co will, subject to Project Co complying with the other requirements of this Deed (including this Schedule), be entitled to:
- (I) compensation (if any) to the extent provided under and in accordance with Sections 3 and 5;
- (II) relief (if any); and
- (III) an extension of time (if any) to the extent provided in accordance with clauses 8.6 (*Project Co's entitlement to compensation for Remediation*), 38 (*Delivery Phase – delay*), 39 (*Operating Phase –*

Intervening Events), 40.10 (*Change in Mandatory Requirements*) or 40.11 (*Extension of time*) (as applicable) of this Deed,

on the terms set out in the relevant Change Notice;

- B. does not accept or rejects the Change Notice or a part of the Change Notice (and the reasons for this) and advise its determination of Project Co's entitlement to any extension of time, relief and/or compensation in accordance with this Schedule; or
- C. in the case of a Change Notice in response to a Modification Request, does not wish to proceed with the proposed Modification and confirms that the Modification Request is withdrawn,

(each a **Change Response**).

- (b) A Change Response provided by the State has the effect of varying this Deed to the extent the Change Notice is accepted in the relevant Change Response, with effect from the date of receipt by Project Co of that Change Response, or such other date specified in that Change Response.
- (c) Whether or not Project Co has issued a Change Notice in respect of a Change Notice Event, the State may at any time in its absolute discretion, issue a Change Response in accordance with this Schedule in respect of a Change Notice Event.
- (d) Nothing in this Deed requires a Change Notice Recipient to review a Change Notice in accordance with the Review Procedures.
- (e) No failure of a Change Notice Recipient (including within any time period specified in this Deed) will entitle Project Co to the relief and/or compensation set out in the Change Notice or put any time at large or deprive the Change Notice Recipient to grant the relief and/or compensation sought or such other relief as appropriate (including the power to extend time).

9.2 State's options

Where the State does not accept the Change Notice, or a part of it, the State may:

- (a) require Project Co to:
 - (i) have any amount that is not an Agreed Margin determined by expert determination in accordance with clause 52 (*Expert determination*) of this Deed;
 - (ii) during the Operating Phase, procure that the Operator conduct a tender process for any part of the work the subject of the Change Compensation Event that will not be carried out by Project Co and the Operator, in accordance with Section 4;
- (b) amend any aspect of the Change Notice in the Change Response to reflect Project Co's actual entitlement; or
- (c) reject the Change Notice on the basis that the event which is the subject of the Change Notice is not an event for which Project Co is entitled to submit a Change Notice under the Project Documents.

9.3 Project Co's options where the Change Notice is not accepted or is rejected

If the Change Notice Recipient does not accept or rejects a Change Notice or a part of it:

- (a) Project Co must proceed with the Project Activities in accordance with this Deed and the Change Response; and

- (b) Project Co must as a condition precedent to pursuing its Claim in respect of the Change Compensation Event (or the relevant part of it, as applicable) refer any Dispute in relation to all or any part of the Change Response to expert determination in accordance with clause 52 (*Expert determination*) of this Deed within 20 Business Days (or such other period as agreed with the relevant Change Notice Recipient) after Project Co's receipt of the Change Response.

9.4 Dispute resolution

If the State does not accept or rejects an amount as calculated by Project Co in any Change Notice (such amount not being a fixed or specified amount under this Schedule), the State may have the amounts verified by an expert appointed in accordance with clause 52 (*Expert determination*) of this Deed, in which case:

- (a) the Base Costs calculated in item "C" in the formula in Section 3.1 will be the lower of:
 - (i) the amount claimed by Project Co in accordance with this Schedule; and
 - (ii) the amount verified by the expert; and
- (b) the Savings calculated in item "D" in the formula in Section 3.1 will be the higher of:
 - (i) the amount claimed by Project Co in accordance with this Schedule; and
 - (ii) the amount verified by the expert,

and the State will update any Change Response provided under Section 9.1 promptly following the expert's verification.

10. Contents of Change Notice

10.1 General

Each Change Notice must:

- (a) contain:
 - (i) the information required by this Schedule; and
 - (ii) any additional information required under this Deed in respect of a particular Change Notice Event or required by the Change Notice Recipient;
- (b) be signed by the Project Co Representative;
- (c) attach copies of any required changes to the Site Plans, the Delivery Phase Program, the Delivery Phase Reports or the Operating Phase Reports (as applicable);
- (d) set out detailed particulars of the nature, occurrence and impact of the relevant Change Notice Event;
- (e) comply with Sections 10.2 to 10.4; and
- (f) if the Change Compensation Event occurs prior to the Date of Commercial Acceptance and results in an amount owing from Project Co to the State, details of the form and timing of compensation Project Co proposes, including:
 - (i) a debt due and payable by Project Co to the State; or
 - (ii) by a reduced or resculpted Monthly Service Payment profile, with such reduction or resculpting being at least equivalent in value to the corresponding amount if the

form and timing of the relevant compensation was a debt due and payable by Project Co to the State; and

- (g) in respect of a Relief Event, describe the reduction in Project Co's liability to indemnify or release the State and its Associates in accordance with this Deed.

10.2 Mitigating factors

In each Change Notice, Project Co must describe the actions Project Co and its Associates have taken (and any further action Project Co proposes to take in the future) to:

- (a) mitigate, minimise or avoid the adverse effects, costs, consequences or duration of the Change Notice Event (including by putting in place temporary measures reasonably required by the State); and
- (b) take advantage of any positive or beneficial effects of the Change Notice Event and maximise any reduction in Costs arising from the Change Notice Event.

10.3 Effects

In each Change Notice, Project Co must provide details, where applicable, and to the extent known or able to be predicted, of:

- (a) the effects of the Change Notice Event on:
- (i) the workmanship, quality, appearance or durability of any part of the Relevant Infrastructure;
 - (ii) the design, manufacture, construction, supply, installation or commissioning of the Works;
 - (iii) the management and maintenance of the Relevant Infrastructure;
 - (iv) the carrying out of the Project Activities and Project Co's ability to carry out the Services in accordance with the Services Requirements;
 - (v) the Relevant Infrastructure meeting the FFP Warranty;
 - (vi) the warranties given by Project Co in this Deed or by a Key Subcontractor in its Key Subcontract;
 - (vii) any other relevant part of this Deed (including Schedules and Attachments) or any other State Project Document, including any amendments required;
 - (viii) any existing Approvals or the requirement for any new Approvals; and
 - (ix) the declaration of the Correctional Complex or Correctional Centres pursuant to the Corrections Legislation;
- (b) any damage caused by the Change Notice Event;
- (c) the time consequences of a Change Notice Event, including:
- (i) an estimate of the time (if any) during which Project Co will be prevented from carrying out or delayed in carrying out the Project Activities due to the Change Notice Event, any impact on any Date for Commercial Acceptance or any likely Date of Commercial Acceptance and any impact on activities on the critical path contained in the then current Delivery Phase Program;
 - (ii) in the case of a Change Notice Event which is a Modification, the time for completion of the Modification (including whether the Modification is required to be completed prior to any Date for Commercial Acceptance) and the latest date by

- which the State could accept the Change Notice with no impact upon the Date for Commercial Acceptance; and
- (iii) any revised Date for Commercial Acceptance;
- (d) where Project Co claims as a consequence of a Change Notice Event:
- (i) an extension of time to a Date for Commercial Acceptance, the number of days extension claimed together with:
 - A. the basis of calculating the total number of days claimed; and
 - B. any information reasonably required by the Change Notice Recipient to demonstrate that Project Co has satisfied the conditions relevant to its extension of time claim as referred to in clause 38 (*Delivery Phase – delay*) of this Deed; or
 - (ii) relief from any other its other obligations under this Deed, the basis on which that Project Co has formed the opinion that such relief is required together with all necessary supporting evidence; and
- (e) the cost consequences of, and the compensation claimed in respect of, the Change Notice Event, together with any information reasonably required by the Change Notice Recipient to demonstrate that Project Co has satisfied the conditions relevant to its compensation claim as referred to in clauses 38.7(a), 39.6(b) or 39.7(c) of this Deed.

10.4 Warranty by Project Co

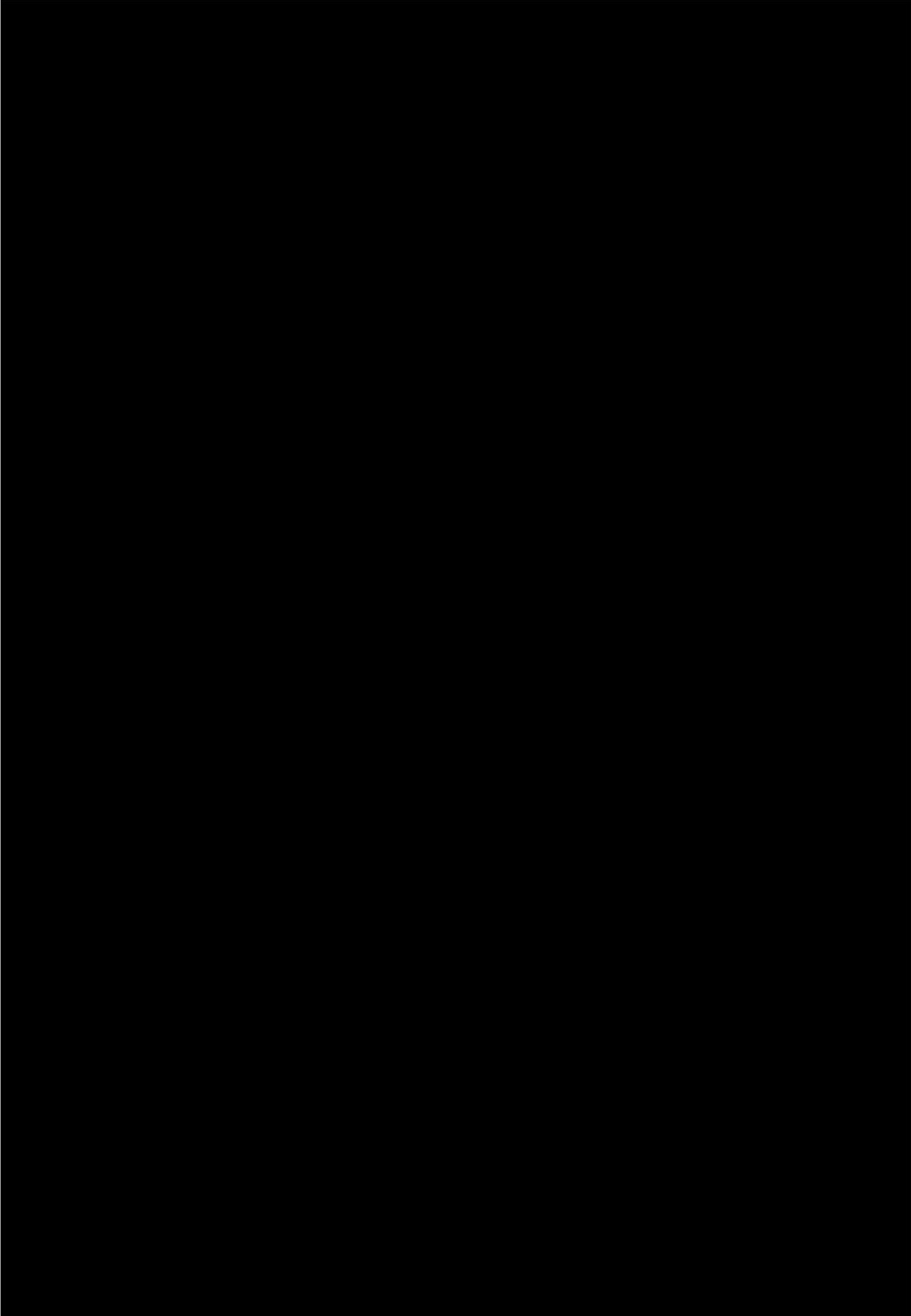
All Change Notices must:

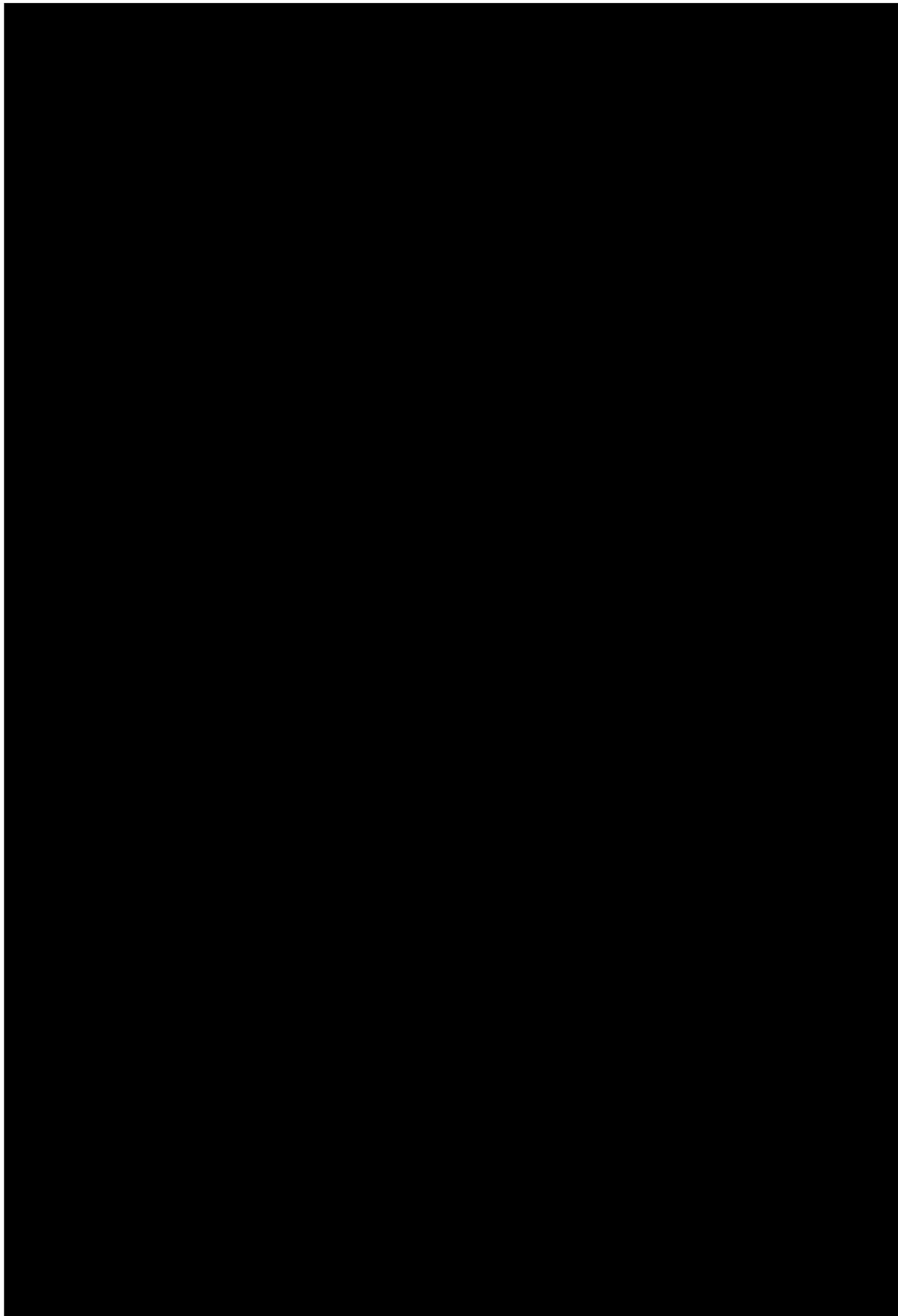
- (a) where the Change Notice is in respect of a Modification the subject of a Modification Order, contain a warranty by Project Co in respect of the Change Compensation Event that:
 - (i) the relevant Change Notice has been prepared so as to avoid or minimise:
 - A. any delay in achieving Commercial Acceptance; and
 - B. any adverse safety impacts of the Change Compensation Event on people;
 - (ii) the Modification when implemented will:
 - A. enable the Relevant Infrastructure to meet the FFP Warranty and otherwise meet the requirements of this Deed, except to the extent that it is agreed or determined that the proposed Modification will have an adverse effect on the matters referred to in section 10.3; and
 - B. enable Project Co at all times during the Operating Phase to carry out the Project Activities in accordance with the Services Requirements and to comply with the terms of this Deed, except to the extent that it is agreed or determined that the proposed Modification will have an adverse effect on the matters referred to in section 10.3,

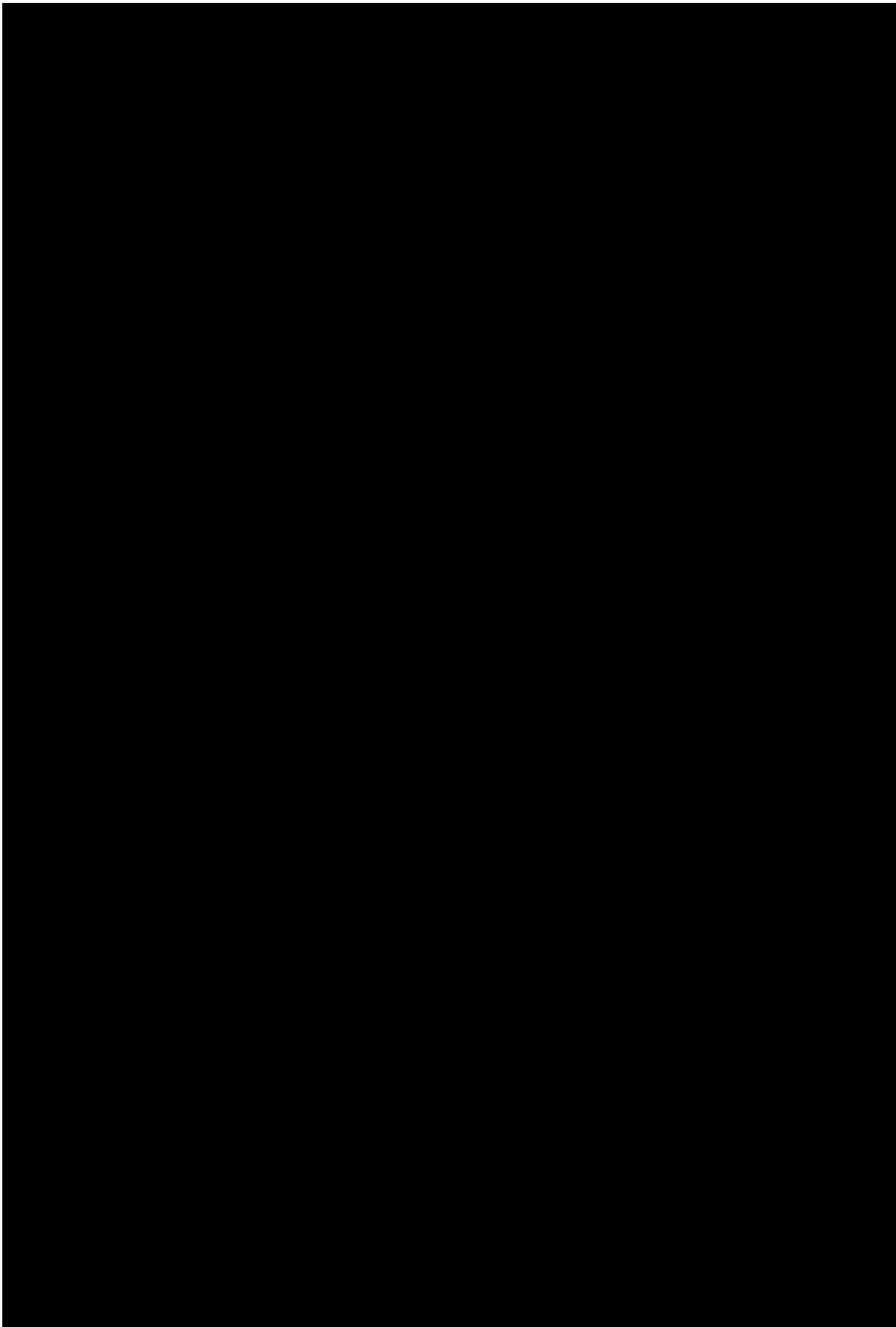
in each case, without limiting the warranties given by Project Co in other clauses of this Deed, except to the extent that it is agreed between the parties or determined in accordance with this Deed that the proposed Modification will have an adverse effect on the matters referred to in section 10.3; and
- (b) contain a warranty by Project Co that it is satisfied that the Claim the subject of the Change Notice is bona fide, true and correct to the best of its knowledge and the relief

sought is an accurate reflection of Project Co's entitlement under this Deed to the extent it is able to be known at the time.

Annexure 1 – Stage 2 Delay Protocol







Schedule 6 — Site Plans

Schedule 7 — Site Access and Tenure Schedule

Operating Phase Sub-Licence

New Grafton Correctional Centre

The Minister for Corrections on behalf of the Crown in right of the State of New South Wales and Infrastructure New South Wales (ABN 85 031 302 516)

Licensors

NorthernPathways Pty Limited (ACN 618 985 452) in its capacity as trustee of NorthernPathways Project Trust (ABN 36 175 930 685)

Licensee

Contents

- 1. Defined terms and interpretation3**
 - 1.1 Defined terms 3
 - 1.2 Interpretation 4
 - 1.3 Moratorium 4
 - 1.4 Order of Precedence 4
- 2. Sub-Licence to access Premises5**
- 3. Licence Fee.....5**
- 4. Goods and Services Tax6**
- 5. Sub-licence and other dealings.....6**
- 6. Termination of Sub-Licence.....6**
- 7. Costs and Expenses7**
- 8. Amendment7**
- 9. No Waiver7**
- 10. General7**
 - 10.1 Notices 7
- Schedule 1 – Plans9**

Operating Phase Sub-Licence dated

Parties **The Minister for Corrections on behalf of the Crown in right of the State of New South Wales and Infrastructure New South Wales (ABN 85 031 302 516) (Licensor)**

NorthernPathways Pty Limited (ACN 618 985 452) in its capacity as trustee of NorthernPathways Project Trust (ABN 36 175 930 685) (Licensee)

Background

- A. The Licensee has entered into the Project Deed for the design and construction of the Relevant Infrastructure, the financing of the Project and the provision of the Services.
- B. Following Commercial Acceptance, the Operating Phase will commence on the Operational Commencement Date and the Licensee will provide the Services.
- C. The Licensor has been granted a non-exclusive licence to enter on, occupy or access (as applicable) the Premises from Property NSW (ABN 91 840 597 406) which enables it to grant a sub-licence to the Licensee on the terms of this Sub-Licence.
- D. The Licensor agrees to grant, and the Licensee agrees to accept, a non-exclusive sub-licence to enter on, occupy or access (as applicable) the Premises to provide the Services following Commercial Acceptance, on the terms of this Sub-Licence.

Operative provisions

1. Defined terms and interpretation**1.1 Defined terms**

In this Sub-Licence, unless otherwise defined in this Sub-Licence, capitalised terms have the meaning given to them in the Project Deed and:

Cost includes any reasonable and proper cost, charge, expense, outgoing, payment or other expenditure of any nature whatever, including all legal fees incurred in connection with the matters described in clause 7 below.

Licensee means the Licensee named as such in this Sub-Licence and includes:

- (a) its successors and permitted assigns; and
- (b) the Project Co Associates.

Licence Fee means each licence fee payable by the Licensee under clause 3 as set out in the Base Case Financial Model worksheet "Licence Schedule", as updated in accordance with the Project Documents and the revised Financial Model issued prior to Commercial Acceptance including in accordance with clause 59.3(a)(iv) of the Project Deed.

Licence Fee Commencement Date means the Operational Commencement Date.

Licence Fee Payment Date means the date for payment of a Licence Fee as set out in the Base Case Financial Model worksheet "Licence Schedule", as updated (if applicable) in accordance with the Project Documents and the revised Financial Model issued prior to Commercial Acceptance including in accordance with clause 59.3(a)(iv) of the Project Deed.

Licensor means the licensor named as such in this Sub-Licence.

Licensor Associate means any officers, agents, advisers, consultants, contractors or employees of the Licensor.

party means a party to this Sub-Licence.

Permitted Use means:

- (a) the provision of the Services; and
- (b) otherwise to exercise the Licensee's rights and to comply with its obligations under the Project Deed and any other Project Documents to which the State is a party.

Premises means the Operating Phase Sites and all fixtures on that land as shown in Schedule 1.

Project Deed means the deed entered into between the State and the Licensee dated [insert] for the design and construction of the Relevant Infrastructure, the financing of the Project and the provision of the Services.

State means:

- (a) The Minister for Corrections on behalf of the Crown in right of the State of New South Wales;
- (b) Infrastructure New South Wales (ABN 85 031 302 516); and
- (c) for the purposes of the Project Deed and the Operator Side Deed only, the Commissioner of Corrective Services.

Term means the Operating Phase.

"**this Sub-Licence**" or "**the Sub-Licence**" means this sub-licence and includes all schedules, parts, appendices, annexures and exhibits to it.

1.2 Interpretation

The parties agree that:

- (a) clause 2.1 (Interpretation) and clause 64 (Notices) of the Project Deed are incorporated by reference into this Sub-Licence;
- (b) unless the context otherwise requires, for the purpose of paragraph (a) references to:
 - (i) the State will become references to the Licensor;
 - (ii) Project Co will become references to the Licensee;
 - (iii) the Deed or this Deed, will become references to this Sub-Licence; and
 - (iv) items in the Contract Particulars which are referred to in clause 64.1 of the Project Deed will be references to the relevant details in clause 10.

1.3 Moratorium

To the extent permitted by Law, the application to this Sub-Licence or to any party of any Law or any requirement or any moratorium having the effect of extending or reducing the Term, reducing or postponing the payment of Licence Fee or any part of it or otherwise affecting the operation of the terms of this Sub-Licence or its application to any party is excluded and negated.

1.4 Order of Precedence

If there is any ambiguity, discrepancy or inconsistency between any provisions of this Sub-Licence and the Project Deed, the terms of the Project Deed will prevail.

2. Sub-Licence to access Premises

- (a) **(Premises generally):** The Licensor grants to the Licensee a non-exclusive sub-licence to enter on, occupy and access (as applicable) the Premises in common with the Licensor and other persons authorised by the Licensor:
 - (i) for the Term; and
 - (ii) on the terms of this Sub-Licence.
- (b) **(Permitted Use):** The Licensee must not use the Premises for any purpose other than the Permitted Use.
- (c) **(Project Deed):**
 - (i) The Licensee must, at all times during the Term, comply with its obligations and liabilities as Project Co under the Project Deed.
 - (ii) The rights conferred by this Sub-Licence are subject to the Licensor and any Licensor Associate having all necessary rights of access to, and occupation of, the Premises in each case under the Project Deed and the Project Documents to which the State is a party including to have free and unfettered access to the Correctional Complex, Project Co Material and Inmates in accordance with clause 28.2 of the Project Deed.
- (d) **(Non-exclusive rights):** Without limiting paragraph (a), the rights conferred by this Sub-Licence are non-exclusive, do not create or confer upon the Licensee any tenancy or any estate or interest in or over the licensed premises or any part of it, and do not comprise or include any rights other than those granted or to which the Licensee is otherwise entitled by law.
- (e) **(Right to create easement):** The Licensor reserves to itself and the Licensor Associates the right to create any registered or unregistered easement or other right through or around the Premises.
- (f) **(No entitlement):** The Licensee acknowledges and agrees that the exercise by the Licensor or any Licensor Associate of the rights of access to the Premises under the Project Deed, the Project Documents to which the State is a party or this Sub-Licence:
 - (i) will not give rise to any right in favour of the Licensee to terminate this Sub-Licence or make any Claim against the Licensor; and
 - (ii) will not release the Licensee from its obligations pursuant to this Sub-Licence.

3. Licence Fee

- (a) **(Licence Fee):** In consideration of the rights to enter on, occupy and access (as applicable) the Premises pursuant to this Sub-Licence, the Licensee agrees to pay each Licence Fee on each Licence Fee Payment Date until the date that this Sub-Licence is terminated under clause 6 without any abatement, deduction or right of set off.
- (b) **(Adjustments):** The parties will adjust the Licence Fee in accordance with clause 36A.1(d) of the Project Deed to reflect any adjustment to the Receivables Purchase Price under clause 36A.1(c) of the Project Deed.
- (c) **(Securitised Modification Payment):** If the State agrees to pay a Securitised Modification Payment, the Licence Fees will be increased in order to ensure that the relevant Receivables Purchase Payment for the Additional Receivables is equal to that Securitised Modification Payment.

- (d) **(Termination):** If this Licence is terminated the Licensee will not be obliged to pay any Licence Payment after the date that this Licence is terminated under clause 6.

4. Goods and Services Tax

- (a) If a GST is or will be or is purported to be payable on the supply of any good, service or thing (a Supply) by either party under this Sub-Licence, to the extent the consideration otherwise provided for that Supply is not stated to include an amount in respect of GST on that Supply, the party receiving the Supply must pay to the party making the Supply on demand a sum equal to any GST payable by the supplier in respect of that Supply.
- (b) To the extent that one party is required to reimburse the other party for costs incurred by the other party, those costs do not include any amount in respect of GST for which the other party is entitled to claim an input tax credit.
- (c) A party's obligation to pay an amount under paragraph (a) is subject to a valid tax invoice being delivered to that party, subject to paragraph (f).
- (d) The Licence Fee under this Sub-Licence is exclusive of GST.
- (e) If clause 36 (Payments Adjustments & Taxes) of the Project Deed would apply in connection with a Taxable Supply to which this clause 4 also applies, then clause 36 (Payments Adjustments & Taxes) of the Project Deed will apply in connection with that supply and the provisions of this clause 4 (but for this paragraph and paragraph (f)) will not apply.
- (f) To the extent the Licence Fee is consideration for a taxable supply by the Licensor, the Licensee must issue a valid tax invoice (being a recipient created tax invoice for the purpose of section 29-70(3) of the GST Act) to the Licensor at the same time as it is required to pay the Licence Fee and the Licensor will not issue a tax invoice to the Licensee.

5. Sub-licence and other dealings

- (a) Subject to paragraphs (b) and (c), the Licensor and the Licensee agree that the Licensee has no right to deal with all or any part of its interest under this Sub-Licence or the Premises (including by way of assignment, sub-licence (other than if the grant of a sub-licence by the Licensee of its interest in this Sub-Licence is to a Subcontractor approved by the Licensor or otherwise permitted under the Project Deed for the purposes of the Project), trust or the grant of any Security Interest) except to the extent allowed under the Project Deed.
- (b) Subject to any Project Co Associates being approved by the State in accordance with the Project Deed and paragraph (c), the Licensee may permit the Project Co Associates to access and use the Premises for the purpose of undertaking the Permitted Use.
- (c) The Licensee is responsible for the acts and omissions of any Project Co Associates given access to the Premises pursuant to this Sub-Licence (as if they were the acts or omissions of the Licensee).

6. Termination of Sub-Licence

- (a) Save for the rights expressly stated in this clause 6, to the extent permitted by law, neither party shall have any right to terminate this Sub-Licence.
- (b) Subject to any earlier determination in accordance with paragraph (c) below, this Sub-Licence shall terminate automatically on the expiration of the Operating Phase and neither party will have any Claim against the other arising out of or in respect of such termination other than any Claim that that party may have arising out of or relating to the Project Deed.

- (c) If the Project Deed is ended for any reason this Sub-Licence will end simultaneously, and neither party will have any Claim against the other arising out of or in respect of such termination other than any Claim that that party may have in accordance with the Project Deed.
- (d) This Sub-Licence may not be terminated by the Licensor or the Licensee whether for breach of its terms or otherwise unless the Project Deed is also terminated concurrently.

7. Costs and Expenses

The Licensee will, upon demand, pay to the Licensor, and keep the Licensor indemnified against, its Costs, expenses, duties and fees of or incidental to:

- (a) any consent, deed, agreement, approval or waiver obtained from the Licensor under or in relation to this Sub-Licence and any sub-licence, or any amendment to the Sub-Licence and any sub-licence made to which the Licensor is a party at the request of the Licensee;
- (b) the taking of enforcement action by the Licensor pursuant to the Sub-Licence or any sub-licence, including the fees of all professional consultants properly incurred by the Licensor (including legal costs on a full indemnity basis); and
- (c) obtaining reports from any consultant engaged by the Licensor in respect of any circumstance described in paragraphs (a) and (b) above.

8. Amendment

No amendment or variation of this Sub-Licence or any sub-licence is valid or binding on a party unless made in writing and executed by both parties.

9. No Waiver

No failure to exercise and no delay in exercising, on the part of the Licensor, any right or remedy under this Sub-Licence or any sub-licence will operate as a waiver of that right or remedy, nor will any single or partial exercise of any right or remedy preclude any other or further exercise of that, or any other, right or remedy.

10. General

10.1 Notices

Licensor

Attention: [to be inserted]

Role: [to be inserted]

Address: [to be inserted]

Email: [to be inserted]

Licensee

Attention: [to be inserted]

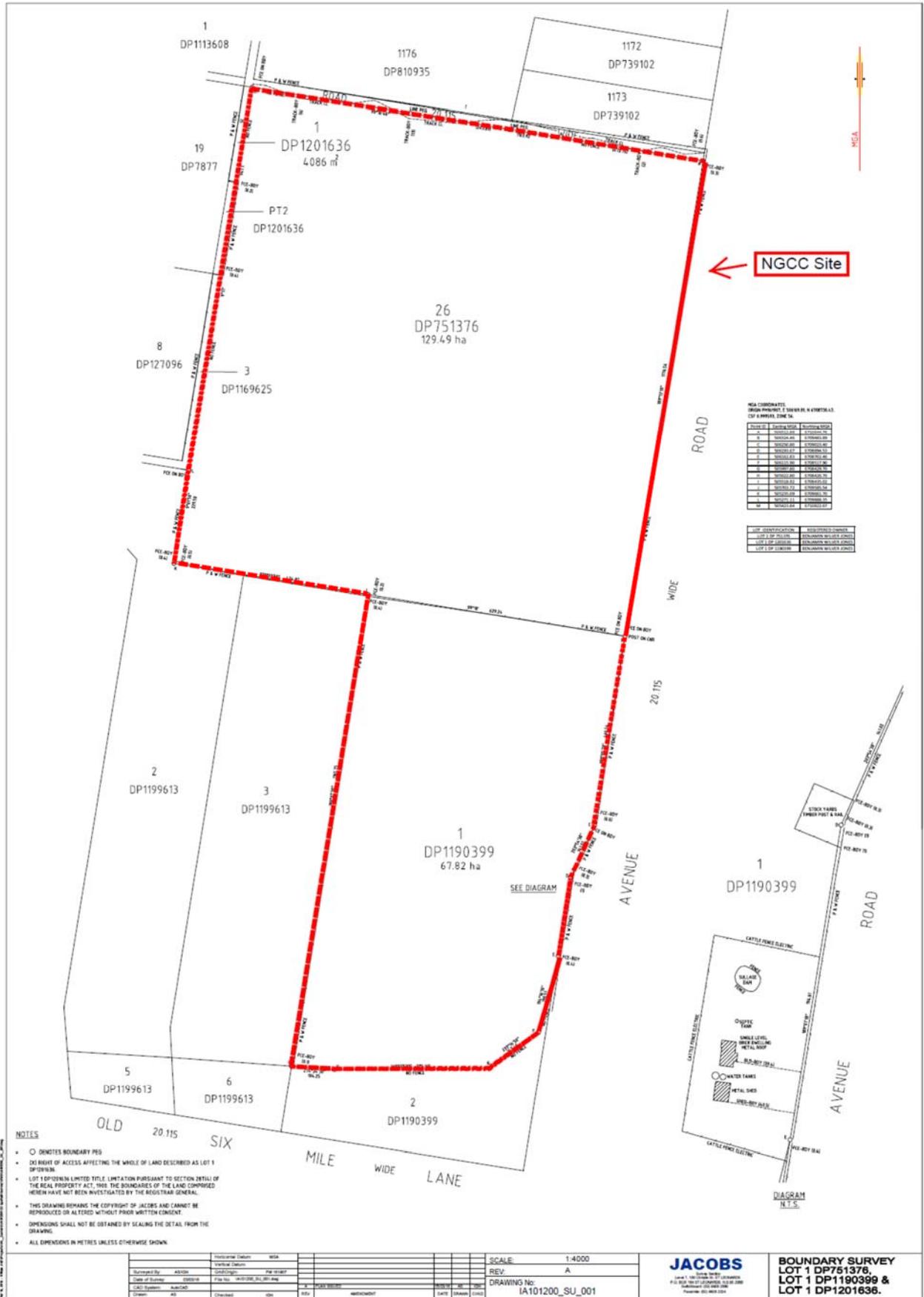
Address: [to be inserted]

Email: [to be inserted]

Executed as a deed.

[Execution clauses to be inserted.]

Schedule 1 – Plans



Schedule 8 — Design Development Schedule

Contents

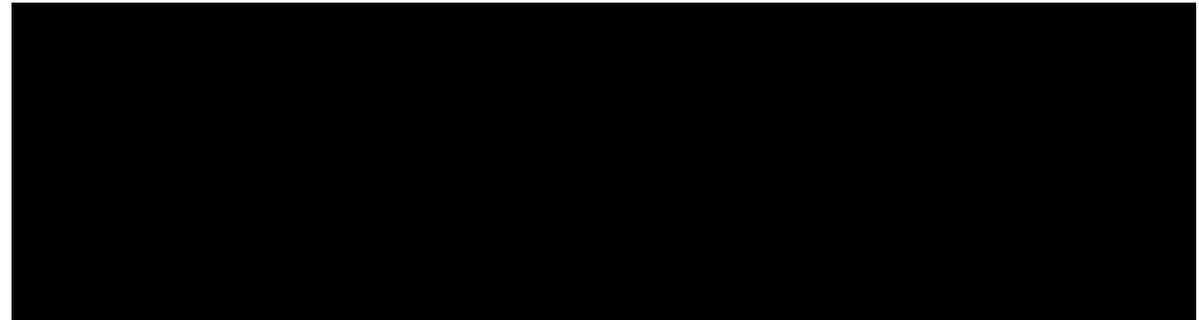
1.	Definitions	2
2.	Design Development Process	5
2.1	General	5
2.2	Design development coordinator obligations	5
2.3	Design Packages	5
2.4	Multiples of same buildings	6
2.5	Sequence, concurrency and overlap of Design Packages	6
2.6	Additional Design Packages	7
2.7	Timing for submission of Design Deliverables	7
2.8	Form of Design Deliverables	8
3.	Initial Design Meeting	8
4.	Design Management Plan	8
4.1	Further updates to Design Management Plan (including Design Deliverables Overview).....	8
4.2	Changes to Design Management Plan.....	9
5.	Design Development Presentations	9
5.1	Purpose of Design Development Presentations.....	9
5.2	Frequency, notice and attendance at Design Development Presentations	10
6.	Design Development Sub-Program	10
7.	For Construction Documentation	10
8.	Building Group Table	10
9.	Design Deliverables Tables	11
9.1	Design Deliverables Table for the Site Masterplan Design Package	12
9.2	Design Deliverables Table for the Maximum Security Correctional Centre Masterplan Design Package.....	12
9.3	Design Deliverables Table for the Minimum Security Correctional Centre Masterplan Design Package	14
9.4	Design Deliverables Table for the Civil Works Design Package A.....	15
9.5	Design Deliverables Table for the Civil Works Design Package B.....	16
9.6	Design Deliverables Table for the On-Site Infrastructure Works Design Package.....	17
9.7	Design Deliverables Table for the Secure Perimeter Design Package	21
9.7A	Design Deliverables Table for the Cell Design Packages	24
9.8	Design Deliverables Table for the Building Design Packages.....	33
9.9	Design Deliverables Table for the FF&E Design Package	47
9.10	Design Deliverables Table for the Signage Design Package	47
9.11	Design Deliverables Table for the Landscape Design Package.....	48
	Annexure 1 – Design Package Submission Register	50
	Annexure 2 – Proposed Daylight Modelling Scope	52

1. Definitions

In this Deed:



Building Group means a collection of buildings grouped together for the purposes of forming a Design Package as identified in section 9 and the Design Package Submission Register.



Design Deliverables Overview has the meaning given in section 4.1.

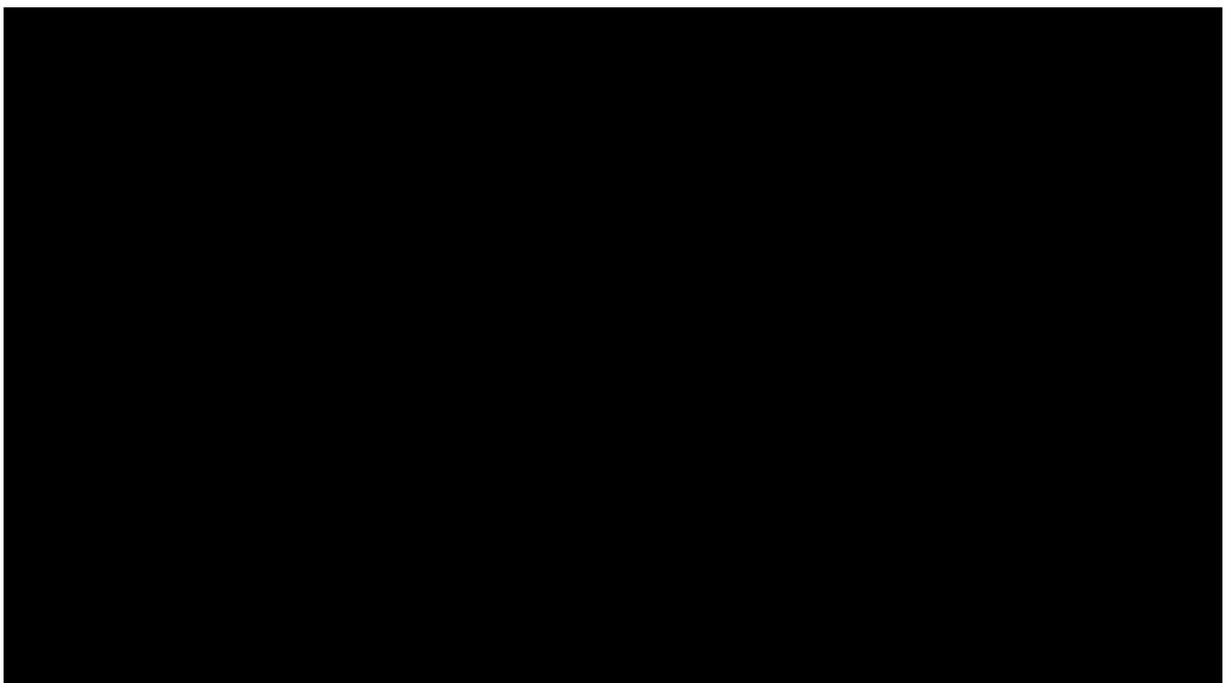
Design Deliverables Tables means the tables included in section 9.

Design Management Plan means the Delivery Phase Plan of that name setting out the process for managing the Design Development Process to be prepared by Project Co (an outline of which is contained in Attachment 2 of this Deed) as developed, reviewed, amended and updated from time to time by Project Co in accordance with this Schedule and the Delivery Phase Plans and Reports Schedule.

Design Development Presentations means the presentations conducted by Project Co during the Design Development Process in accordance with the Design Development Sub-Program, at or around the conclusion of:

- (a) schematic design activities; and
- (b) detailed design activities.

Design Development Sub-Program has the meaning given in the Programming Requirements.



[REDACTED]

Design Package Submission Register means the table at Annexure 1 to this Schedule 8.

Design Stage means:

- (a) Design Stage 1;
- (b) Design Stage 2; and/or
- (c) Design Stage 3,

as the context requires.

Design Stage 1 means for each Design Package, the stage during which Project Co prepares and submits to the State Representative the Stage 1 Design Deliverables including in general terms the developed schematic design for the Project.

Design Stage 2 means for each Design Package, the stage during which Project Co prepares and submits to the State Representative the Stage 2 Design Deliverables including in general terms the detailed design for the Project.

Design Stage 3 means for each Design Package, the stage during which Project Co prepares and submits to the State Representative the Stage 3 Design Deliverables including in general terms the For Construction Documentation.

[REDACTED]

Initial Design Management Plan means the Design Management Plan current at the date of this Deed.

[REDACTED]



Non-Reviewable Temporary Works means any temporary physical works required for the purpose of performing the Delivery Phase Activities which do not form part of the Works necessary for Technical Completion or Commercial Acceptance and that:

- (a) do not have an impact upon any members of the public; and
 - (b) do not involve any potential risk to the health or safety of members of the public or property.
- 

Stage 1 Design Deliverables means for each of the Design Packages the Design Deliverables:

- (a) listed under the heading Stage 1 Design Deliverables in the Design Deliverables Tables;
- (b) otherwise proposed by Project Co to be provided as Stage 1 Design Deliverables, as approved by the State Representative; and
- (c) that Project Co is required to submit to the State Representative during Design Stage 1, in accordance with the terms of this Deed.

Stage 2 Design Deliverables means for each of the Design Packages the Design Deliverables:

- (a) listed under the heading Stage 2 Design Deliverables in the Design Deliverables Tables;
- (b) otherwise proposed by Project Co to be provided as Stage 2 Design Deliverables, as approved by the State Representative; and
- (c) that Project Co is required to submit to the State Representative during Design Stage 2, in accordance with the terms of this Deed.

Stage 3 Design Deliverables means for each of the Design Packages the Design Deliverables:

- (a) listed under the heading Stage 3 Design Deliverables in the Design Deliverables Tables and any related documentation required for construction, including typical details of all construction, but excluding shop drawings which are to be provided during the construction phase, as required;
- (b) otherwise proposed by Project Co to be provided as Stage 3 Design Deliverables, as approved by the State Representative; and
- (c) that Project Co is required to submit to the State Representative during Design Stage 3, in accordance with the terms of this Deed.

2. Design Development Process

2.1 General

- (a) (**Design Development Process**): The Design Development Process is the process by which Project Co progressively develops the design of the Correctional Complex from the Design Proposal to the For Construction Documentation and otherwise includes all other tasks identified in this Schedule and this Deed as forming part of the Design Development Process.
- (b) (**Design Packages**): To facilitate the conduct of the Design Development Process, the State has divided the design work for the Correctional Complex into Design Packages, which relate to aspects of the Correctional Complex or design elements (as applicable) which are discussed in more detail in section 2.3.
- (c) (**Design Stages**): The Design Deliverables for each Design Package are divided into three Design Stages consisting of:
 - (i) Design Stage 1, which, in general terms, requires Project Co to further develop the Design Proposal into a developed schematic design;
 - (ii) Design Stage 2, which, in general terms, requires Project Co to develop the schematic design from Design Stage 1 into a detailed design; and
 - (iii) Design Stage 3, which, in general terms, requires Project Co to develop the detailed design from Design Stage 2 into For Construction Documentation.
- (d) (**Design Deliverables**): Project Co must for each Design Package submit the complete set of Design Deliverables (not including any Design Deliverable that relates solely to Non-Reviewable Temporary Works) for each Design Stage of a Design Package to the State and the Independent Certifier for review in accordance with the Review Procedures and the timing set out in the Design Development Sub-Program.
- (e) (**Review Period**): Project Co must not submit Design Deliverables in respect of a Design Package for a subsequent Design Stage to the State or the Independent Certifier for review until the later of the completion of the previous Design Stage for that Design Package and the expiry of the Review Period for the previous Design Stage of that Design Package and as otherwise required by section 2.7.
- (f) (**Design Stage 3**): Subject to section 2.7 and the Review Procedures, Project Co may construct that part of the Works to which a Design Package relates once the Design Package for Design Stage 3 has been reviewed by the State and the Independent Certifier in accordance with the Review Procedures.

2.2 Design development coordinator obligations

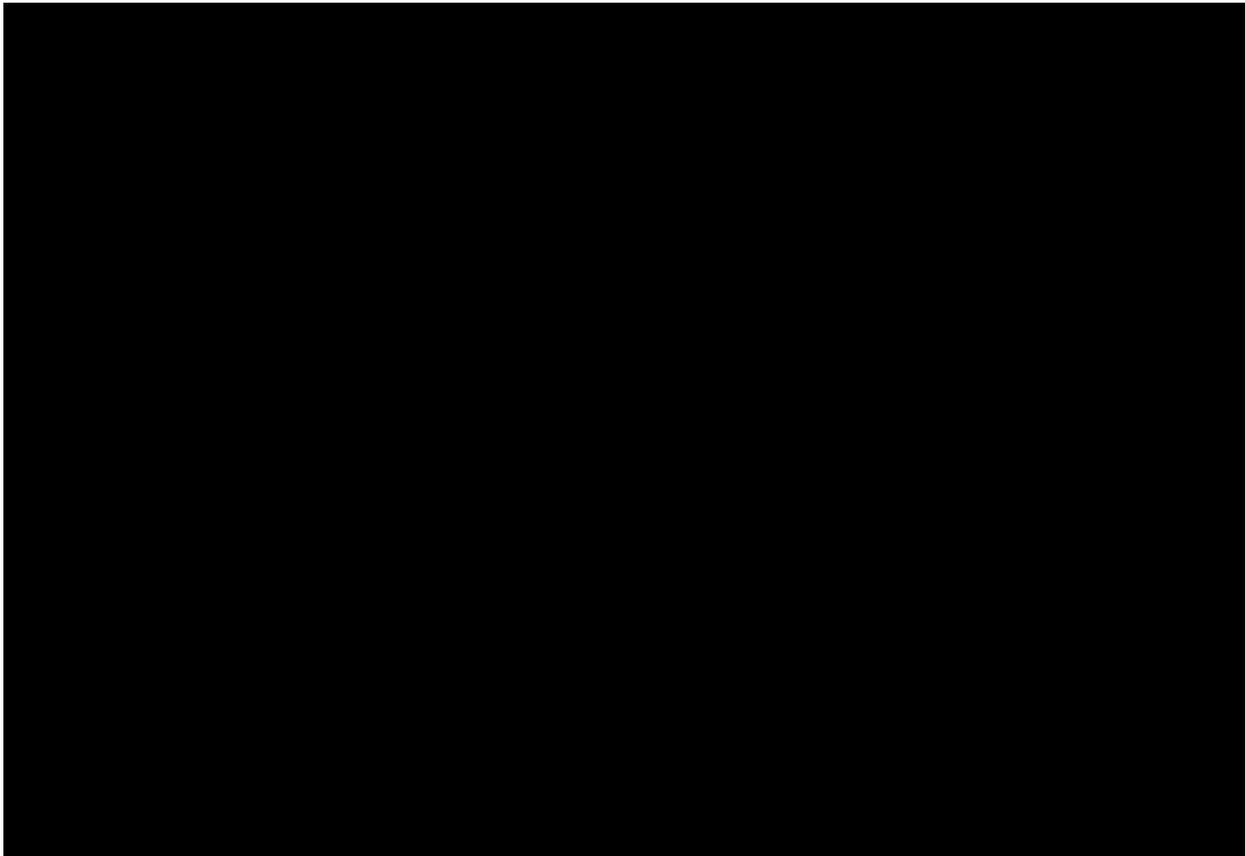
Project Co must ensure that its design development coordinator:

- (a) convenes and manages meetings with the State in respect of the design of the Correctional Complex;
- (b) convenes and manages all Design Development Presentations;
- (c) manages the submission of the Design Deliverables in accordance with the Review Procedures;
- (d) reviews all of the Design Deliverables prior to submission to the State and the Independent Certifier and ensures that the Design Deliverables are complete, co-ordinated and are of a quality capable of review by the State and the Independent Certifier in accordance with the Review Procedures; and
- (e) otherwise consults with the State Representative throughout the Design Development Process,

in accordance with this section 2.2, the Design Management Plan, the Design Development Sub-Program and the remainder of this Schedule.

2.3 Design Packages

The Design Packages have been created to reflect that:



- (e) particular design components such as artwork, elements of Correctional Complex FF&E, signage and internal colour schedules are addressed on a Project-wide basis and not specifically related to any building.

2.4 Multiples of same buildings

To the extent that the Correctional Complex contains multiples of the same buildings:

- (a) it is acceptable that there will be one [redacted] which will pertain to all multiples; and
- (b) Project Co must:
 - (i) in so far as possible, ensure that the Design Deliverables for the subsequent buildings are consistent with the Design Deliverables for the original building; and
 - (ii) to the extent there are any differences between the Design Deliverables for the original buildings and the Design Deliverables for the subsequent buildings, provide details of those differences (including colours) and the reasoning for such differences.

2.5 Sequence, concurrency and overlap of Design Packages

- (a) The outcome of the [redacted]
[redacted]
[redacted]
[redacted]
- (b) Project Co must complete and submit the [redacted]
[redacted]
[redacted]
[redacted]
[redacted] in accordance with the design phase of the Delivery Phase Program for review by the State and the Independent Certifier prior to submitting any other Design Packages for review by the State and the Independent Certifier.
- (c) To the extent that Project Co elects to carry out design work for the [redacted]
[redacted]

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED] concurrently, it does so at its risk and it must amend all relevant Design Deliverables to address the outcome of the State's and the Independent Certifier's review of the [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

- (d) Project Co may submit [REDACTED] in any order as to suit its design development or construction program.
- (e) Project Co must not submit Design Deliverables in respect of a Design Stage unless:
 - (i) Project Co has prepared all Design Deliverables in accordance with this Deed; and
 - (ii) for Design Stages other than Design Stage 1:
 - A. Project Co has submitted all Design Deliverables relating to the relevant Design Package for the previous Design Stage in accordance with the Review Procedures;
 - B. the Review Period has expired for the previous Design Stage; and
 - C. if the State or the Independent Certifier has provided comments or conditions on the Design Deliverables relating to a Design Package in accordance with the Review Procedures for a previous Design Stage in respect of that Design Package, Project Co has complied with its obligations in accordance with the Review Procedures in connection with such comments or conditions (including if necessary, to address particular comments or conditions or to re-submit Design Deliverables).

2.6 Additional Design Packages

- (a) Project Co may divide the design work for the Correctional Complex into additional Design Packages subject to receiving the State Representative's prior written approval to do so.
- (b) Project Co must submit the following information to the State Representative as part of a request for approval to divide the design work for the Correctional Complex into additional Design Packages:
 - (i) details of the reasoning for additional Design Packages;
 - (ii) a Design Deliverables Overview for the proposed Design Package which complies with the requirements set out in section 4.1 of this Schedule; and
 - (ii) such other information concerning the proposed Design Package reasonably requested by the State Representative.

2.7 Timing for submission of Design Deliverables

Without limiting its obligations as set out in the Review Procedures, Project Co:

- (a) subject to this Schedule, must submit all Design Deliverables in accordance with its Design Management Plan;
- (b) must submit the Design Deliverables for a Design Package for each Design Stage to which they relate as one complete package of information and not as individual documents except where:
 - (i) Project Co is required to revise one or more Design Deliverables to address the State's or the Independent Certifier's comments provided in accordance with the Review Procedures, in which case Project Co may submit such documents individually; or
 - (ii) the State Representative directs otherwise in respect of a [REDACTED] [REDACTED] in which case Project Co must submit such documents as directed;

- (c) acknowledges that the Review Period commences upon receipt by the State and the Independent Certifier of all of the Design Deliverables for a Design Package for the relevant Design Stage which comply with the requirements of this Deed with respect to submission of Design Deliverables;
- (d) must not, except as set out in the Design Package Submission Register and unless otherwise approved in writing by the State Representative, have more than four Design Packages at any Design Stage submitted to the State and the Independent Certifier concurrently for review in accordance with the Review Procedures; and
- (e) must submit other additional information reasonably requested by the State Representative to the State Representative for review in accordance with the Review Procedures.

2.8 Form of Design Deliverables

- (a) Project Co must ensure that the Design Deliverables comply with the Design Deliverables Tables and otherwise manage the preparation of the Design Deliverables so that the Design Deliverables are consistent and coordinated across different design and engineering disciplines.
- (b) Project Co must ensure that each of the Design Deliverables contain or identify the following information (unless otherwise agreed by the State Representative):
 - (i) the Design Package to which the Design Deliverable relates;
 - (ii) the Design Stage to which the Design Deliverable relates;
 - (iii) if the Design Deliverable is a drawing:
 - A. a drawing number;
 - B. a revision number;
 - C. a grid reference to the location within the Correctional Complex of the area drawn, including where this is a modification to a previously submitted Design Deliverable, a cloud around the relevant area to identify a revision;
 - (iv) if the Design Deliverable is a document other than a drawing, a number and revision number or other equivalent coding system that readily differentiates the documentation from previous versions;
 - (v) the identity of the buildings to which the document relates (and to the extent that a building sub-category exists that better defines the space, the identity of that building sub-category);
 - (vi) details of any Modifications that have arisen during the Design Development Process; and
 - (vii) any other information reasonably requested by the State Representative.
- (c) Project Co must highlight all amendments to the Design Deliverables and in doing so show all changes to the Design Deliverables from those submitted for the previous Design Stage, or in respect of Design Stage 1, from the Design Proposal.

3. Initial Design Meeting

As soon as possible and no later than 10 Business Days after Financial Close, Project Co must coordinate and attend an initial design meeting with the State Representative to:

- (a) commence planning of the Design Development Process; and
- (b) discuss the Initial Design Management Plan.

4. Design Management Plan

4.1 Further updates to Design Management Plan (including Design Deliverables Overview)

- (a) Project Co must:

- (i) submit an updated design deliverables overview (**Design Deliverables Overview**) quarterly from Financial Close (or within such shorter time periods as reasonably requested by the State Representative) until the completion of the Design Development Process;
 - (ii) otherwise submit an updated Design Management Plan or a discrete component of the Design Management Plan (as applicable):
 - A. in accordance with the Delivery Phase Plans and Reports Schedule;
 - B. if reasonably requested by the State Representative to do so; and
 - C. otherwise as it considers necessary to reflect any changes to the nature or the status of the Works; and
 - (iii) submit any revisions, modifications or updated versions of the Design Management Plan (including the Design Deliverables Overview) to the State Representative for review in accordance with the Review Procedures.
- (b) In so far as there is any inconsistency between the Design Management Plan and this Deed, the requirements of this Deed will prevail.

4.2 Changes to Design Management Plan

- (a) Project Co must make changes to the Design Management Plan that are reasonably directed by the State Representative.
- (b) Without limiting paragraph (a), Project Co must make changes to the Design Management Plan that are directed by the State Representative if the State Representative reasonably forms the view that the approved Design Management Plan does not:
 - (i) adequately reflect or take into account the scope of the Design Development Process;
 - (iii) effectively or reliably result in the production of Design Deliverables that comply with the requirements of this Deed; or
 - (iv) allow the State or the Independent Certifier sufficient time in which to receive and review the Design Deliverables in accordance with the Review Procedures.

5. Design Development Presentations

5.1 Purpose of Design Development Presentations

The purpose of the Design Development Presentations is to:

- (a) (**Correctional Complex design**): visually demonstrate the design of the Correctional Complex (including the progressive development of the design of the Correctional Complex);
- (b) (**present and explain mock ups**): if requested by the State Representative, present and explain mock ups (including full scale or scale mock ups) of different components of the Correctional Complex;
- (c) (**key elevations and sections**): identify key elevations and sections;
- (d) (**consistent with the purposes of the Project**): demonstrate how the design of the Correctional Complex complements and is otherwise consistent with the purposes of the Project;
- (e) (**fly-throughs**): provide updated animations and fly throughs of the areas within the Correctional Complex;
- (f) (**sample boards**): provide updated sample boards;
- (g) (**consistent with Design Requirements**): demonstrate that the design is such that the Correctional Complex is consistent with the Design Requirements and will satisfy the FFP Warranty; and

- (h) **(issues identified by State Representative):** address specific issues otherwise identified by the State Representative.

5.2 Frequency, notice and attendance at Design Development Presentations

- (a) Project Co must undertake the Design Development Presentations generally in accordance with the Design Development Sub-Program and otherwise at the request of the State Representative (acting reasonably) and must give the State Representative and other proposed attendees approved by the State Representative 10 Business Days' notice of the conduct of a Design Development Presentation.
- (b) Project Co must ensure that as a minimum the D&C Subcontractor and the lead designers attend such Design Development Presentations to provide explanations concerning the design and any other relevant supporting information.
- (c) Project Co must also provide any additional Design Development Presentations requested by the State Representative (acting reasonably).

6. Design Development Sub-Program

The requirements for the Design Development Sub-Program are set out in the Programming Requirements. Project Co must submit Design Deliverables for review by the State and the Independent Certifier in accordance with the Design Development Sub-Program.

7. For Construction Documentation

- (a) Subject to paragraph (b), Project Co must only use the For Construction Documentation that has been reviewed by the State and the Independent Certifier in accordance with the Review Procedures for the purposes of construction of the Correctional Complex.
- (b) Project Co may amend the For Construction Documentation in accordance with paragraph (c) and proceed to construct the Correctional Complex in accordance with the For Construction Documentation (as amended) without the State and the Independent Certifier having first reviewed those amendments, provided that:
 - (i) the amendments are, in the reasonable opinion of a professional engaged in the design, documentation and construction of projects similar to the Correctional Complex:
 - A. for documentation and design coordination purposes;
 - B. minor drafting amendments; or
 - C. in the nature of amendments typical to or reasonably required as part of the design, documentation and construction process in projects similar to the Correctional Complex; and
 - (ii) Project Co has submitted details of the amendment to the State and the Independent Certifier for review.
- (c) Project Co must amend the For Construction Documentation in accordance with the details provided in its notice under paragraph (b)(ii) and provide the updated copies to the State on no less than a monthly basis.
- (d) Nothing in this section 7 will relieve Project Co from, or alter, affect or reduce, the obligations and Liabilities of Project Co in accordance with the State Project Documents or at Law.

8. Building Group Table

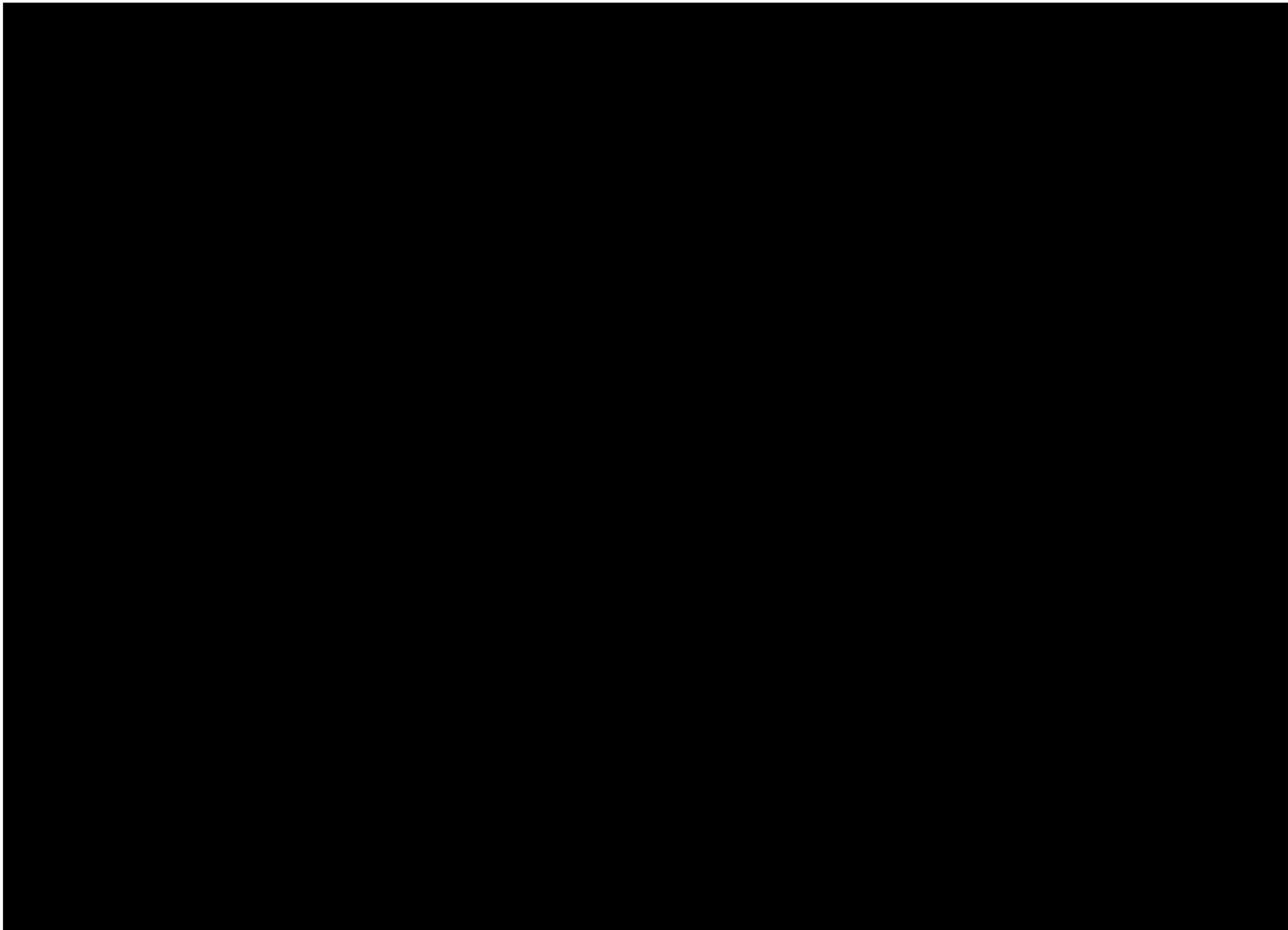
The following table defines the buildings required by the State within each [REDACTED]

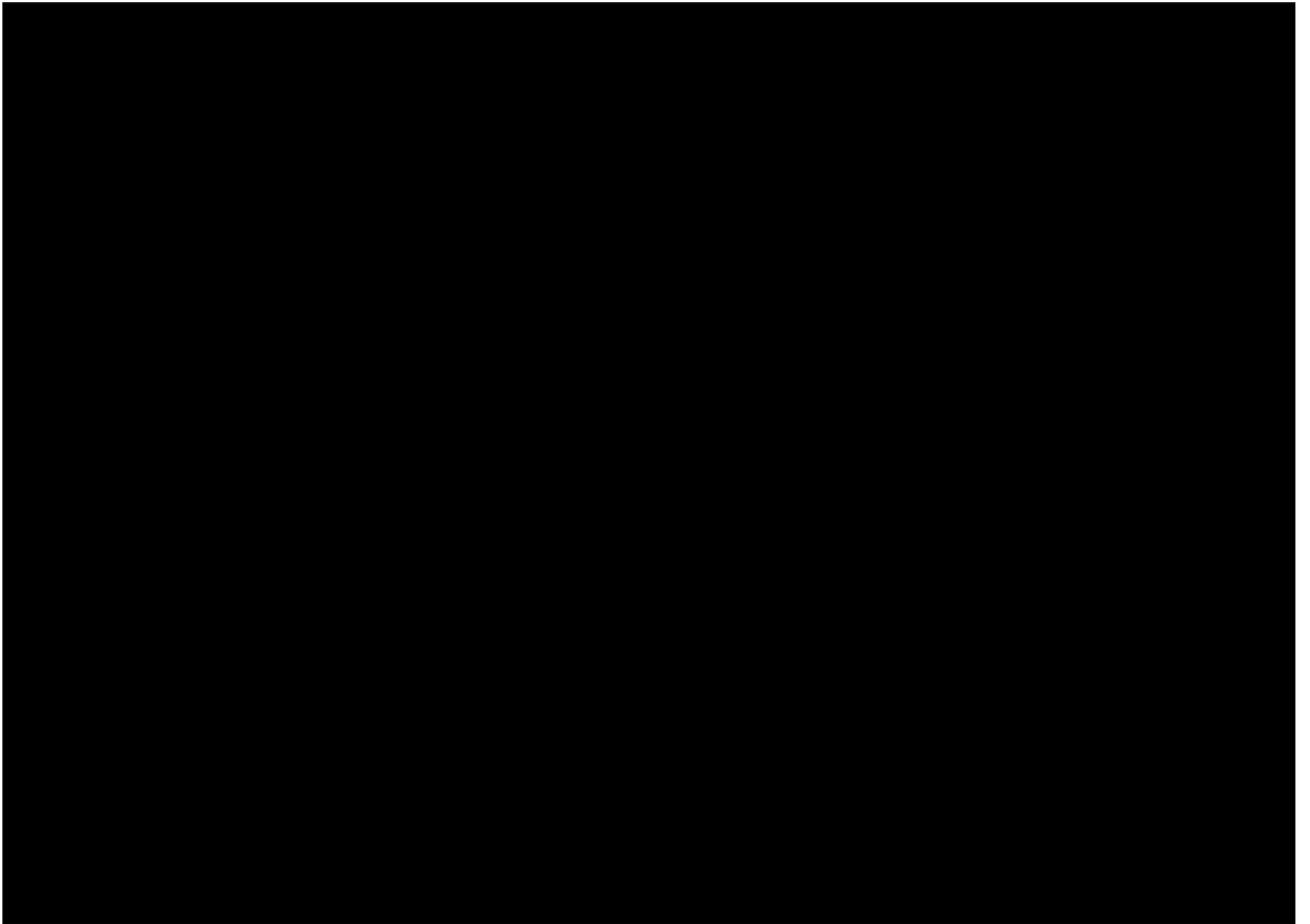
Building group	Building areas
----------------	----------------

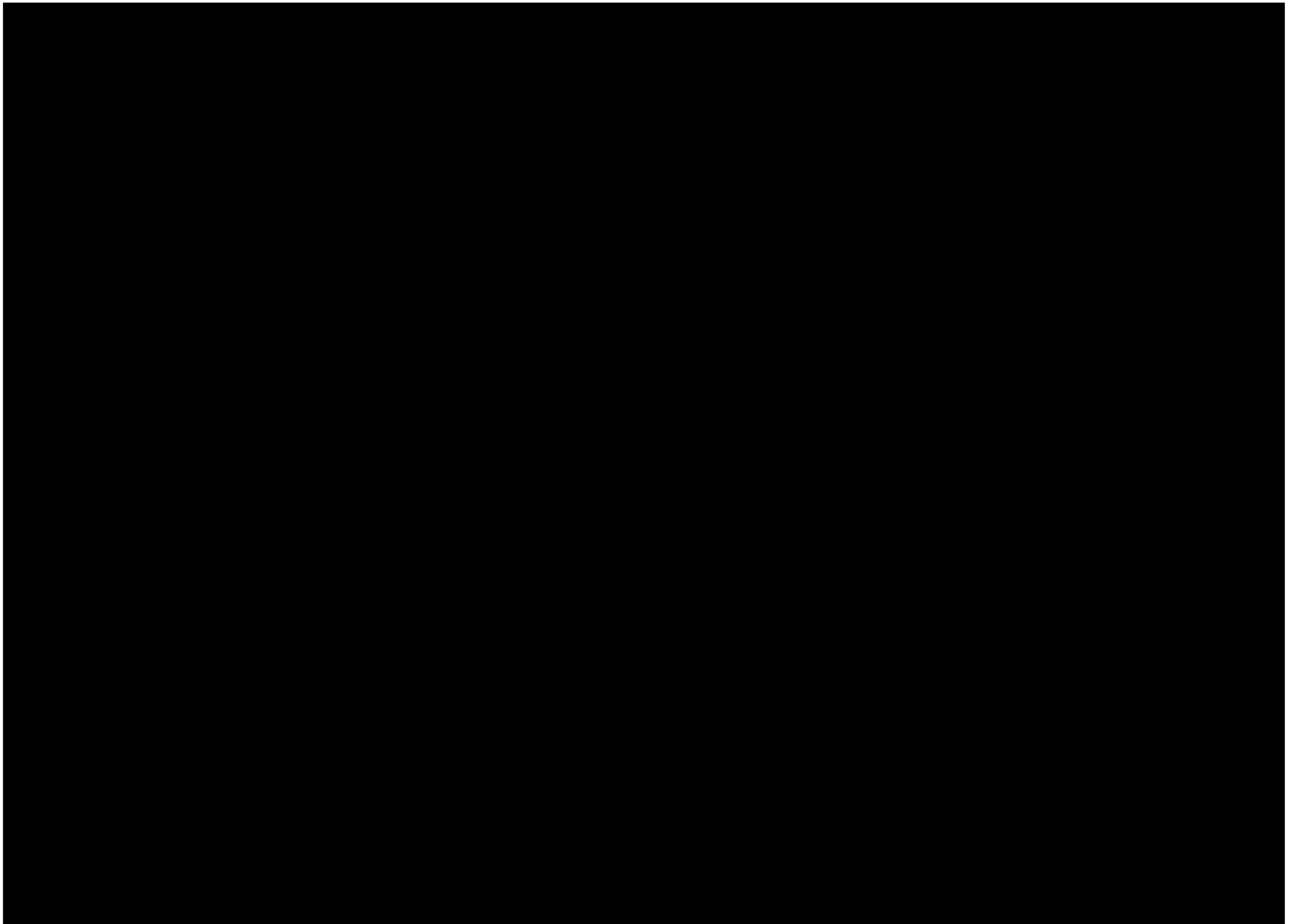
Building group	Building areas

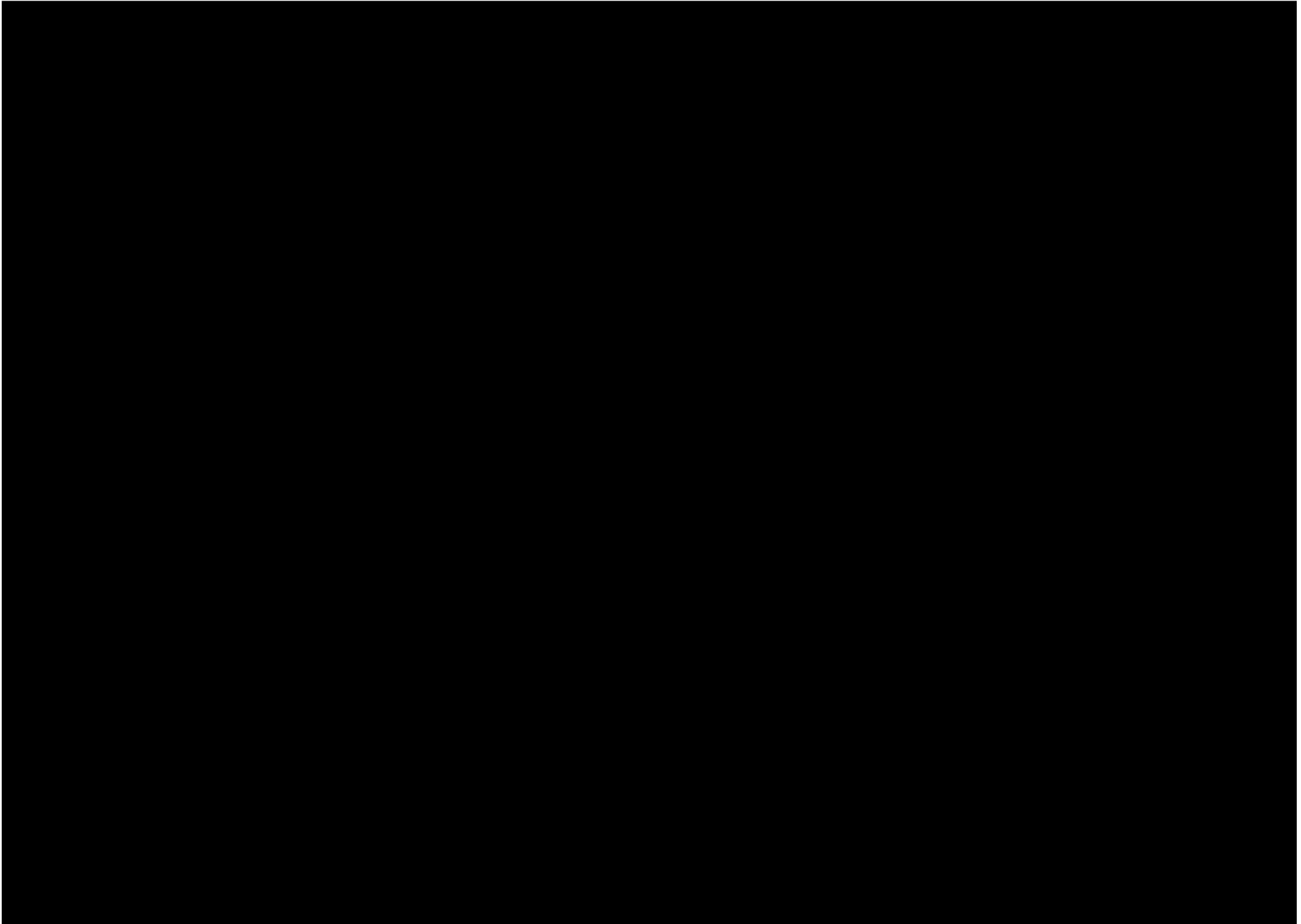
9. Design Deliverables Tables

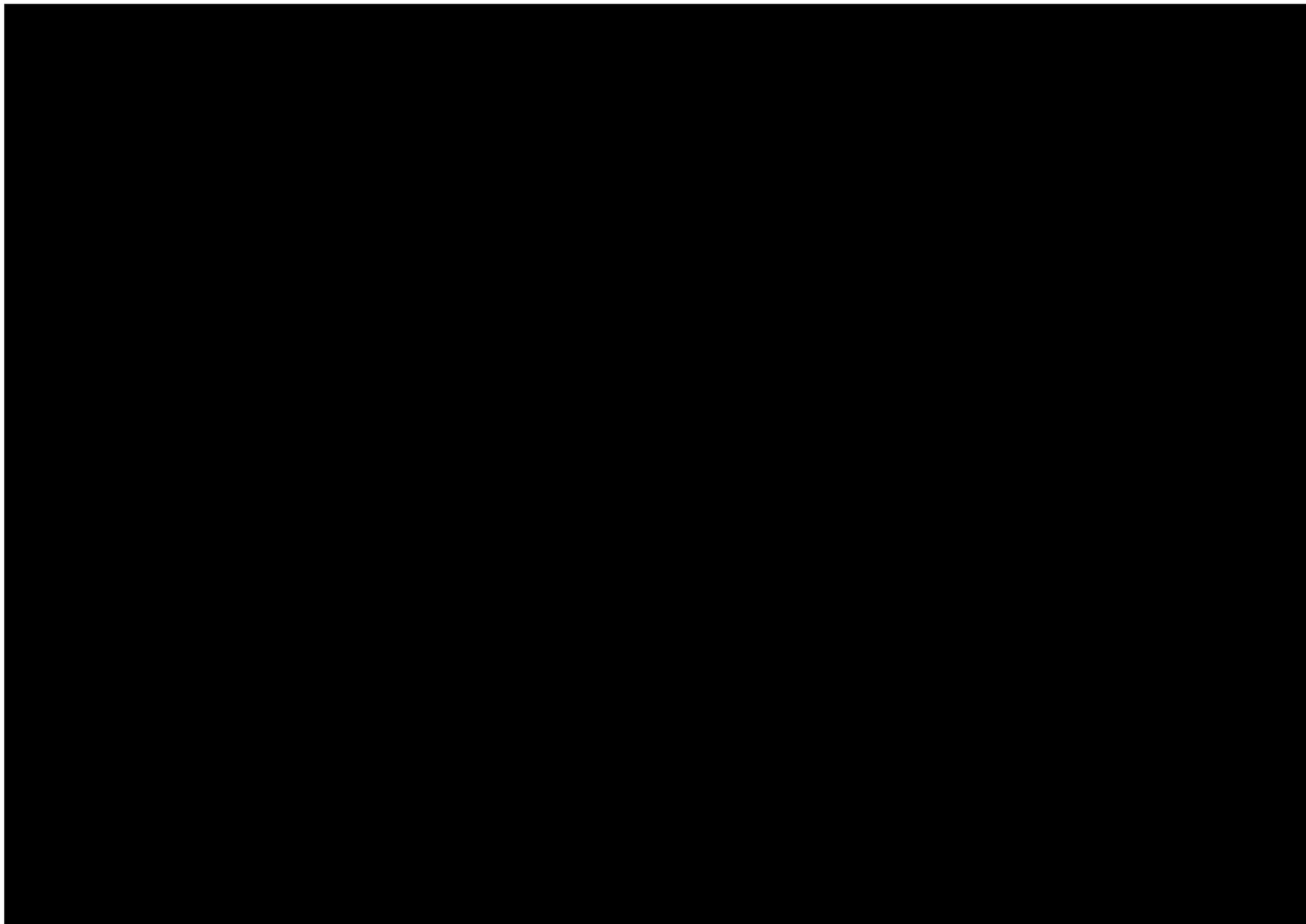
To the extent that the Design Deliverables Tables include references to areas within the Site or Correctional Complex and those terms are not defined in clause 1 of this Deed or section 1 of this Schedule, the meaning given to those terms in the glossary to the Output Specification will apply for the purposes of the Design Deliverables Tables.

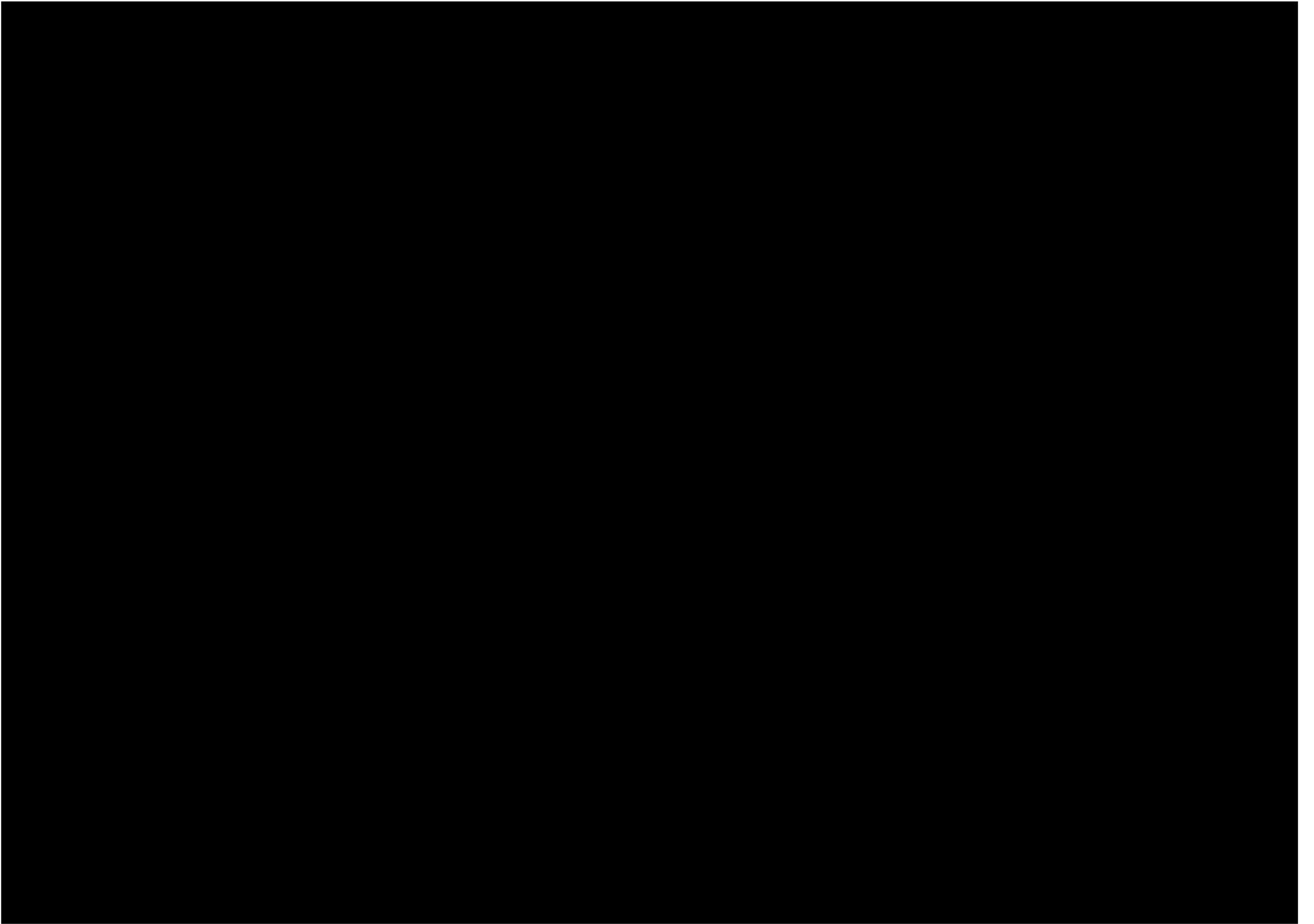


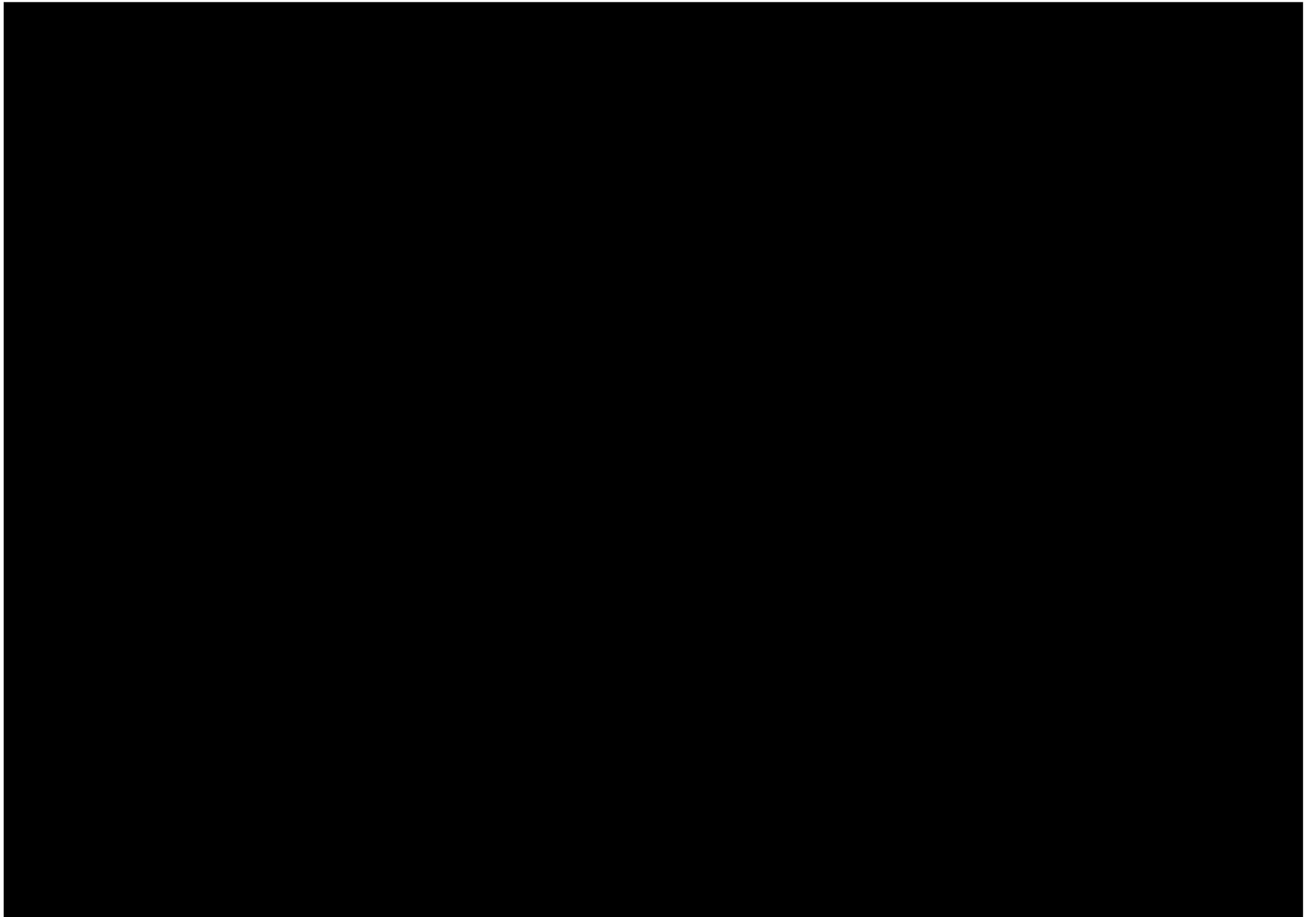


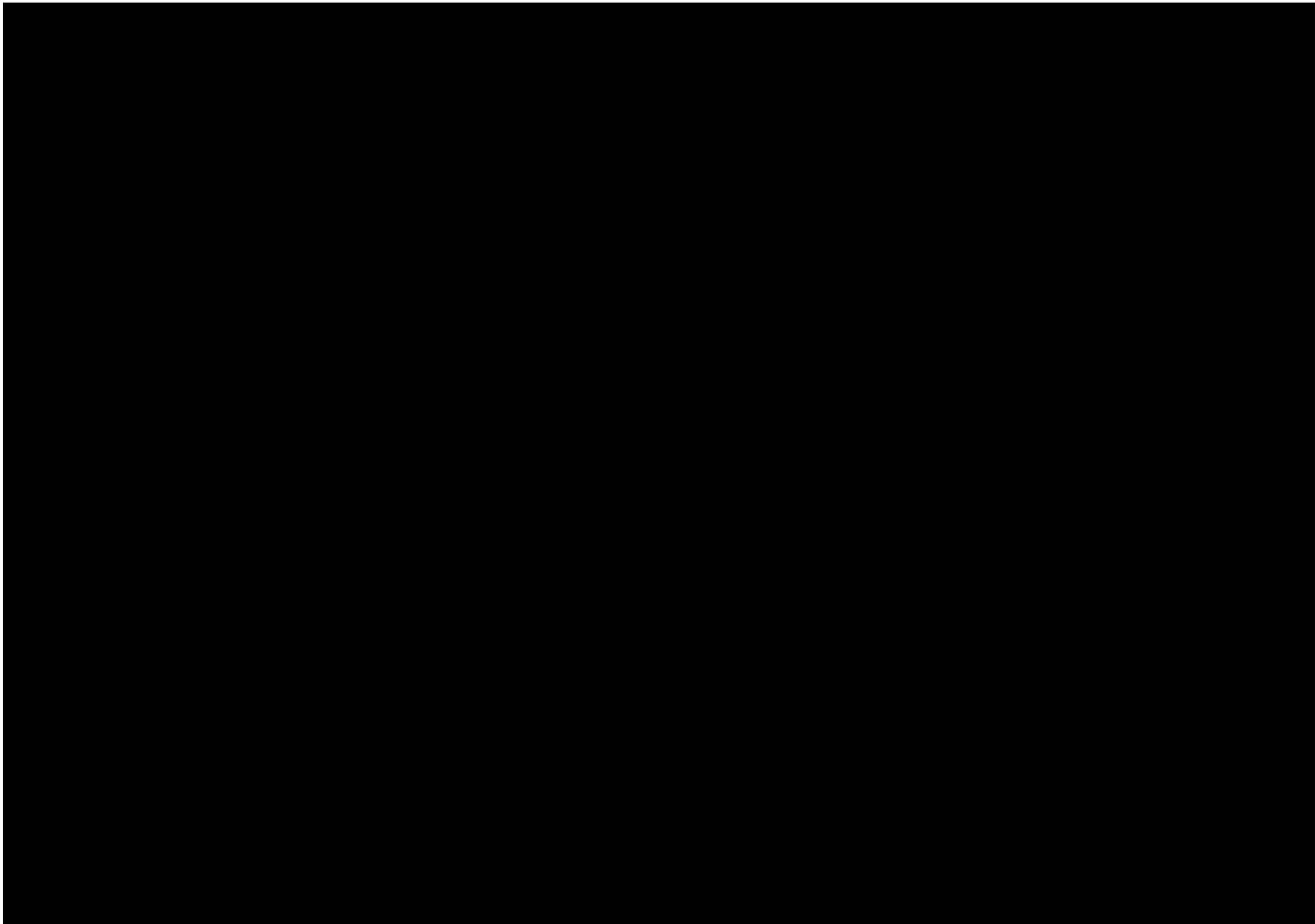


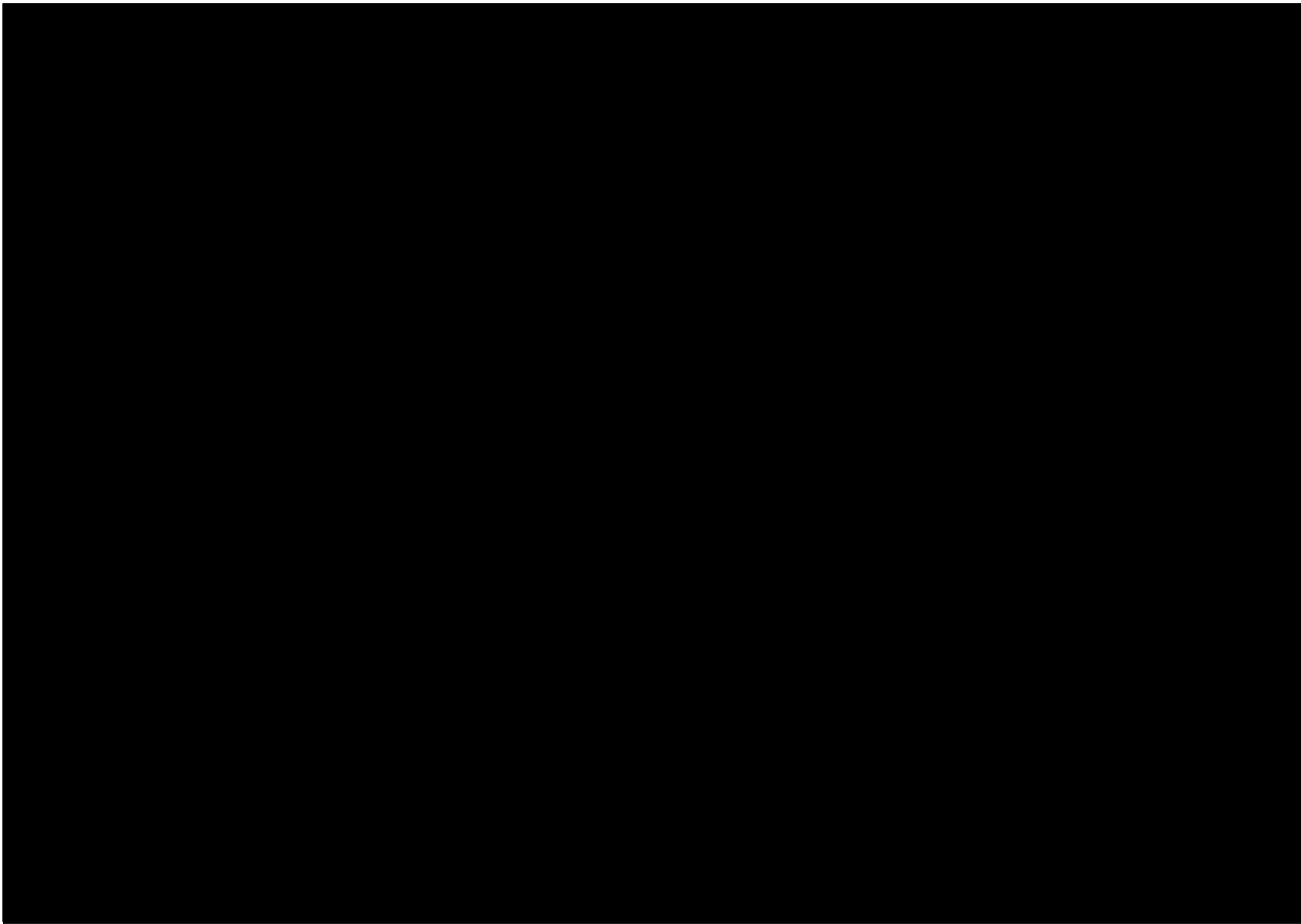




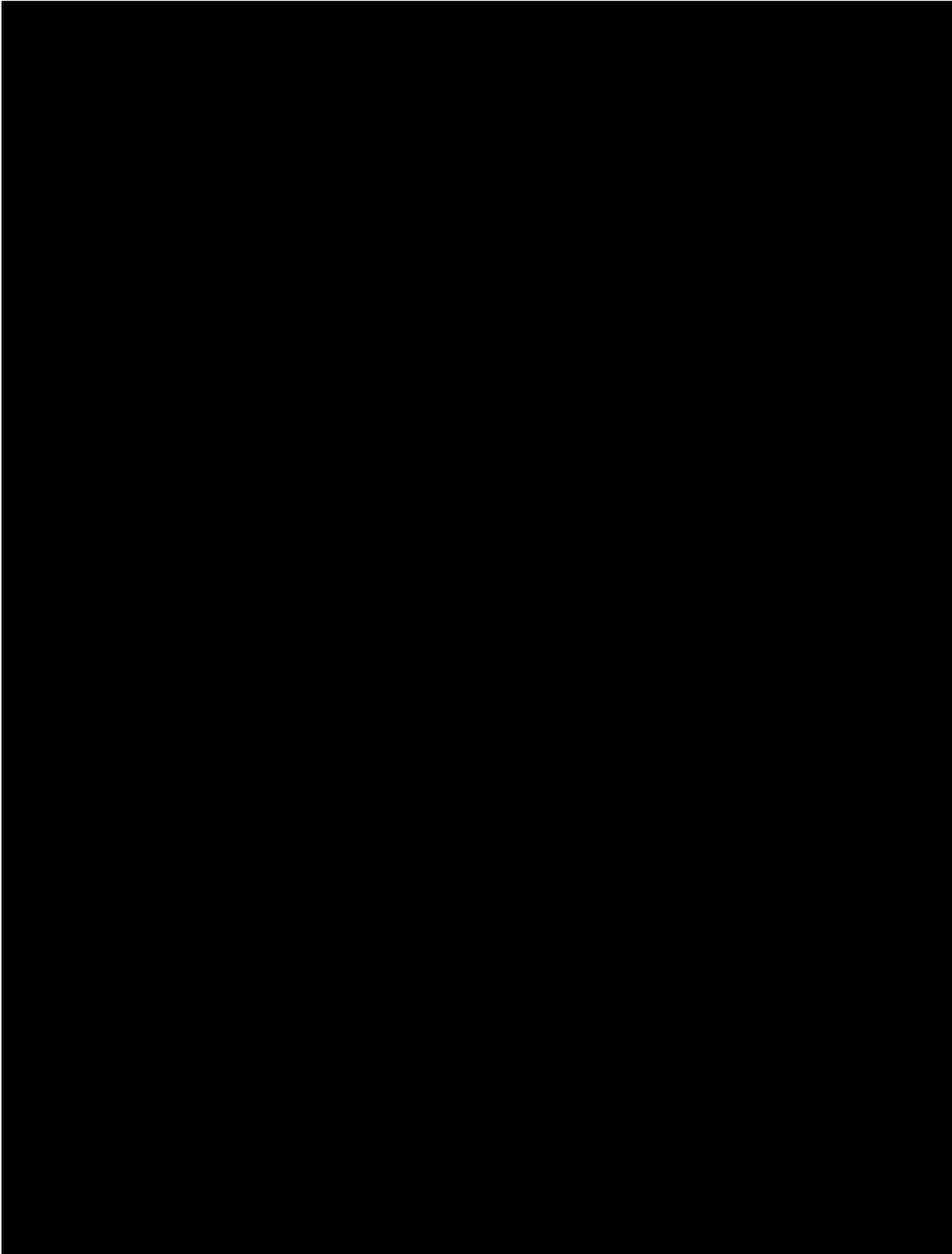




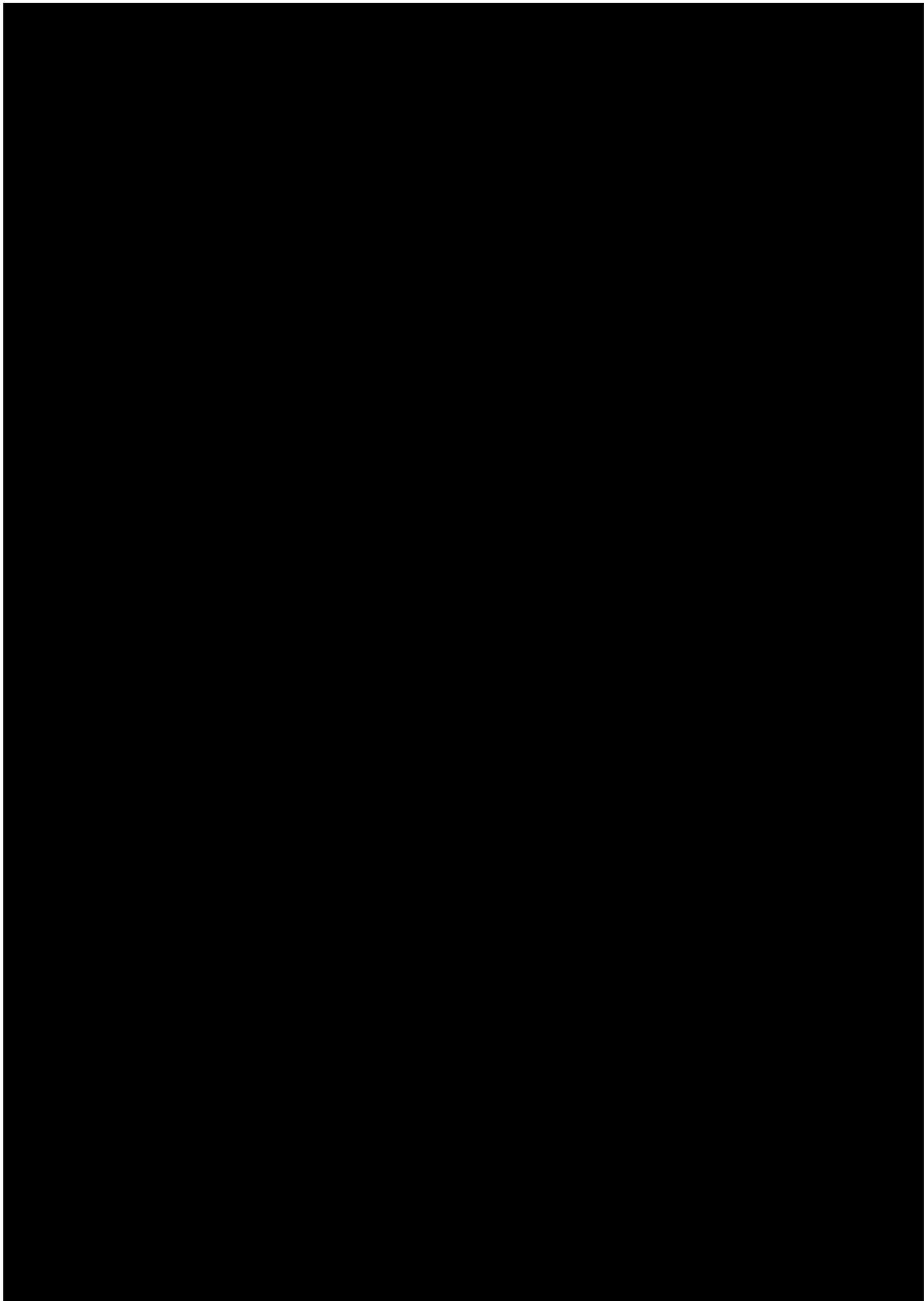


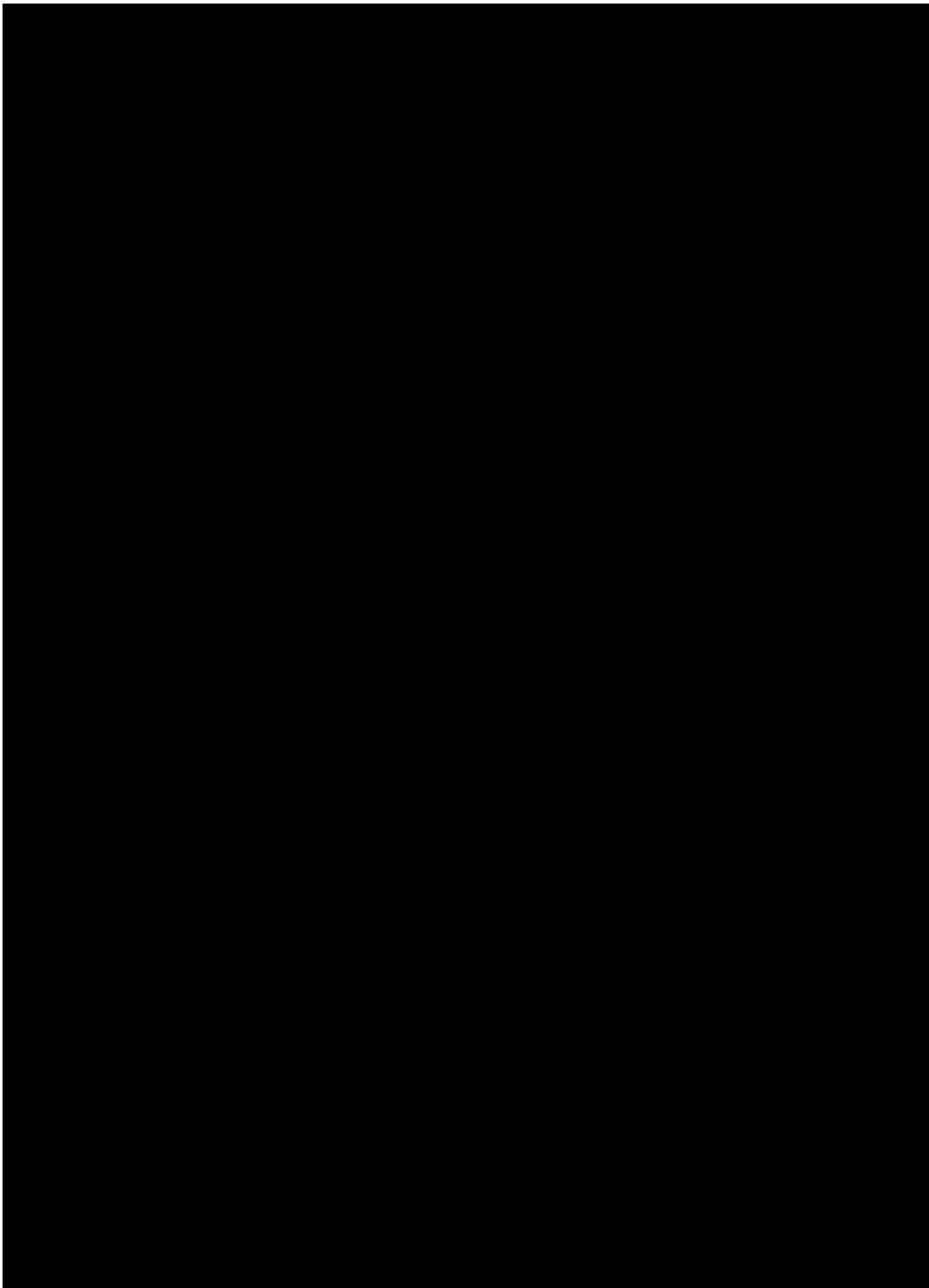


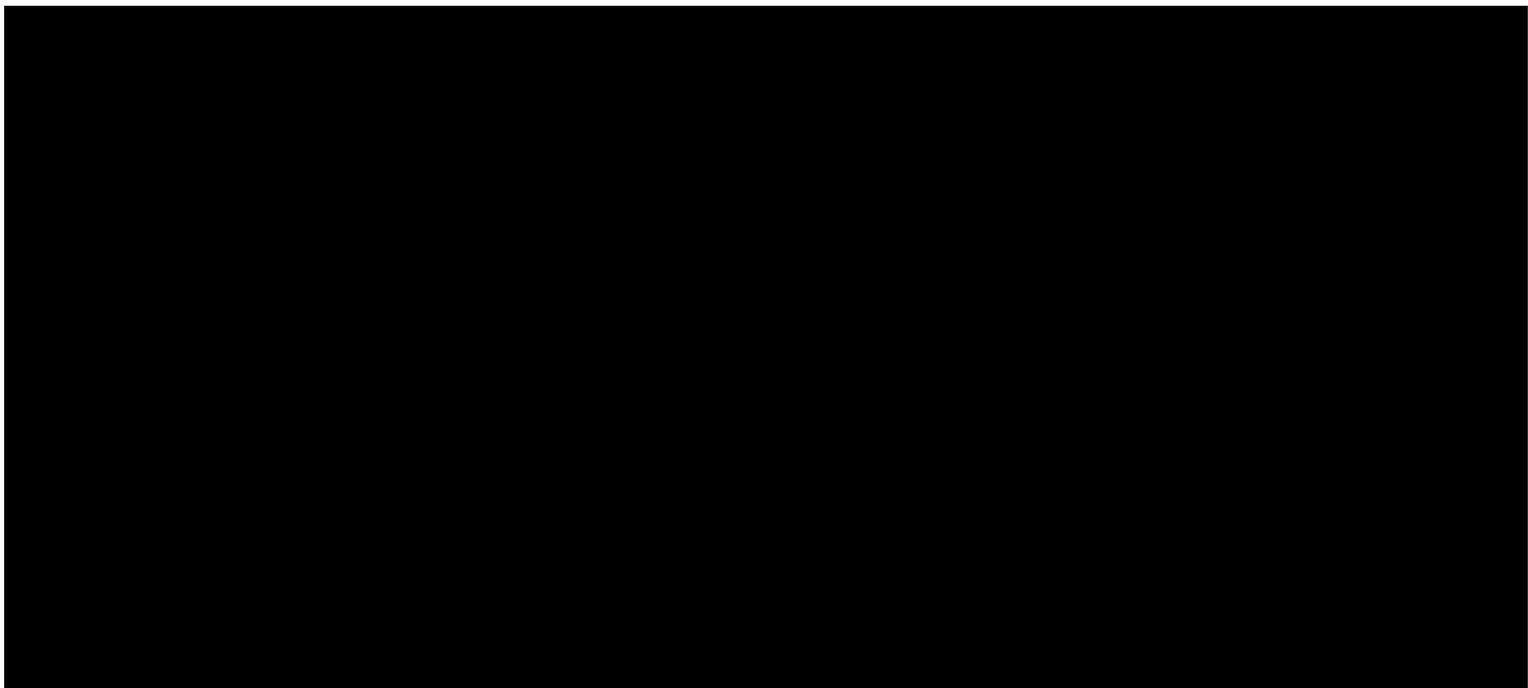
Annexure 1 – Design Package Submission Register



Annexure 2 – Proposed Daylight Modelling Scope







Schedule 9 — Review Procedures

1. Submission and review

1.1 Submission

- (a) Project Co must submit all Project Co Material for review in accordance with these Review Procedures where required in accordance with the State Project Documents (**Submitted Documents**).
- (b) The Submitted Documents must be submitted to the State, the State Representative or the Independent Certifier (as applicable) (**Reviewing Party**) for review or approval in accordance with this Schedule.
- (c) With each Submitted Document, Project Co must provide:
 - (i) details of the Submitted Document, its nature and the relevant clause or Schedule of the State Project Document in accordance with which it is submitted for review; and
 - (ii) any other information required in accordance with the State Project Document or otherwise reasonably required by the Reviewing Party for the review of the Submitted Document in accordance with this Schedule.

1.2 Review

- (a) The Reviewing Party must review the Submitted Document submitted in accordance with Section 1.1 and provide any comments or conditions in writing to Project Co in accordance with this Schedule within the Review Period.
- (b) If the Reviewing Party provides comments or conditions on the Submitted Documents in accordance with Section 1.2(a), the Reviewing Party and Project Co must meet on the next Business Day after the expiry of the relevant Review Period to discuss and confer on the Reviewing Party's 'comments' or 'conditions' in response to a Submitted Document.
- (c) **Review Period** means:
 - (i) without limiting Section 7.3, in respect of any Design Deliverables:
 - (A) for review by the Independent Certifier, 13 Business Days; and
 - (B) for review by any other Reviewing Party, 15 Business Days; and
 - (ii) otherwise, 15 Business Days, except where the Review Period is extended to 25 Business Days under the Operational Readiness Plan.

2. Further information

Project Co must as soon as possible upon request by the Reviewing Party:

- (a) submit any further information, data or documents;
- (b) make available appropriately qualified personnel; and
- (c) provide access to all Project Co Material,

that the Reviewing Party reasonably requires in order for the Reviewing Party to review the Submitted Document and respond in accordance with this Schedule.

3. Document management

3.1 Copies of Submitted Documents

- (a) Unless otherwise stated in the State Project Documents, Project Co must provide:
- (i) three original paper copies (of Design Deliverables only);
 - (ii) one electronic version in PDF format; and
 - (iii) if requested by the Reviewing Party, one electronic version in original format (in accordance with Section 3.1(c)),
- of each Submitted Document to the Reviewing Party for review in accordance with this Schedule.
- (b) Where the Reviewing Party is the Independent Certifier, a copy of the Submitted Document must also be submitted to the State at the same time.
- (c) An electronic copy of a Submitted Document must be an electronic copy of that document in the format of the software in which the document was originally created which has been configured to allow the person to whom the electronic copy is provided to access and amend the information contained therein in the same manner as the original creator of that document.

3.2 Register of Submitted Documents

Project Co must maintain a register of the date of submission and content of each Submitted Document and must regularly update that register to record:

- (a) each Submitted Document to which it receives a response or comment from the Reviewing Party, including a copy of that response or comment; and
- (b) each Submitted Document to which it receives no response or no comment in the Review Period or in respect of which it is deemed not to have received any response or comment in accordance with Sections 5.1 or 5.2.

4. Review in stages

- (a) If Submitted Documents are to be reviewed in stages, each stage for that Submitted Document must be submitted for review and the review completed in accordance with this Schedule before any subsequent stage for that Submitted Document may be submitted for review.
- (b) If for any reason any stage is reviewed out of sequence as a consequence of any Project Co Act or Omission, the Reviewing Party will be entitled to further review or to complete a new review of those stages of the Submitted Documents that have already been reviewed in accordance with this Schedule.

5. Comments on Submitted Document

5.1 Response to Submitted Document

- (a) The Reviewing Party may:
 - (i) provide 'comments' or 'no comments' in respect of a Submitted Document; or
 - (ii) provide 'conditions' in respect of a Submitted Document.
- (b) If the Reviewing Party provides 'no comments' in respect of a Submitted Document or is deemed to provide no comments in respect of a Submitted Document in accordance with Section 5.2, Project Co may proceed in accordance with the Submitted Document.
- (c) Without limiting Section 8.2(d), in respect of:
 - (i) any Stage 1 Design Deliverable or Stage 2 Design Deliverable, if:

- (A) the Reviewing Party provides 'comments' in accordance with Section 7; and
 - (B) the Reviewing Party, acting reasonably, having regard to whether the comments can or cannot be addressed in the next Design Stage without adversely affecting the Project, requires that the comments be addressed before Project Co proceeds to the next Design Stage,
- Project Co may not proceed with the part of the Design Deliverable that is subject to the 'comments' unless it has addressed the 'comments' in accordance with Section 5.3; or
- (ii) any other Submitted Document, if the Reviewing Party provides 'comments' in accordance with Section 7, Project Co may not proceed with the Submitted Document unless it has addressed the 'comments' in accordance with Section 5.3.
- (d) Without limiting Section 8.2(d), if the Reviewing Party provides 'conditions' in respect of the Submitted Document in accordance with Section 7, Project Co may proceed on the basis of the Submitted Document but must also:
- (i) address the conditions provided in respect of the Submitted Document accordingly to the extent that the Submitted Documents do not comply with the requirements of the State Project Documents; and
 - (ii) notify the Reviewing Party in writing of:
 - (A) any 'conditions' Project Co does not propose to address, giving reasons; and
 - (B) all actions taken or to be taken to address the relevant 'conditions'.

5.2 No comments on Submitted Document

- (a) If the Reviewing Party has no comments on a Submitted Document, the Reviewing Party may respond with a statement 'no comment'.
- (b) If the Reviewing Party fails to respond to any Submitted Document or Resubmitted Document within the Review Period in accordance with this Schedule, then the Reviewing Party will be deemed to have returned the Submitted Document to Project Co with 'no comment'.

5.3 Comments on Submitted Document

- (a) If the Reviewing Party has comments on a Submitted Document, it must indicate that its response is in the form of 'comments'.
- (b) Subject to Section 8, in respect of:
 - (i) any Stage 1 Design Deliverable or Stage 2 Design Deliverable, if:
 - (A) the Reviewing Party provides 'comments' in accordance with Section 7; and
 - (B) the Reviewing Party, acting reasonably, having regard to whether the comments can or cannot be addressed in the next Design Stage without adversely affecting the Project, requires that the comments be addressed before Project Co proceeds to the next Design Stage; or
 - (ii) any other Submitted Document, if the Reviewing Party provides 'comments' in accordance with Section 7,

Project Co must:

 - (iii) amend the relevant element of the Submitted Document in accordance with the comments of the Reviewing Party to the extent necessary to ensure that:
 - (A) the Submitted Document meets the requirements of the State Project Documents; and
 - (B) the issues identified in accordance with Section 7 are addressed; and

- (iv) resubmit:
 - (A) the revised relevant part of the Submitted Document to the Reviewing Party; and
 - (B) any document on which the amendment to the relevant part of the Submitted Document may have an effect,

(Resubmitted Document) and the provisions of Sections 1 to 5 will reapply to each Resubmitted Document until such time as:

 - (C) the Resubmitted Document is returned to Project Co without any comment;
 - (D) the Resubmitted Document is deemed to have been returned with 'no comment'; or
 - (E) the Reviewing Party only provides conditions in respect of the Resubmitted Document.
- (c) To the extent that any Submitted Document, Resubmitted Document or any part of any Submitted Document or Resubmitted Document is not subject to 'comments', Project Co may use the Submitted Document or Resubmitted Document as if there was 'no comment' in accordance with this Schedule 9.

5.4 Submitted Document with Conditions

- (a) If the Reviewing Party considers that Project Co may proceed to undertake the Project Activities in accordance with the Submitted Document but that certain conditions must be satisfied, the Reviewing Party must indicate that its response to the Submitted Document is in the form of 'conditions'.
- (b) Without limiting Section 8.2(d), if the Reviewing Party specifies that certain 'conditions' must be satisfied in respect of the Submitted Document in accordance with Section 7, Project Co may proceed with the Project Activities in accordance with the Submitted Document but must:
 - (i) otherwise satisfy the conditions within the time specified by the Reviewing Party (acting reasonably) (or if no time is specified, promptly) such that the Submitted Document complies with the State Project Documents; and
 - (ii) notify the Reviewing Party in writing of:
 - (A) any 'conditions' Project Co does not propose to address, giving reasons; and
 - (B) all actions taken or to be taken to address the relevant 'conditions'.

5.5 Substantiate comments or conditions

If the Reviewing Party provides Project Co with comments or conditions in connection with the Submitted Document in accordance with Section 7, the Reviewing Party must provide sufficient detail to Project Co to substantiate those comments or conditions.

6. Right to Proceed

6.1 Submitted Document with 'no comments'

- (a) Without limiting Section 8.2, Project Co may proceed with the Project Activities the subject of a Submitted Document in accordance with sections 5.1(c), 5.1(d), 5.3(b), 5.3(c) and 5.4(b), but otherwise may not proceed unless:
 - (i) the Submitted Document or relevant part of the Submitted Document is returned with 'no comments' or is deemed to be returned with 'no comment'; or
 - (ii) the Submitted Document or relevant part of the Submitted Document includes 'conditions' and is not the subject of comments.

- (b) If Project Co is entitled to proceed with the Project Activities the subject of the Submitted Document, Project Co must deliver the Project in accordance with the Submitted Document, save for minor amendments to the Design Deliverables which are made in accordance with Section 7 of Schedule 8 (*Design Development Schedule*), and any conditions in respect of the Submitted Document, unless it is necessary to depart from the Submitted Document to comply with a State Project Document, in which case Project Co must update the Submitted Document accordingly and the provisions of Sections 1 to 5 shall apply to such re-submission.
- (c) If Project Co proceeds with the Project Activities the subject of a Submitted Document in accordance with section 6.1(a) but is required to address 'comments' or 'conditions' on another part of that Submitted Document in accordance with section 5.3(b) or 5.4(b), Project Co must:
 - (i) when submitting the Resubmitted Document under section 5.3(b), identify the potential impact that the Resubmitted Document may have on the Project Activities; and
 - (ii) when addressing 'conditions' under section 5.4(b), comply with its obligations under section 5.4(b).
- (d) To the extent that Project Co elects to proceed with the Project Activities in accordance with section 5.1(c), 5.1(d), 5.3(b), 5.3(c), 5.4(b), 6.1(a) or 8.2(d)(ii), Project Co does so at its own risk and it must:
 - (i) amend all relevant Design Deliverables; and
 - (ii) carry out any work,
 as necessary to address the outcome of the Reviewing Party's review of that Submitted Document or Resubmitted Document.

7. Grounds on which the Reviewing Party may comment on or provide conditions to a Submitted Document

7.1 General

The Reviewing Party may provide comments on, or conditions to, a Submitted Document if:

- (a) the Submitted Document:
 - (i) is incomplete, inaccurate, of poor quality, ambiguous, unclear or otherwise is not in a condition to allow the Reviewing Party, in its reasonable opinion, to adequately review it;
 - (ii) does not comply with the relevant Laws, Approvals or Policies; or
 - (iii) is otherwise not in accordance with, or is not submitted in accordance with, the requirements of the State Project Documents; or
- (b) the Reviewing Party is of the view, acting reasonably, that implementing or proceeding on the basis of the Submitted Document would:
 - (i) adversely affect any of the State's rights under a State Project Document, the State's ability to enforce any such rights, any of its statutory functions, or its ability to perform its obligations under a State Project Document;
 - (ii) not enable Project Co to comply with its obligations under the State Project Documents (including the FFP Warranty); or
 - (iii) likely result in an increase to the State's Liabilities under a State Project Document.

7.2 Delivery Phase Program

If the Submitted Document is the Delivery Phase Program then, in addition to the Reviewing Party's rights in accordance with Section 7.1, the Reviewing Party may provide comments or

conditions, in respect of the Delivery Phase Program and Project Co must amend the Delivery Phase Program accordingly if:

- (a) the Delivery Phase Program is inconsistent with, or is otherwise not in accordance with, the Programming Requirements; or
- (b) compliance with the Delivery Phase Program would mean that Completion would not be achieved by the relevant Date for Completion.

In providing any comments or conditions under this Section, the State agrees to act consistently with the Independent Certifier under this section 7.2 and clause 3.5 of the Independent Certifier Deed.

7.3 Design Deliverables

- (a) If the Submitted Document is a Design Deliverable:
 - (i) in addition to its rights under Section 7.1, the Reviewing Party may also provide comments or conditions in respect of the Design Deliverable where the Design Deliverable:
 - (A) is inconsistent with or not in accordance with the Design Requirements; or
 - (B) is not submitted in accordance with the Design Development Process;
 - (ii) the State may provide comments or conditions in respect of the Design Deliverable to the Independent Certifier (with a copy to Project Co) within 8 Business Days following receipt of the Design Deliverable from Project Co, which comments or conditions:
 - (A) will be marked by the State as 'draft comments or conditions for consideration by the Independent Certifier';
 - (B) are provided to Project Co for Project Co's information only;
 - (C) Project Co is not required to address (whether by way of amendment, satisfaction of conditions or otherwise) in accordance with Section 5; and
 - (D) may not give rise to a dispute under Section 8 or clause 52 of this Deed, **(Draft State Comments or Conditions)**; and
 - (iii) the Independent Certifier:
 - (A) must review each Design Deliverable:
 - (I) that relates to the design of:
 - (1) the Gatehouse (including all electronic security measures associated with managing entry and egress of all persons), as specified in the Output Specification;
 - (2) the Main (master) Control Room, as specified in the Output Specification;
 - (3) the Secure Perimeter and all internal barriers, gates and the like relating to Inmate separation and containment, as specified in the Output Specification;
 - (4) the Electronic Security System, as specified in the Output Specification;
 - (5) the Access Control, as specified in the Output Specification;
 - (6) the Health Centre, as specified in the Output Specification; or
 - (7) one or more cells; and
 - (II) where the State has provided Draft State Comments or Conditions, prior to the expiry of the Review Period:

- (1) consider the Draft State Comments or Conditions; and
 - (2) to the extent that the Independent Certifier does not include any or all of the Draft State Comments or Conditions in its comments or conditions provided to Project Co in accordance with Section 1.2(a), provide the State with detailed written reasons of why it did not include such Draft State Comments or Conditions; and
- (B) may review each other Design Deliverable.
- (b) Nothing in this Section 7.3:
- (i) limits the State's rights to provide comments or conditions in respect of any Design Deliverable directly to Project Co without first providing those comments or conditions to the Independent Certifier; or
 - (ii) lengthens the Review Period in respect of any Design Deliverable.

7.4 Operational Readiness Plan

If the Submitted Document is the Operational Readiness Plan, in addition to its rights under Section 7.1, the Reviewing Party may provide comments or conditions in respect of the Submitted Document where:

- (a) the Submitted Document is inconsistent with or not in accordance with Services Requirements;
- (b) the Submitted Document does not accurately set out (or set out in sufficient detail) how Project Co will deliver the Services so as to meet the Services Requirements;
- (c) the Submitted Document does not adequately take into account the comments or concerns of the Reviewing Party in accordance with the Operational Readiness Plan and the Operating Manual; or
- (d) the Reviewing Party (acting reasonably) considers that Project Co will not be ready to deliver the Services at the Operational Commencement Date despite compliance with the terms of the Operational Readiness Plan.

8. Dispute resolution

8.1 Disputed amendments

- (a) If Project Co does not agree with any comments or conditions of the Reviewing Party in respect of a Submitted Document, Project Co and the Reviewing Party must meet to try to resolve the difference of opinion in good faith.
- (b) If, following good faith negotiations, Project Co still disputes that any amendments are required to the Submitted Document, either party may:
 - (i) where the Submitted Document is a Design Deliverable or otherwise relevant to the Delivery Phase Activities or the Relevant Infrastructure (and the Reviewing Party is not the Independent Certifier), refer the matter for determination to the Independent Certifier in accordance with Section 8.2; or
 - (ii) where:
 - (A) the Submitted Document is not a Design Deliverable and the Reviewing Party is the Independent Certifier;
 - (B) the Submitted Document is relevant to the Services or the Submitted Document is the Operational Readiness Plan; or
 - (C) there is no Independent Certifier appointed at the time,
 refer the matter to expert determination in accordance with clause 52 of this Deed.

8.2 Independent Certifier determination of dispute

- (a) If a dispute regarding a Submitted Document is referred to the Independent Certifier for determination in accordance with these Review Procedures, the parties must meet with the Independent Certifier within 2 Business Days of the referral and explain their positions in respect of the Submitted Document to the Independent Certifier.
- (b) If the Independent Certifier considers it necessary, the Independent Certifier can require the parties to provide details of their positions in writing.
- (c) The Independent Certifier must make a determination as to whether or not the Submitted Document requires any amendment in accordance with the comments or otherwise or whether the conditions should be satisfied, within 5 Business Days of the referral of the dispute to the Independent Certifier.
- (d) If the Independent Certifier determines that the Submitted Document does not require any amendment or that the conditions do not need to be satisfied, then:
 - (i) the State may refer the matter to expert determination in accordance with clause 52 of this Deed; and
 - (ii) subject to Section 8.2(e), Project Co may, without limiting the parties' rights and obligations under Section 9, proceed with the Project Activities relevant to that Submitted Document.
- (e) Despite Section 8.2(d)(ii), if:
 - (i) the Independent Certifier determines that the Submitted Document does not require any amendment or that the conditions do not need to be satisfied, the State may refer the matter to expert determination in accordance with clause 52 of this Deed; and
 - (ii) the Submitted Document relates to the design of:
 - (A) the Gatehouse (including all electronic security measures associated with managing entry and egress of all persons), as specified in the Output Specification;
 - (B) the Main (master) Control Room, as specified in the Output Specification;
 - (C) the Secure Perimeter and all internal barriers, gates and the like relating to Inmate separation and containment, as specified in the Output Specification;
 - (D) the Electronic Security System, as specified in the Output Specification;
 - (E) the Access Control, as specified in the Output Specification;
 - (F) the Health Centre, as specified in the Output Specification; or
 - (G) the cells as provided in the Cell Design Package,Project Co may not proceed with the Project Activities relevant to that Submitted Document until the Dispute is finally resolved in accordance with this Deed.

9. No limitation on obligations

- (a) Except as otherwise expressly provided in the Independent Certifier Deed, the Reviewing Party does not owe any duty of care to Project Co to review at all, or in reviewing, commenting or failing to comment on, accepting, approving, endorsing, providing conditions for or rejecting a Submitted Document, to detect defects, errors, omissions or non-compliances with the State Project Documents, any Law, any Approval or any Policy.
- (b) Notwithstanding this Schedule, where in this Deed the words 'review', 'comment', 'accept', 'endorse', 'approve', 'consent', 'condition' or 'reject' (or similar) or other grammatical forms of any of those words are used in relation to documents of any kind, including Submitted Documents, or where such words are used by the Reviewing Party, then those words, their use and the acts or omissions associated with them (including pursuant to this Schedule) do not in any way:

- (i) relieve Project Co from, or alter, affect or reduce, the obligations and Liabilities of Project Co in accordance with the State Project Documents or otherwise at Law;
 - (ii) constitute any representation that any Submitted Document complies with the State Project Documents;
 - (iii) prejudice the State's rights against Project Co, whether under the State Project Documents or otherwise at Law; or
 - (iv) affect the time for performance of the State's obligations in accordance with the State Project Documents.
- (c) The review, acceptance, endorsement or approval of, comment or failure to comment on or provision of conditions or consent to, any Submitted Document will not be evidence that any Works or Services have been or will be undertaken or performed in accordance with the State Project Documents.
- (d) Project Co agrees that:
- (i) Project Co will not be entitled to make any Claim against any Reviewing Party, whether under this Deed or at Law, for any Liabilities incurred by Project Co in connection with any review, comment or failure to comment on, provision of conditions to, or acceptance, approval, endorsement or rejection of, a Submitted Document; and
 - (ii) without limiting Section 9(d)(i), Project Co will not be entitled to make any Claim against any Reviewing Party in connection with any delay in the review of a Submitted Document.

Schedule 10 — Moral Rights Consent

MORAL RIGHTS CONSENT

THIS DEED POLL is made on the day of

BY: [Insert name of individual] of [insert address], [insert occupation] (**Author**)

IN FAVOUR OF [Insert Relevant State Agency Name] (ABN [Insert]), a [body corporate/government agency] constituted under [Insert relevant legislation under which the agency is constituted]

and

[Insert Relevant State Agency Name] (ABN [Insert]), a [body corporate/government agency] constituted under [Insert relevant legislation under which the agency is constituted]

(together the **State**)

and

[Insert Project Co's name] (ABN [Insert]) of [Insert address] (**Project Co**)

WHEREAS:

- A The State has contracted out, or proposes to contract out, the Project (as that term is defined in the Project Deed) (**Project**).
- B Project Co is responsible for the Project under the deed entitled 'New Grafton Correctional Centre – Project Deed' between the State and Project Co dated [insert date] (**Project Deed**).
- C The Author may create or has created material in which copyright subsists for the purposes of the *Copyright Act 1968* (Cth) (as amended from time to time) for the purposes of, or otherwise for use in connection with, the Project (**Copyright Material**).

THE AUTHOR COVENANTS as follows:

The Author in consideration of the State or Project Co paying the Author \$1.00 (inclusive of GST) (receipt of which is hereby acknowledged):

1. agrees, to the extent permitted by law, not to sue, enforce any claim, bring any action or exercise any remedy in respect of any, or any alleged, breach, infringement or other wrongdoing, howsoever or whatsoever occurring, including without limitation for the breach or alleged breach of any of the Author's 'moral rights' under the *Copyright Act 1968* (Cth) (as amended from time to time) whether before or after the date of this deed poll by:
 - (a) the State or Project Co;
 - (b) any contractor which the State or Project Co engages;
 - (c) any third party to whom the State or Project Co sub-licences (whether express or implied) or grants any other right to use, possess, modify, vary or amend any of the Copyright Material; or
 - (d) any third party to whom the State or Project Co assigns rights it has in, or in relation to, any of the Copyright Material,

(together, the **Beneficiaries**) in relation to any of the Copyright Material;

2. without limiting clause 1 above, consents to any of the Beneficiaries:
 - (a) failing to acknowledge or attribute the Author's authorship of any of the Copyright Material;
 - (b) falsely attributing authorship of any of the Copyright Material; and
 - (c) making any modification, variation or amendment of any nature whatsoever to any of the Copyright Material, whether or not it:
 - (i) results in a material distortion, destruction or mutilation of any of the Copyright Material; or
 - (ii) is prejudicial to the honour or reputation of the Author; and

3. without limiting clauses 1 or 2, consents to any of the Beneficiaries:
 - (a) using any of the Copyright Material for any purpose for which it was intended at the time the Copyright Material was created;
 - (b) altering any of the Copyright Material by adding to, removing elements from, or rearranging elements of, the Copyright Material, including without limitation by combining elements of any of the Copyright Material with any other material; and
 - (c) changing, relocating, demolishing or destroying any building which incorporates, is based on, or is constructed in accordance with, any of the Copyright Material.

Nothing in this document amounts to an obligation on the State to comply, or a warranty by the State that it will comply, with the *Competition and Consumer Act 2010* (Cth) or any equivalent provision of a statute of any state or territory in the Commonwealth of Australia.

Executed as a deed poll.

[Note to Author: Execution clause to be confirmed prior to execution]

Signed by the Author in the presence of:

Signature of witness

Signature of the Author

Name of witness (print)

Schedule 11 – Delivery Phase Plans and Reports Schedule

The purpose of this Schedule is to set out in detail Project Co's obligations in respect of the Delivery Phase Plans and the Delivery Phase Reports.

In this Schedule, each individual plan, program, protocol, report or notification forming part of the Delivery Phase Plans and Reports is referred to as a "Plan".

1. Reports

Table 1: Delivery Phase Reports

Report	Content	Time for provision
A. Monthly Works Report	<p>The Monthly Works Report must comprise the following information:</p> <ol style="list-style-type: none"> 1) (Project Co report): a written overview of the Delivery Phase Activities and the Project more generally, prepared by Project Co; 2) (Delivery Phase Activities): details of the progress of the Delivery Phase Activities and compliance with the Delivery Phase Program, including: <ol style="list-style-type: none"> a) (Works completed): details of Works completed in the previous month; and b) (Works underway): details of Works scheduled for the current month; 3) (updated Delivery Phase Program): a copy of the Delivery Phase Program updated in accordance with this Deed; 4) (Construction Management Plan): details of Project Co's performance against the Construction Management Plan including any issues arising in relation to the execution of the Works; 5) (Technical Completion, Commercial Acceptance, operational readiness and ramp-up preparation): a report on the activities associated with Technical Completion, Commercial Acceptance, operational readiness and ramp-up; 6) (Claims and Disputes): details of any outstanding or unresolved Claims and Disputes; 7) (Modifications): the progress of any Modifications or information relating to any proposed Modifications; 	5 Business Days prior to each Project Control Group meeting during the Delivery Phase

Report	Content	Time for provision
	<p>8) (quality assurance issues): details of any quality assurance issues;</p> <p>9) (public relations issues): details of any public relations issues, including complaints or concerns raised by the public or Project stakeholders;</p> <p>10) (environmental issues): details of any environmental issues;</p> <p>11) (work health and safety): details of Project Co performance in respect of work health and safety;</p> <p>12) (safety incidents): details of any safety incidents that have occurred in the reporting period and since the start of the Project;</p> <p>13) (monitoring and test programs): the results of any monitoring and test programs;</p> <p>14) (Contamination): details of the removal of any Contamination including details of the quantities and types of Contamination removed during the relevant reporting period;</p> <p>15) (research): report on progress of Project Co's research into the effectiveness of pre- and post-release reintegration programs and their relationship to recidivism rates;</p> <p>16) (FM Activities): details of the progress of the FM Services and compliance with the Operational Readiness Plan, including:</p> <p style="padding-left: 20px;">a) (Work completed): details of Work completed in the previous month; and</p> <p style="padding-left: 20px;">b) (Work underway): details of Work scheduled for the current month;</p> <p>17) (Stakeholders and communication matters): details of any stakeholder or communication matters, including complaints or concerns raised by the public or Project stakeholders and the status of Project Co's stakeholder and community involvement activities against the Communications and Community Relations Plan; and</p> <p>18) (Other information): such other information reasonably requested by the State Representative.</p>	

Report	Content	Time for provision
B. Quality Assurance Report	<p>The Quality Assurance Report must:</p> <ol style="list-style-type: none"> 1) confirm that the D&C Subcontractor is implementing and maintaining the Quality Assurance System and the Delivery Phase Quality Assurance Plan for the design and construction of the Correctional Complex in accordance with the D&C Subcontract and AS/NZS ISO 9001 and AS/NZS ISO 14001; 2) identify areas or items of non-compliance; 3) include a summary of the items that have been addressed and remediated since the submission of the Quality Assurance Report for the previous Quarter; and 4) include a summary of the overall performance of the Quality Assurance System. 	Quarterly, with the first Quality Assurance Report due at the end of the Quarter contemplated by paragraph (a) of the definition of Quarter.
C. Delivery Phase Program	<p>The Initial Delivery Program is contained in Attachment 2.</p> <p>Project Co must update the Delivery Phase Program so it meets the requirements of Schedule 4.</p>	As required in accordance with Schedule 4
D. Aboriginal Participation Report (Construction)	The Aboriginal Participation Report (Construction) must be in accordance with clause 10.12(c) and 10.12(d) under this Deed.	As required in accordance with the Deed.
E. Post Completion Report	The Post Completion Report must be submitted after the completion of all Post Completion Tests and must be in accordance with the Commercial Acceptance Schedule.	After the completion of all Post Completion Tests.
F. Training and Apprenticeships Report	<p>The Training and Apprenticeship Report must provide detail on the engagement of apprentices and trainees on the contracted work and achievement against the project target.</p> <p>The report must be submitted on a quarterly basis to the Department of Industry and the State on the engagement of apprentices and trainees reported by contractors.</p>	Quarterly
G. Australian Industry Participation Compliance Report (Delivery)	<p>The Australian Industry Participation Compliance Report (Delivery) must be prepared in accordance with the template provided at:</p> <p>http://www.industry.gov.au/industry/IndustryInitiatives/AustralianIndustryParticipation/Pages/AIP-plans-required-Jobs-Act-2013.aspx.</p>	Every 6 months

2. Delivery Phase Plans

2.1 Overview

The minimum requirements for Delivery Phase Plans for the Project are detailed in this Schedule 11.

To avoid repetition of content across multiple Delivery Phase Plans, Project Co may use cross-references.

The Delivery Phase Plans detailed in this Schedule must be submitted and updated:

- (a) in accordance with Table 2;
- (b) as required by the State Representative or any Authority;
- (c) to align with changes in:
 - (i) the design, delivery and/or operations;
 - (ii) other related Plans; and
 - (iii) the Plans as requested by the State Representative under this Deed.

Table 2 —Delivery Phase Plans

Plan	Plan submission date	Frequency of updates
Project Management Plan	30 Business Days from the date of this Deed	
Delivery Phase Quality Assurance Plan	30 Business Days from the date of this Deed	Annually or updated as required in accordance with this Deed
Design Management Plan	30 Business Days from the date of this Deed	
Construction Management Plan	30 Business Days from the date of this Deed	
Site Access and Interface Protocols	On the date of this Deed	
Risk Management Plan	30 Business Days from the date of this Deed	
WHS Management Plan	30 Business Days from the date of this Deed	
Communications and Community Relations Plan	30 Business Days from the date of this Deed	
Environmental Management Plan	30 Business Days from the date of this Deed	
Aboriginal Participation	60 Business Days from the date of	

Plan	Plan submission date	Frequency of updates
Plan (Construction)	this Deed	
Technical Completion Plan	Not less than 60 Business Days prior to the date Project Co expects to achieve Technical Completion	
Commercial Acceptance Plan	Not less than 60 Business Days prior to the date Project Co expects to achieve Commercial Acceptance	
Operational Readiness Plan	30 Business Days from the date of this Deed	1st draft - 30 Business Days from the date of this Deed 2nd draft - 18 months prior to the date Project Co expects to achieve Commercial Acceptance Final version - 12 months prior to the date Project Co expects to achieve Commercial Acceptance
Training and Apprenticeships Plan	30 Business Days from the date of this Deed	
Australian Industry Participation Plan (Delivery)	90 Business Days prior to a trigger date for the Project or on the day specified by the AIP Authority.	
Workplace Relations Management Plan	30 Business Days from the date of this Deed	
Handover Package	Within 20 Business Days from the date the State issues a termination notice under this Deed	

2.2 Project Management Plan

- (a) Project Co must develop, implement and update a Project Management Plan for the Delivery Phase Activities, as specified in this Deed.
- (b) The Project Management Plan must include:
 - (i) organisational structure of Project Co's Project management team, including:
 - A. key Project management personnel;
 - B. lines of communication and interfaces with Project Co's overall organisational structure; and
 - C. minimum skill levels for each role;
 - (ii) interfaces of the Project Management Plan with other Plans;
 - (iii) processes for managing and updating the Delivery Phase Program;
 - (iv) strategies for interfacing with External Infrastructure including coordination and interfacing with Authorities;
 - (v) the approach to resources management;
 - (vi) risk management procedures;
 - (vii) quality management procedures;
 - (viii) community engagement strategy;
 - (ix) document and data management;
 - (x) approach to verification and validation of the Works and Temporary Equipment;
 - (xi) schedule of Approvals Project Co must obtain and the process and indicative timing for obtaining all required Approvals;
 - (xii) Project reporting procedures; and
 - (xiii) approach to implementing and maintaining a confidential document management system that meets the requirements of this Deed.

2.3 Delivery Phase Quality Assurance Plan

- (a) Project Co must develop, implement and update a Delivery Phase Quality Assurance Plan for the Delivery Phase Activities, as specified in this Deed.
- (b) The Delivery Phase Quality Assurance Plan must satisfy the requirements of the Output Specification.
- (c) The Delivery Phase Quality Assurance Plan must include the:
 - (i) organisational structure identifying Project Co's key personnel with quality management responsibilities and accountabilities, including:
 - A. lines of communication and interfaces with Project Co's overall organisational structure; and
 - B. minimum skill levels required;
 - (ii) interfaces of the Delivery Phase Quality Assurance Plan with other Plans;

- (iii) process for liaising and interfacing with the Independent Certifier;
- (iv) schedule of identified hold points and witness points, which includes the persons responsible for the release of hold points;
- (v) strategy for inspection, witnessing, monitoring and reporting;
- (vi) strategy for certifying that Delivery Phase Activities are in accordance with Design Deliverables;
- (vii) auditing procedures for the Delivery Phase Quality Assurance Plan;
- (viii) process for developing and managing quality records;
- (ix) procedures for rectifying non-conformances and managing improvement opportunities, corrective action and preventative action to prevent recurrence; and
- (x) reporting requirements.

2.4 Design Management Plan

- (a) Project Co must develop, implement and update a Design Management Plan which complies with the requirements of the Design Development Schedule.
- (b) The Design Management Plan must include the:
 - (i) approach to involving the Operator in the development of the design of the Correctional Complex;
 - (ii) organisational structure of the Project Co's design management team, including:
 - A. key design management personnel;
 - B. lines of communication and interfaces with Project Co's overall organisational structure; and
 - C. design disciplines and minimum skill levels for each role;
 - (iii) interfaces of the Design Management Plan with other Plans;
 - (iv) procedures and processes for managing the interfaces between relevant design disciplines, including cross discipline interface checking;
 - (v) integration of all design elements into the Design Packages (as defined in Schedule 8 to this Deed), including Temporary Equipment and supplier designs;
 - (vi) design standards to be adopted for each Design Package;
 - (vii) strategy and processes for consideration of and addressing relevant stakeholder inputs;
 - (viii) schedule of Design Packages;
 - (ix) procedure and process for review, verification and certification of the Design Packages, prior to issuing to the State and Independent Certifier;
 - (x) program of when the Design Packages will be submitted to the State and the Independent Certifier for review;
 - (xi) strategy for design development presentations to the State and the Independent Certifier including timing, level of documentation and feedback procedure;

- (xii) procedure for managing requests for information and design changes, and updating Design Deliverables throughout the Delivery Phase;
- (xiii) process for identifying and addressing safety in design and environmental issues throughout the Delivery Phase;
- (xiv) process for design risk management; and
- (xv) value engineering process, which gives regard to innovation and whole-of-life cost.

2.5 Construction Management Plan

- (a) Project Co must develop, implement and update a Construction Management Plan for construction activities as specified in this Deed.
- (b) The Construction Management Plan for the Project must include:
 - (i) organisational structure of Project Co's construction management team, including:
 - A. key construction management personnel;
 - B. lines of communication and interfaces with Project Co's overall organisational structure; and
 - C. minimum skill levels for each role;
 - (ii) interfaces of the Construction Management Plan with other Plans;
 - (iii) proposed construction methodology including but not limited to:
 - A. construction resources;
 - B. construction staging;
 - C. construction techniques;
 - D. working hours;
 - E. provision for maintaining emergency access and ingress for emergency vehicles and evacuation at all times;
 - F. waste removal from the Site;
 - G. water use during the Delivery Phase;
 - H. the interface with, and requirements of, Authorities;
 - I. the provision of amenities that sufficiently meet resource requirements and any visitors to the Delivery Phase Site; and
 - J. provision for temporary services, including managing any capacity constraints in relation to Utilities during the Delivery Phase;
 - (iv) the methodology for the selection and monitoring of proposed Subcontractors and other personnel for the Delivery Phase Activities with respect to the following:
 - A. construction performance standards;
 - B. compliance with the subcontracting provisions in this Deed;
 - C. design compliance;

- D. safety; and
 - E. security of all Confidential Design Information including documents issued to Subcontractors;
- (v) detail on the physical resources including significant items of Equipment and Temporary Equipment required for the Project;
 - (vi) the management approach for handling construction materials, including detail on proposed haulage arrangements and on Site storage;
 - (vii) details on the Site establishment and management of work areas including the Site layouts required for all major Delivery Phase Activities;
 - (viii) risk management procedures for construction activities;
 - (ix) procedures for the development, implementation and management of work method statements;
 - (x) the manner in which durability and performance requirements will be satisfied, addressed, and recorded during the Delivery Phase Activities;
 - (xi) construction standards and technical specifications;
 - (xii) Project Co's approach to ensuring:
 - A. safety in design is factored into the Delivery Phase Activities;
 - B. the safety and adequacy of Temporary Equipment;
 - C. the involvement of designers during the construction of the Works and Temporary Equipment;
 - D. up-to-date information is provided to the State Representative and the Independent Certifier as required by this Deed; and
 - E. accurate work as executed Design Deliverables;
 - (xiii) details on how Site access, including to properties affected by the Delivery Phase Activities is provided to the State Representative;
 - (xiv) management processes for safety and incidents during construction, including reporting processes for incidents;
 - (xv) approach to maintenance during construction;
 - (xvi) traffic staging, arrangements and control measures as well as vehicle parking for the Works;
 - (xvii) strategies and methodology that detail and minimise the impact on local roads and landowner access points;
 - (xviii) the fire management strategy including the provision of firefighting equipment and the processes for contacting the fire department in the event of a fire on the Delivery Phase Site; and
 - (xix) methodology and management approach to earthworks required for the Site including:
 - (A) how Project Co will investigate, monitor, design and construct the foundations and associated earthwork structures, where earthworks

consist of cuttings, topsoil and spoil and any other changes to the existing Site surface, as required for the Correctional Complex;

- (B) a proposed strategy to manage and deal with issues associated with the earthworks required for the Project; and
- (C) details on the construction methods and staging arrangements associated with the earthworks for the Project.

2.6 Site Access and Interface Protocols

- (a) The Site Access and Interface Protocols are to contain the processes and regime to facilitate State and third party access to the Site in a safe and efficient manner during the Delivery Phase.
- (b) The Site Access and Interface Protocols must also include the regime to manage each of the following:
 - (i) **(direct neighbours)**: managing the interfaces with all direct neighbours to the Delivery Phase Site and any other third parties affected by the Works;
 - (ii) **(works on adjacent or nearby sites)**: managing the interface between the Works and any construction works being carried out on adjacent or nearby sites;
 - (iii) **(security)**: ensuring the security of the Delivery Phase Site during the Delivery Phase;
 - (iv) **(Emergency vehicles)**: maintaining access for emergency vehicles at all times;
 - (v) **(access)**: providing access to the State in accordance with the requirements of this Deed;
 - (vi) **(Completion access)** access by the State and third parties during the periods leading up to and at Technical Completion and Commercial Acceptance to facilitate Defects inspection; and
 - (vii) **(controlling and managing access)**: controlling and managing access by the State and its Associates and any other third parties during the Delivery Phase including the nature of security screening processes.

2.7 Risk Management Plan

- (a) Project Co must develop, implement and update a Risk Management Plan which complies with the requirements of this Deed.
- (b) The Risk Management Plan must include:
 - (i) organisational structure identifying Project Co's key personnel with risk management responsibilities and accountabilities, including:
 - A. lines of communication and interfaces with Project Co's overall organisational structure; and
 - B. minimum skill levels required;
 - (ii) interfaces of the Risk Management Plan with other Plans;
 - (iii) details of Project Co's risk management principles, framework and processes in accordance with ISO 31000;
 - (iv) processes and procedures for the identification, assessment, treatment and management of risks;

- (v) a risk register, including risks, hazards, risk owners, mitigation strategies and residual risk assessment;
- (vi) timing and details of Project Co's risk review processes, compliance, and audit related activities;
- (vii) specific measures to minimise risks to Project stakeholders, including third party stakeholders; and
- (viii) reporting procedures.

2.8 WHS Management Plan

- (a) The WHS Management Plan must be a documented work health and safety management plan which includes the content required to be included in a WHS management plan prepared under the WHS Legislation (even if Project Co is not a principal contractor under the WHS Legislation) and also provides for:
 - (i) arrangements in relation to general construction industry training, work activity based health and safety training and site specific health and safety training;
 - (ii) arrangements for employees, agents and contractors of Project Co to be made aware of the content of the WHS Management Plan;
 - (iii) arrangements for review of the WHS Management Plan as Project Activities change;
 - (iv) a statement that the WHS Management Plan is available for inspection at the Site; and
 - (v) arrangements for auditing and monitoring of work health safety and rehabilitation at the Site (including of any Subcontractors).

2.9 Communications and Community and Relations Plan

- (a) Project Co must prepare a comprehensive Communications and Community Relations Plan to detail all proposed communication activity during the Delivery Phase of the Project and set out the strategy for implementation. The Communications and Community Relations Plan must:
 - (i) describe the strategic approach and guiding principles that underpin the plan to maximise the success of the Project;
 - (ii) explain the scope including what communication activities are covered in the plan and what is excluded;
 - (iii) articulate the communications objectives;
 - (iv) list the stakeholder groups, both internal and external;
 - (v) list the overall key messages relevant to all stakeholder groups as well as additional messages that are relevant to specific groups;
 - (vi) identify the issues involved with the management of each stakeholder, highlighting critical issues that may arise and the proposed approaches to managing these issues at each stage of the Project;
 - (vii) contain strategies for enhancing stakeholder relationships and engagement with the local council;

- (viii) contain a process for Project Co's involvement with the Community Reference Group and how it intends to facilitate communication and foster good relations with the local community;
- (ix) contain a process for identifying and managing key communication risks / issues including:
 - A. a process for identifying and responding to potential issues and risks;
 - B. an approach for dealing with unplanned events; and
 - C. a process for providing timely advice to the State in relation to issues and risks;
- (x) list the range of communication activities and tools that will be developed to communicate and engage with stakeholders;
- (xi) provide an overview of the community programs and engagement activities for the different stages of the project addressing any site based initiatives and community building initiatives such as apprenticeships, training, capacity building and sponsorship;
- (xii) contain a strategy for media engagement including:
 - A. proposed proactive media activity;
 - B. proposed media spokespeople where appropriate; and
 - C. proposed approach for responding to unplanned issues and enquiries, including a protocol for appropriate liaison with the State;
- (xiii) describe Project Co's resourcing and integration approach, including what level of resourcing is proposed for implementing communication activities (including attendance at Community Reference Group meetings) and team roles and responsibilities;
- (xiv) set out approval workflows for all types of communications materials including media;
- (xv) address the State's proposed community and communications activities (if any) as provided by the State (from time to time); and
- (xvi) contain a methodology for evaluating the success of any communication activities undertaken and the proposed reporting mechanisms such as regular reports to the State and key members of the Project team.

2.10 Environmental Management Plan

- (a) Project Co must develop, implement and update an Environmental Management Plan for the Delivery Phase Activities as specified in this Deed.
- (b) The Environmental Management Plan for the Delivery Phase Activities and the Works must include:
 - (i) organisational structure identifying Project Co's key personnel with environmental management responsibilities and accountabilities, including:
 - A. key environmental management personnel;
 - B. lines of communication and interfaces with Project Co's overall organisational structure; and

- C. minimum skill levels for each role;
- (ii) interfaces of the Environmental Management Plan with other Plans;
- (iii) proposed construction methodologies including:
 - A. construction resources;
 - B. construction staging;
 - C. construction techniques;
 - D. working hours;
 - E. waste removal from the Site;
 - F. water use during the Delivery Phase; and
 - G. the interface with, and requirements of, third parties such as Authorities, including local councils and the NSW Environmental Protection Authority;
- (iv) the management approach for handling construction materials, including detail on proposed haulage arrangements and on Site storage;
- (v) strategies for managing the dust, vibration and noise from Delivery Phase Activities within the requirements of this Deed;
- (vi) details on how Site access, including to properties affected by the Delivery Phase Activities is provided to the State Representative;
- (vii) approach to erosion and sediment control;
- (viii) proposed mitigation methods to ensure native flora and fauna are protected during Delivery Phase Activities;
- (ix) proposed methodology for works that require the potential extraction, storage, usage and treatment of groundwater;
- (x) strategies to encourage a positive environmental and sustainable culture and work practices during Delivery Phase Activities;
- (xi) approach to dealing with, reporting and identifying potential environmental incidents; and
- (xii) provision for the creation and submission to the State Representative of a Contamination Remediation Plan in the event of discovering or becoming aware of any Contamination as per clause 8.5 of this Deed.

2.11 Aboriginal Participation Plan (Construction)

- (a) Project Co must develop, implement and update an Aboriginal Participation Plan (Construction) for construction activities as specified in clause 10.12 of this Deed using the template provided at: <https://www.procurepoint.nsw.gov.au/policy-and-reform/construction-policies/aboriginal-participation-construction-policy>; and
- (b) Project Co must provide detail on the methodology, programs and initiatives they will implement in order to achieve and maintain the minimum targeted project spend (within the meaning set out in the NSW Government Aboriginal Participation Plan) which must be no less than 1.5% of the estimated value of the design and construction costs for the Project.

2.12 Technical Completion Plan

- (a) The Technical Completion Plan must set out Project Co's methodology for achieving Technical Completion, and must include:
- (i) **(overall strategy)**: Project Co's overall strategy for achieving Technical Completion, including the proposed methodology for achieving each of the Technical Completion Criteria and the proposed process for involving the Independent Certifier and the State in Technical Completion;
 - (ii) **(details of all activities)**: details of all activities Project Co must undertake in order to achieve Technical Completion and the timing of these activities;
 - (iii) **(parties)**: details of the parties involved in achieving each of the Technical Completion Criteria and Project Co's strategy for managing the interface between those various parties;
 - (iv) **(Technical Completion Tests)**: details of each of the Technical Completion Tests including:
 - A. the objectives of each test;
 - B. a methodology for the conduct of each test;
 - C. parties involved in the conduct of each;
 - D. the procedure for reporting the results of Technical Completion Tests; and
 - E. the methodology for re-tests should a Technical Completion Test be failed;
 - (v) **(Approvals)**: a list of all Approvals required including details of which parties are responsible for obtaining such Approvals, their status and the time at which they are required;
 - (vi) **(certificates of compliance)**: a list of all certificates of compliance required for the Project and the time at which they are required;
 - (vii) **(methodology)**: Project Co's methodology for:
 - A. carrying out commissioning processes generally;
 - B. confirming that all control systems are in place, fully commissioned and operational;
 - C. how site wide testing of systems will be facilitated in a 'clean' environment;
 - D. the State's involvement and communication in witnessing;
 - E. confirming that all warranties relating to the Correctional Complex have been obtained or otherwise are in place;
 - F. ensuring that all documentation that must be provided by Project Co to the State Representative is provided; and
 - G. installing furniture, fittings and equipment across the Site including the dates of delivery and details of installation, calibration and testing; and
 - (viii) **(other information)**: any other information reasonably requested by the State Representative or Independent Certifier.

2.13 Commercial Acceptance Plan

- (a) The Commercial Acceptance Plan must contain Project Co's methodology for carrying out commissioning during the Commissioning Period and for achieving Commercial Acceptance and must include:
- (i) **(overarching strategy)**: Project Co's overarching strategy for achieving Commercial Acceptance;
 - (ii) **(details of Commissioning Period)**: details and timing of all activities to be undertaken during the Commissioning Period;
 - (iii) **(participation in Commissioning Period)**: information regarding the nature and extent of the participation and assistance Project Co will be required to undertake in relation to each of the activities, exercises and scenarios as part of commissioning during the Commissioning Period in detail sufficient to allow the State to determine in accordance with the Commercial Acceptance Schedule, and acting reasonably, whether Project Co has successfully provided that participation and assistance;
 - (iv) **(Commercial Acceptance Criteria)**: details of each of the Commercial Acceptance Criteria and Project Co's proposed methodology for achieving each of the Commercial Acceptance Criteria;
 - (v) **(Commercial Acceptance Tests)**: details of each of the Commercial Acceptance Tests including a methodology for the conduct of each test, details of the systems and parties involved in the conduct of each, the objectives of each test, the methodology for re-tests should a Commercial Acceptance Test be failed and the procedure for reporting the results of each Commercial Acceptance Test;
 - (vi) **(co-ordination of activities)**: information regarding the structure, procedures and methodology for co-ordinating Commercial Acceptance activities with those activities to be undertaken as part of the implementation of the Operational Readiness Plan;
 - (vii) **(Approvals)**: a list of all Approvals required (which have not been provided as at Technical Completion);
 - (viii) **(certificates of compliance)**: a list of all certificates of compliance required for the Project (which have not been provided as at Technical Completion) and the time at which they are required;
 - (ix) **(methodology)**: Project Co's methodology for:
 - A. identifying and rectifying Commercial Acceptance Outstanding Items, and other Defects;
 - B. ensuring that all warranties relating to the Correctional Complex have been obtained or otherwise are in place; and
 - C. ensuring that the Correctional Complex complies with the Completion Requirements, the Services Requirements and otherwise achieves the FFP Warranty; and
 - (x) **(other information)**: any other information reasonably requested by the State Representative or Independent Certifier.

2.14 Operational Readiness Plan

- (a) Project Co is to prepare an Operational Readiness Plan. The plan must:

- (i) demonstrate a clear understanding of the mobilisation and operational commissioning planning activities to ensure the delivery of the full range of Services at and after Commercial Acceptance in accordance with the Ramp-Up Profile Schedule;
- (ii) identify and quantify the resources to undertake the key mobilisation and operational commissioning tasks;
- (iii) set out the timeline and strategy for the coordinated development of the:
 - A. Technical Completion Plan;
 - B. Commercial Acceptance Plan; and
 - C. the Operating Phase Plans;
- (b) provide information regarding the mobilisation or operational commissioning of each of the Services, including:
 - (i) identification of key operational readiness dates;
 - (ii) identification and quantification of all personnel to be involved in operational readiness activities;
 - (iii) indicative allocation of operational readiness and ramp-up responsibilities and interdependencies, including as between:
 - A. Project Co;
 - B. the Operator;
 - C. the D&C Subcontractor;
 - D. the Significant Subcontractors; and
 - E. the State; and
 - (iv) the major mobilisation or commissioning risks and how these are to be managed or mitigated;
- (c) include a:
 - (i) strategy for liaising with and involving the State Representative in delivering the Operational Readiness Plan; and
 - (ii) strategy to engage all stakeholders;
- (d) detail Project Co's approach to meet the requirements set out in the Ramp-Up Profile Schedule;
- (e) detail the process for accepting Inmates into the Correctional Complex, including any proposed staging such as areas of the Correctional Complex to be opened sequentially, or Inmates to be prioritised for transfer;
- (f) methodology for oversight of the ramp-up process including any additional monitoring or testing to be undertaken to demonstrate that the Correctional Complex continues to be able to increase the number of Inmates at the Correctional Complex to achieve full operating capacity; and
- (g) detail Project Co's approach to ensuring a full Staff complement is available to meet the requirements set out in the Ramp-Up Profile Schedule.

2.15 Training and Apprenticeships Plan

- (a) Project Co is to prepare a Training and Apprenticeship Plan. The plan must:
- (i) specify the target number of apprentices for every tradespersons for the Project, which should be in the order of 1 apprentice for every 4 tradespersons;
 - (ii) identify the strategies and mechanisms that will ensure this target is met as a minimum;
 - (iii) contain a process for identifying and managing skill shortages and resourcing requirements in order to meet this target;
 - (iv) contain processes that actively support employees in the construction industry completing apprenticeships and traineeships and which should achieve completion rates of at least 65% (as measured on a company basis) by December 2019;
 - (v) demonstrate compliance with '*PBD-2016-02 Construction Apprenticeships*' issued by the NSW Procurement Board dated 30 March 2016, as updated from time to time;
 - (vi) identify the issues involved with the management of the trainees and apprentices, highlighting critical issues that may arise and the proposed approaches to managing these issues during the Delivery Phase;
 - (vii) provide the method and approach required to meet quarterly reporting requirements to the Department of Industry; and
 - (viii) be in accordance with Legislation, employment obligations relevant to the employment of trainees and apprentices.

2.16 Australian Industry Participation Plan (Delivery)

- (a) Project Co is to prepare an Australian Industry Participation Plan (Delivery). The plan must:
- (i) provide a mechanism for Project Co to detail actions they will undertake to familiarise themselves with the capabilities of Australian businesses, identify qualified suppliers, and provide them with access to supply opportunities within a project. The objectives of an AIP plan are to:
 - A. demonstrate how full, fair and reasonable opportunity will be provided to Australian businesses to supply goods and services to a project;
 - B. detail the supply of key goods or services for a facility's initial operational phase, if the project involves establishing a new facility;
 - (ii) set out how and when Project Co will report on compliance with the AIP plan during the Delivery Phase and for the first two years of the Operating Phase;
 - (iii) be prepared using the approved template provided at:
<http://www.industry.gov.au/industry/IndustryInitiatives/AustralianIndustryParticipation/Pages/AIP-plans-required-Jobs-Act-2013.aspx>; and
 - (iv) be prepared in accordance with requirements specific to the Project as determined by the AIP Authority.

2.17 Workplace Relations Management Plan

- (a) Project Co is to prepare a Workplace Relations Management Plan (**WRMP**) which complies with the Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction. The WRMP must include:
- (i) Project Co's organisational structure;
 - (ii) identification of industrial relations risks that the project might face;
 - (iii) how Project Co intends to establish the site;
 - (iv) how Project Co will select and manage subcontractors;
 - (v) how Project Co will establish terms and conditions of employment;
 - (vi) how Project Co will attract, recruit and retain suitable direct labour;
 - (vii) how Project Co will ensure that direct and subcontract employees can be mobilised to the site efficiently and effectively;
 - (viii) how Project Co proposes to achieve labour productivity and value for money objectives of the NSW Government;
 - (ix) how Project Co will measure and report labour productivity and performance;
 - (x) how Project Co will comply with the freedom of association objectives and right of entry requirements of the Guidelines;
 - (xi) how Project Co will ensure that employee grievances are managed effectively and in accordance with the relevant industrial instrument and the Guidelines;
 - (xii) how Project Co will manage unlawful industrial action; and
 - (xiii) how Project Co will audit and review the WRMP.

2.18 Handover Package

The Handover Package is to contain key information to enable the State or other incoming party to take over the Project Activities. As a minimum, this plan is to contain the following information:

- (a) (**Contracts**): a list of all agreements, permits, licences or other documents which are material to the Project Activities, including (as appropriate) the contact number, name, address, email address, telephone and facsimile numbers of counterparties, contract price, value and subject matter;
- (b) (**Approvals correspondence**): copies of all:
 - (i) Correspondence with all relevant Authorities, the State, consultants, contractors and Key Subcontractors in relation to Approvals as required under the Communications and Community Relations Plan;
 - (ii) Approvals correspondence related to subsequent building works and alterations and additions to the Project Activities; and
 - (iii) Records relevant to any Approvals obtained by Project Co in respect of the Site or the Project Activities.

Schedule 12 — Completion Schedule, Technical Completion Schedule and Commercial Acceptance Schedule

1. Technical Completion Criteria

The criteria set out below constitute the Technical Completion Criteria. Unless stated otherwise, Project Co must satisfy each of the Technical Completion Criteria to the satisfaction of the Independent Certifier.

Item	Subject Matter	Technical Completion Criterion
1.	Delivery Phase Plans	<p>Project Co must have submitted a Technical Completion Plan that has been reviewed in accordance with the Review Procedures and does not have any outstanding "conditions" (as that term is used in the Review Procedures).</p> <p>Project Co must have complied with all of its obligations set out in the Technical Completion Plan.</p> <p>Project Co must have complied with its obligations relevant to Technical Completion as set out in the Operational Readiness Plan.</p>
2.	Technical Completion Tests	<p>Project Co must have successfully completed all of the Technical Completion Tests:</p> <ul style="list-style-type: none"> ▪ set out in Attachment 1; ▪ that are included in the Technical Completion Plan; ▪ that are Additional Technical Completion Tests; and ▪ that are required to prove all functionality of each piece of Equipment provided by Project Co.
3.	Works in accordance with For Construction Documentation	<p>Project Co must have completed the Works in accordance with the For Construction Documentation and must have installed all Equipment in accordance with this Deed, except for the soft landscaping which will be a Commercial Acceptance Criterion (to the extent it does not adversely impact on the operational readiness and training that is to be undertaken during the Commissioning Period).</p>
4.	Conditions for Submitted Documents	<p>Project Co must have satisfied, in accordance with the Review Procedures, all outstanding items for all Design Deliverables (including 'comments' and 'conditions') identified by the State in accordance with the Review Procedures.</p>
5.	Fit For Purpose	<p>There are no issues that would prevent the Correctional Complex from meeting the FFP Warranty at Commercial Acceptance.</p>
6.	Approvals	<p>Project Co must have obtained all Approvals required for the occupation of the Correctional Complex (including any required occupancy certificates) and provided copies of those Approvals to the Independent Certifier. To the extent that such Approvals contain conditions, those conditions must not impact on the</p>

Item	Subject Matter	Technical Completion Criterion
		ability of the Correctional Complex to satisfy the FFP Warranty.
7.	Damage	Project Co must have repaired or rectified any property damage including damage on or to the Site, the property adjoining the Site or the Correctional Complex arising in the course of carrying out the Works, other than where these are Technical Completion Outstanding Items.
8.	Safety	Project Co must have done all that is required to ensure that all State Associates are safe from the Delivery Phase Activities that are continuing beyond Technical Completion.
9.	Removed construction machinery	Project Co must have removed all Temporary Equipment not required to achieve Commercial Acceptance.
10.	Clean	Project Co must have cleaned the Correctional Complex so that the Correctional Complex is free of all construction debris and rubbish, and have conducted metal detector sweeps of the areas inside the perimeter fences, in order to ensure all metal objects have been removed, so that the Correctional Centres and Site are clean, tidy and free from rubbish, construction waste, dust, metal and scrap to the satisfaction of the State (acting reasonably).
11.	Project Co capable of obtaining Approvals to perform the Services	The Correctional Complex must be in a condition and standard that will not prevent Project Co from obtaining any Approvals necessary for Commercial Acceptance.
12.	No Defects	Except for any Technical Completion Outstanding Items, the Correctional Complex must be free from all Defects.
13.	Quality assurance	<p>Project Co must have:</p> <ul style="list-style-type: none"> ▪ audited the Delivery Phase Activities against the Quality Assurance Plan and the Quality Assurance System; ▪ ensured that the D&C Subcontractor has rectified all non-conformances with the Quality Assurance Plan and the Quality Assurance System; and ▪ provided evidence that the Quality Assurance System remains certified in accordance with clauses 11.1 and 22.
14.	Survey	Project Co must have provided the State with the survey required by clause 5.6(f) of this Deed.
15.	Miscellaneous	Project Co must have done all other things required by this Deed to achieve Technical Completion.

2. Commercial Acceptance Criteria

The criteria set out below constitute the Commercial Acceptance Criteria for the purposes of this Deed. Unless stated otherwise, Project Co must satisfy each of the Commercial Acceptance Criteria to the satisfaction of the State Representative (acting reasonably).

Item	Subject Matter	Commercial Acceptance Criterion
1.	Compliance with the Operational Readiness Plan	<p>Project Co must have submitted the Operational Readiness Plan that has been reviewed in accordance with the Review Procedures and does not have any outstanding "conditions" (as that term is used in the Review Procedures).</p> <p>Project Co must have complied with its obligations relevant to Commercial Acceptance as set out in the Operational Readiness Plan.</p>
2.	Compliance with Commercial Acceptance Plan	<p>Project Co must have submitted a final version of the Commercial Acceptance Plan that has been reviewed in accordance with the Review Procedures and does not have any outstanding "conditions" (as that term is used in the Review Procedures).</p> <p>Project Co must have complied with its obligations in the Commercial Acceptance Plan.</p>
3.	Commercial Acceptance Tests	<p>Project Co must have successfully completed all of the Commercial Acceptance Tests:</p> <ul style="list-style-type: none"> ▪ set out in Attachment 1; ▪ that are included in the Commercial Acceptance Plan; and ▪ that are Additional Commercial Acceptance Tests.
4.	Technical Completion	<p>The Independent Certifier must have issued a Certificate of Technical Completion to the State under clause 23.9 certifying that Technical Completion has been achieved.</p> <p>Project Co must have supplied the State with the final Technical Completion Report in accordance with clause 23.8 of this Deed.</p>
5.	Fault-Free Period	<p>Project Co must have successfully completed fault-free operation of the Correctional Complex for 28 consecutive days, 24 hours a day, under full operating conditions (in the absence of Inmates) (Fault-Free Period).</p> <p>During the Fault-Free Period, the Correctional Complex must continually meet the Design Requirements and Services Requirements.</p> <p>The Fault-Free Period will be recommenced if there are any Material Defects.</p>
6.	Operating Phase Plans	<p>Project Co must have submitted a final version of all Operating Phase Plans in accordance with the Operating Phase Plans and Reports Schedule that have been reviewed in accordance with the Review Procedures and do not have any outstanding "comments" or "conditions" (as those terms are used in the</p>

Item	Subject Matter	Commercial Acceptance Criterion
		Review Procedures).
7.	Technical Completion Outstanding Items	Project Co must have provided written confirmation from the Independent Certifier to the State that all Technical Completion Outstanding Items required to be completed prior to Commercial Acceptance have been completed.
8.	Fit For Purpose	The Correctional Complex is Fit for Purpose.
9.	Damage	Project Co must have repaired or rectified any property damage (including damage on or to property adjoining the Site caused or contributed to by Project Co or its Associates) that occurred after Technical Completion, to the satisfaction of the State other than where these are Commercial Acceptance Outstanding Items.
10.	Safety	Project Co must have satisfied the State that the Correctional Complex is in a condition such that Project Co is ready to receive Inmates in accordance with this Deed.
11.	Clean	Project Co must have cleaned the Correctional Complex (including cleaning the exterior and completing a clinical clean of the clinical areas).
12.	Insurances	Project Co must have provided evidence that it has procured all Insurances required for the Operating Phase in accordance with clause 46 of this Deed.
13.	Miscellaneous	<p>Project Co must have otherwise done all other things required by this Deed to achieve Commercial Acceptance.</p> <p>Project Co must have provided the State with accurate and up-to-date as built drawings, BIM model information, room data sheets, architectural and services drawings and all other information required by the emergency services.</p>
14.	Public open day	Project Co must provide the opportunity for members of the public to visit the Correctional Complex prior to Commercial Acceptance.

Attachment 1

1. General testing requirements

1.1 Overview

- (a) Project Co's overriding obligations in respect of the regime of Completion Tests are to demonstrate that:
 - (i) the requirements of the Output Specification have been met;
 - (ii) the requirements of the Design Proposal have been met; and
 - (iii) the Correctional Complex meets the FFP Warranty.
- (b) Without limiting Project Co's overriding obligations set out in section 1.1 (a), Project Co must:
 - (i) conduct those tests necessary to demonstrate that the requirements of the Output Specification have been met and the Correctional Complex is Fit For Purpose (even where those tests are not specifically identified in this Schedule);
 - (ii) conduct any tests over and above those listed here to demonstrate the operation and functionality of the Equipment provided by Project Co, even where Equipment has been provided that is not specifically listed below; and
 - (iii) comply with all reasonable directions of the State and the Independent Certifier in relation to the conduct of the Completion Tests.

1.2 Testing personnel

- (a) Project Co must ensure that all testing is undertaken by experienced commissioning personnel who:
 - (i) are correctly certified for the relevant particular test; and
 - (ii) have valid experience in the relevant particular field.
- (b) Without limiting section 1.2(a), where required by the State Project Documents, a Policy or Law, Project Co must ensure that testing is conducted under the supervision of an accredited person of the manufacturer or supplier of the particular item of Equipment.

1.3 Testing instruments

Project Co must:

- (a) supply or otherwise provide all instruments and appliances necessary to conduct any Completion Tests;
- (b) ensure all test instruments have been checked and calibrated for accuracy by:
 - (i) the manufacturer; or
 - (ii) a NATA accredited testing facility,in accordance with the manufacturer's requirements;
- (c) only use test instruments if they have been designed for the specific task for which they are used; and
- (d) provide a copy of calibration showing the degree of accuracy of each of the testing instruments to the State Representative and the Independent Certifier if requested by the State Representative or the Independent Certifier.

1.4 'Demonstrate'

Where the word 'demonstrate' appears throughout this Schedule 12 in relation to the operation of equipment or a system, Project Co must, in addition to its demonstration obligation, provide a procedure which will allow the equipment or system to be operated.

2. Technical Completion Tests

2.1 Architectural

Project Co must:

- (a) **(general)**: carry out testing to ensure that all cell areas meet the minimum requirements in accordance with the Design Requirements and the Services Requirements and otherwise to the reasonable satisfaction of the Independent Certifier;
- (b) **(environmental)**: carry out testing to certify that all areas of the Correctional Complex where day lighting requirements are specified in accordance with the Output Specification meet the specified requirements; and
- (c) **(landscaping)**:
 - (i) carry out testing to demonstrate that all vehicle and pedestrian movement paths within the Site meet the requirements for passing and serviceability;
 - (ii) carry out testing to demonstrate the full functionality of the complete irrigation system;
 - (iii) provide a record of all plants provided at Technical Completion and a report by an independent landscape consultant on the condition of all plants at Technical Completion; and
 - (iv) confirm the landscaping complies with the grounds maintenance standards as set out in clause 3.2 of Volume 4, Part C, Section 4 of the Output Specification.

2.2 Removal of metal and other objects from the Site

Project Co must:

- (a) carry out metal scanning of the Site and provide written confirmation to the State that all metal has been removed; and
- (b) ensure that any product or material that could become a security risk in respect of the Services is removed from the Site prior to Technical Completion.

2.3 Food delivery system

Project Co must carry out testing to demonstrate the full capability of the food delivery system to meet the Output Specification.

2.4 Laundry

Project Co must carry out testing to demonstrate the full capability of the laundry facilities or arrangements to meet the Design Requirements.

2.5 Acoustics

Project Co must carry out testing to demonstrate that the requirements of the Output Specification are met.

2.6 Integrated testing

- (a) **(Technical Completion Tests)**: The Technical Completion Tests must include, as a minimum, testing which spans across all engineering service disciplines and other disciplines, as required to obtain satisfactory operation of an overall system and Site **(Integrated Testing)** at the completion of the Works.

- (b) **(Integrated Testing)**: Without limiting section 2.6(a), Project Co must carry out Integrated Testing, at a minimum, in respect of the following:
 - (i) critical operational tests of installations (computer rooms, control rooms, emergency generators, back-up system operation and alarming), and essential services systems (fire mode operation tests, etc); and
 - (ii) performance testing of systems or situations that cover more than a single discipline: e.g. energy testing, load tests on mechanical and boiler systems, failure simulation tests, running of services systems over the unoccupied testing period.
- (c) **(Systems are operational)**: Integrated Testing must demonstrate that all systems and interfaces between systems are operating correctly, ensuring the operation of the system as a whole is successful.
- (d) **(Phases)**: Project Co must carry out Integrated Testing in phases to be agreed with the Independent Certifier prior to operational commissioning, in accordance with the Delivery Phase Program.
- (e) **(Satisfaction of Independent Certifier)**: Each phase must be completed to the satisfaction of the Independent Certifier prior to commencement of the next phase.
- (f) **(Artificial loads)**: Project Co must provide any and all artificial loads (e.g. heat, electrical) required for a full load testing in accordance with the State Project Documents, Policies or Law.
- (g) **(Completed systems)**: Integrated Testing must only be carried out on completed systems where all components of each system have been installed, tested and completed.
- (h) **(Building engineering systems)**: The running of the building engineering systems must be logged and controlled at the building management system.

2.7 Ecologically Sustainable Design (ESD) Services

Project Co must provide a sustainability report demonstrating the achievement of the sustainability targets contained in the Output Specification and otherwise in accordance with the requirements of the Design Development Schedule.

2.8 Mechanical Services

All commissioning must be undertaken in accordance with the requirements of either the CIBSE Commissioning Codes, ASHRAE Guideline Standard 202-2013 and Guideline 1.1 2007 and Standard 111 (whichever imposes the higher or greater standard or requirement).

Project Co must:

- (a) **(acceptance testing)**:
 - (i) commission, test and balance each of the mechanical systems installed;
 - (ii) ensure testing and balancing is carried out:
 - (A) by technicians certified by the National Environmental Balancing Bureau (**NEBB**) and to NEBB standard; and
 - (B) under the supervision of an accredited representative of the manufacturer or supplier of the particular item of Equipment; and
 - (iii) ensure comprehensive pre-commissioning, commissioning, and quality monitoring are performed;
- (b) **(testing and commissioning)**: at a minimum, commission, test and record, and demonstrate the operation of the following systems (including all sub components and individual equipment forming part of):

- (i) heating system;
- (ii) mechanical ventilation system;
- (iii) natural ventilation system;
- (iv) chilled water and heating water system;
- (v) air conditioning systems;
- (vi) natural gas distribution system;
- (vii) kitchen systems;
- (viii) general exhaust systems;
- (ix) specialist industries systems;
- (x) air balancing of all air handling systems, grilles and diffusers;
- (xi) air pressurisation tests in all areas where a designated amount of air pressurisation is required or where a pressure gradient is required from one area to another;
- (xii) water balancing of all water circulation systems;
- (xiii) test domestic hot water system, including any solar contribution systems;
- (xiv) test system water flow and pressure systems;
- (xv) test high-efficiency particulate air filter and housing testing and filter and housing fumigation system;
- (xvi) acceptance testing of all Equipment, including testing recommended by manufacturers;
- (xvii) test and record room temperature logging system;
- (xviii) test fire and life safety system and component testing, including all essential services systems;
- (xix) test and record building management system;
- (xx) test and record plant and equipment control system;
- (xxi) test fail safe systems;
- (xxii) test room air velocity and comfort temperature system;
- (xxiii) test electrical system operation, including the testing of any interlock or relay type control carried out directly through the mechanical switchboards;
- (xxiv) test involvement in Integrated Testing of systems such as fire mode operation, emergency generator operation, communications room system;
- (xxv) test authority supply system;
- (xxvi) test chemical treatment system;
- (xxvii) test main data room and communications room environmental control, monitoring and alarm systems and interfaces with the building management system;

- (xxviii) test pressures and flow rates at all gas outlets;
 - (xxix) test all safety controls to gas systems;
 - (xxx) test central plant performance system to verify manufacturers' performance data;
 - (xxxi) test refrigerant leak prevention system;
 - (xxxii) test medical gas cross-contamination prevention system;
 - (xxxiii) test medical gas alarm and auto changeover systems;
 - (xxxiv) test recovery system operation;
 - (xxxv) test heating and cooling capacity verification;
 - (xxxvi) test smoke control and smoke management systems; and
 - (xxxvii) inspect to ensure mechanical ducting (including ensuring mechanical ducting is clean).
- (c) **(pipework)**; undertake tests to ensure that:
- (i) pipework is chemically clean and all piping systems have been flushed;
 - (ii) as pipework proceeds, and before pipes are hidden or lagged, testing of the various systems to twice the maximum working pressure, as set out in AS 4041, is undertaken;
 - (iii) as pipework proceeds and before pipes are hidden or lagged, testing of the various systems at 1.5 times the working pressure or 1 MPa (whichever is the greater) for at least 24 hours continuously;
 - (iv) test pressures are maintained for not less than 4 hours prior to inspecting all joints; and
 - (v) equivalent tests are carried out on each system when all pipework has been completed;
- (d) **(air quantities)**: conduct all SMACNA and AS 4254 tests and submit results, regulate and adjust the volume dampers on all ductwork systems to achieve the air quantities shown on the For Construction Documentation and to the satisfaction of the Independent Certifier;
- (e) **(water quantities)**: conduct water balancing tests and submit results, regulate and adjust the volume control valves on all piping systems to achieve the water quantities nominated and to the satisfaction of the Independent Certifier;
- (f) **(Authorities)**:
- (i) perform all tests required by Authorities (other than the State) who may from time to time have jurisdiction over the work, and obtain the necessary certificates of approval; and
 - (ii) lodge all these certificates of approval with the State;
- (g) **(automatic controls)**: effect and maintain the setting and calibration of all automatic controls, to achieve correct operation of the systems; and
- (h) **(Building Management System (BMS))**: test every function, connection, interface and control mechanism supported by the BMS to the satisfaction of the Independent Certifier, including:

- (i) test point-to-point communications;
- (ii) testing of control strategies;
- (iii) test calibration settings;
- (iv) testing of temperature control and monitoring of thermal systems and air conditioning;
- (v) testing of electrical services interfaces monitoring and alarms via individual dedicated PLC systems, uninterrupted power supplies (**UPS**), standby gensets and the like;
- (vi) test staging of thermal and cooling plant load management, control and monitoring;
- (vii) testing of alarming to BMS front end;
- (viii) testing and monitoring of auto changeover procedures;
- (ix) testing of trending capabilities and accreditation capabilities (to meet the ESD requirements described in the Output Specification and other accreditation requirements); and
- (x) testing of reporting functions, generation of reports on all event types.

2.9 Vertical transportation

Project Co must complete the following testing in respect of all vertical transportation systems:

- (a) risk assessment reporting;
- (b) test emergency mode systems;
- (c) test trapped person alarm system;
- (d) test security key access system;
- (e) full traffic analysis for all installed vertical transport equipment;
- (f) full test reports; and
- (g) statement of compliance for each lift.

2.10 Electrical services

Project Co must, as a minimum, commission, test and record, and demonstrate the operation of the electrical systems as set out below (including all sub components and individual Equipment forming part of the electrical systems):

- (a) specialist industries systems;
- (b) power factor correction systems;
- (c) all main and distribution switchboards;
- (d) co-generation / tri-generation systems;
- (e) generator system operation including all interfaces;
- (f) load shed system;
- (g) standby power systems, including alarms to BMS and all interfaces;

- (h) changeover and switching operation to alternative supplies;
- (i) all lighting including compliance with all lux level requirements;
- (j) general power;
- (k) electromedical power systems;
- (l) lightning protection systems;
- (m) emergency and exit lighting, including all monitoring systems;
- (n) all override control systems;
- (o) integrated systems testing, including all BMS and fire life safety systems;
- (p) surge protection systems;
- (q) metering and monitoring systems;
- (r) lighting addressing;
- (s) **(earthing):**
 - (i) check that all earthing provided is installed and tested to the requirements of AS/NZS 3000, AS/NZS 3017 and AS/NZS 3003;
 - (ii) test the main earth;
 - (iii) check all earthing terminations, and test the resistance and continuity of all earthing and bonding conductors;
 - (iv) check that clear labels have been provided for the main earth and the communications earth; and
 - (v) provide separate test results for the lightning protection system in terms of the requirements of AS 1768;
- (t) **(switch and distribution boards):**
 - (i) test the main switchboard and all distribution boards to demonstrate operational functionality;
 - (ii) test safety switches and Residual Current Devices (**RCDs**) in accordance with the requirements of AS/NZS 3000 and AS/NZS 3003;
 - (iii) test earth loop impedance on every circuit;
 - (iv) check that correct cartridges are fitted to all fuse holders and that all overload relays have been correctly set;
 - (v) check that all interlock circuits function correctly;
 - (vi) carry out insulation tests;
 - (vii) check that all circuit breakers function correctly;
 - (viii) check that spare HRC fuse cartridges and other spare parts have been supplied and are fitted in racks provided;
 - (ix) check that all operating handles and other loose items have been supplied and are in the correct storage positions;

- (x) touch up cabinet scratches and polish off any dirty marks; and
- (xi) vacuum out all switchboard and control panel cabinets and refit removed covers;
- (u) **(thermographic scan):**
 - (i) provide a thermographic scan of the entire electrical (power) installation including interiors of switchboards as carried out by qualified personnel. Two scans shall be carried out at a time to be mutually agreed with the Independent Certifier (test 1 within 4 weeks of the Date of Technical Completion); and
 - (ii) provide a comprehensive report to be submitted within 2 weeks following the completion of each scan;
- (v) during integrated testing across the fully functioning electrical service, test and record that all power points within a Building, Neighbourhood, Community, Correctional Centre and the Correctional Complex are serviceable and are available for simultaneous use; and
- (w) simultaneously test all power points by connecting the maximum operational design load and confirm the operation of the electrical distribution infrastructure and its equipment is able to operate under the maximum operational designed load conditions across the fully functioning site.

2.11 Communications systems

Project Co must:

- (a) **(acceptance testing):** demonstrate that each communication system delivered as part of the Correctional Complex is correctly functioning and otherwise meets the Output Specification and the functional output of the system as a whole;
- (b) **(structured cabling system):**
 - (i) ensure the information and communications technology commissioning process is closely coordinated with the information and communications technology Subcontractor and the engineering services commissioning. Major information and communications technology commissioning stages shall include:
 - (A) pre-deployment bench testing;
 - (B) deployment of hardware;
 - (C) programming;
 - (D) testing of carrier interfaces, local area networks and wide area networks links;
 - (E) patching;
 - (F) handset rollout; and
 - (G) user acceptance testing;
 - (ii) during information and communications technology commissioning, demonstrate that the Output Specification and the other requirements of this Deed have been met, including:
 - (A) conducting performance testing of all terminations and outlets in accordance with AS/NZS 3080, AS/NZS 3087, the system manufacturer's requirements, and compliant with Class-E;
 - (B) demonstrating compliance with the State's installation and commissioning standards;

- (C) demonstrating installation has been reviewed and certified by an Information Security Registered Assessor Program (**IRAP**) approved person;
 - (D) performing testing as per the vendor's requirement; and
 - (E) providing copies of the test result and the vendor's certification;
- (c) **(communications testing personnel):**
- (i) ensure that each individual network and the complete installation is certified in total by an IRAP approved person and evidence of full certification provided;
 - (ii) ensure that the information and communications technology Subcontractor provides all specialist testing personnel for testing information and communications technology equipment and systems in the relevant Equipment list; and
 - (iii) allocate a project manager to managing the information and communications technology installation, testing, commissioning and handover (and closely coordinate with the Independent Certifier to ensure that all information and communications technology occupancy issues are coordinated with the services commissioning and Delivery Phase Program);
- (d) **(IPTV):** demonstrate that the internet protocol television (**IPTV**) system, when fully equipped and all units switched on:
- (i) provides a signal on every channel free of noise, horizontal bars, smearing, ghosting, pixelating, hum, etc.;
 - (ii) provides the required level of signal to all TVs simultaneously across the Correctional Complex;
 - (iii) and its components satisfy the applicable Policies;
 - (iv) cannot be compromised by Inmates in any way for use outside of its intended purpose;
 - (v) provides automated software to allow for the blocking of programs based on rating, time schedule and manual action; and
 - (vi) provides all required channels and content;
- (e) **(Public Address System (PAS)):** demonstrate that:
- (i) control room staff can make announcements to any zone in the Correctional Complex;
 - (ii) officer post staff can make announcements to the local area;
 - (iii) the PAS allows announcements to be made;
 - (iv) announcements are integrated to the cell intercommunication system; and
 - (v) PAS announcements can be turned down and muted in AV areas.
- (f) **(Voice Telecommunication System (VTS)):** demonstrate that the VTS:
- (i) operates as a single integrated system across the Correctional Complex;
 - (ii) provides the full functionality required; and

- (iii) provides the call handling abilities required from each type of handset, anywhere within the Correctional Complex;
- (g) **(Audio Visual (AV) system):**
 - (i) fully test and commission all AV systems;
 - (ii) demonstrate the functionality of each AV system, including demonstrating that each AV system meets the requirements of the Output Specification;
 - (iii) fully test and commission all video conferencing systems in accordance with the manufacturers' requirements; and
 - (iv) ensure that all testing of the AV system is undertaken by an experienced commissioning representative of the installation company and under the supervision of an accredited representative of the manufacturer;
- (h) **(nurse call systems):**
 - (i) fully test and commission all nurse call systems in accordance with the manufacturers' requirements;
 - (ii) demonstrate the nurse call functionality fully; and
 - (iii) ensure that all testing of the nurse call system is undertaken by an experienced commissioning representative under the supervision of an accredited representative of the manufacturer;
- (i) **(Inmate Interactive Learning System (IILS)):**
 - (i) demonstrate that the IILS has been fully tested and commissioned;
 - (ii) demonstrate the functionality and operation of the IILS to provide learning and information services;
 - (iii) demonstrate the ability to easily change content;
 - (iv) demonstrate all functions as per the Output Specification; and
 - (v) demonstrate that the IILS cannot be compromised by Inmates in any way for use outside of their intended purpose;
- (j) **(Inmate phone systems (including all functionality and interfaces)):**
 - (i) fully test and commission all Inmate phone systems;
 - (ii) demonstrate the Inmate phone functionality; and
 - (iii) demonstrate live listening and recording by the CSNSW Security and Intelligence Division.
- (k) **(Inmate information kiosk system (including all functionality and interfaces)):**
 - (i) fully test and commission the Inmate information kiosk systems in accordance with the manufacturers' requirements; and
 - (ii) demonstrate the Inmate information kiosk functionality;
- (l) **(video conferencing rooms):**
 - (i) demonstrate the functionality of each video conferencing system (general, eHealth and audio-video conferencing links to Courts);

- (ii) demonstrate audio video conferencing links to Courts are compatible with all courts, tribunals and NSW Department of Justice video conferencing facilities statewide, including demonstrating that all Court video conferencing systems meet the requirements of the Output Specification;
 - (iii) fully test and commission all video conferencing systems in accordance with the manufacturers' requirements; and
 - (iv) ensure that all testing of the video conferencing system is undertaken by an experienced commissioning representative of the installation company and under the supervision of an accredited representative of the manufacturer;
- (m) **(communications contractor manual):**
- (i) include in the initial Technical Completion Report a manual prepared by the information and communications technology Subcontractor including:
 - (A) all relevant data relating to the information and communications technology systems, equipment and their interfaces;
 - (B) details of the configuration and programming of equipment;
 - (C) information on operation and maintenance of the information and communications technology system and equipment;
 - (D) cabling infrastructure drawings (including all cables installed by Project Co) including the following details:
 - (I) fibre optic cabling infrastructure;
 - (II) horizontal cabling;
 - (III) patching records;
 - (IV) cable risers;
 - (V) cabling redundancy;
 - (VI) building distributor rack layouts and rack elevations; and
 - (VII) PABX Comms Room rack layouts and elevations; and
 - (ii) ensure that the manual is in plain English;
- (n) **(ICT components):** demonstrate that all ICT systems have been fully tested and commissioned including:
- (i) all network equipment such as switches and routers;
 - (ii) all telephony and VoIP equipment;
 - (iii) all storage area network (**SAN**) equipment including data storage and backup tapes;
 - (iv) all servers and workstations;
 - (v) all cable management and racking;
 - (vi) all videoconferencing and AV system equipment;
 - (vii) all multimedia streaming system;

- (viii) all wireless IP handsets; and
- (ix) any other ICT hardware, software, applications, systems and other components that are required by the Independent Certifier to be demonstrated and tested;
- (o) **(timed synchronisation):**
 - (i) demonstrate that all devices are timed synchronised, have been fully tested and commissioned by an experienced commissioning representative; and
 - (ii) include in the manual referred to in paragraph (m) above all timed synchronised equipment test logs; and
- (p) **(testing of network systems):**
 - (i) demonstrate and provide a report from an independent penetration testing provider that all networks, switches, servers, computers, information systems, software and infrastructure are not susceptible to any known vulnerabilities, using testing based on Best Industry Practices.

2.12 Fire engineering

Project Co must obtain from a registered fire safety engineer and building surveyor, a statement that the Correctional Complex complies with:

- (a) the Victorian Cell and Fire Safety Guidelines, to the extent the Correctional Complex is required to comply with the Victorian Cell and Fire Safety Guidelines (whether pursuant to the State Project Documents or otherwise); and
- (b) otherwise, the National Construction Code,

and all other applicable Laws and Policies.

2.13 Fire protection services

Project Co must commission, test and demonstrate the operation of the fire systems (including all sub components and individual equipment forming part of the system):

- (a) response times to all accommodation areas can be achieved in practice within timelines specified in the fire engineering report;
- (b) fire alarm system operation including point testing and operation of all interfaced systems for fire mode operation;
- (c) multi point aspirating smoke detection system operation;
- (d) sprinkler and fire hydrant system flow testing to prove water supply;
- (e) occupancy warning system testing to the satisfaction of the applicable Policies;
- (f) verification of fire and life safety systems including Integrated Testing;
- (g) fire pump operational tests;
- (h) fire hydrant and hose-reel systems testing;
- (i) testing of installation of fire extinguishers;
- (j) fire computer monitoring and control;
- (k) fire emergency warning and intercommunication system (**EWIS**) operation;
- (l) any special area fire protection (including any computer room); and

- (m) VESDA Fire alarm system operational testing.

2.14 Hydraulic services

Project Co must commission, test and demonstrate the operation of the hydraulic systems (including all sub components and individual equipment forming part of):

- (a) ensure all systems operate to satisfy the full requirements set out for each service;
- (b) commission and test, at a minimum:
 - (i) hydrostatically test all sewer drainage and trade waste drainage systems;
 - (ii) hydrostatically test all sanitary plumbing systems;
 - (iii) hydrostatically test all downpipes systems;
 - (iv) in drain camera inspection of all gravity drainage lines;
 - (v) pressure test all cold and heated water pipe lines;
 - (vi) temperature control at all hot water outlets;
 - (vii) operation of all fixtures, taps and points of demand;
 - (viii) flow rates of all fixtures, fittings and points of demand;
 - (ix) during integrated testing across the fully functioning hydraulic service and Site and in accordance with Site operational design, test simultaneously the designed maximum sanitary fittings and fixtures such that the relevant equipment is able to operate under the maximum operating designed load conditions, and confirm the hydraulic distribution infrastructure and its ability to simultaneously supply maximum design load conditions across the Site;
 - (x) temperature within the heated water reticulation systems;
 - (xi) operation of all water pumps;
 - (xii) operation of all sewerage pumps;
 - (xiii) operation of all rainwater pumps;
 - (xiv) operation of all sewerage reclamation and treatment;
 - (xv) operation of all trade wastes and grease traps;
 - (xvi) operation of all dedicated industries systems;
 - (xvii) operation of all dedicated medical systems;
 - (xviii) operation and temperature settings of hot water generation systems;
 - (xix) operation and temperature settings of solar systems;
 - (xx) operation of all valves, backflow devices, pressure devices temperature and controls and systems under operational conditions;
 - (xxi) demonstrate BMS monitoring of all points;
 - (xxii) isolation of services as per the Output Specification;
 - (xxiii) schedules for all equipment, valves and operational items; and

- (xxiv) tank control systems testing; and
- (c) demonstrate the capacity of the hydraulics systems to ensure it is able to continuously provide sufficient water to every tapping (e.g. basins, showers and toilets) when operating simultaneously across the Correctional Complex in accordance with the water management system detailed in the Proposal.

2.15 Civil engineering

Project Co must:

- (a) **(acceptance testing):**
 - (i) test all stormwater management discharge requirements;
 - (ii) undertake water testing up for drains in accordance with AS/NZS 3500.3; and
 - (iii) flush all pipes, cleaning all pits and testing all water control and quality devices; and
- (b) **(certification):**
 - (i) obtain from an independent design consultant a Form 11 Certificate of Compliance under the NCC for all elements of civil testing; and
 - (ii) provide proof that the design and construction of all civil works meets the Output Specification.

2.16 Structural engineering

Project Co must provide:

- (a) evidence that the materials used and construction undertaken comply with the For Construction Documentation;
- (b) a complete set of as-built structural documentation in approved electronic format; and
- (c) evidence that all variations and alterations made to the certified documentation have been evaluated and approved.

2.17 Security

(a) Project Co must:

- (i) test the Electronic Security System, on a component by component basis and as a complete system to demonstrate compliance with the requirements set out in the Output Specification; and
 - (ii) test the Electronic Security System to demonstrate that all elements of the Electronic Security System, including each piece of equipment, are fully functioning, configured correctly and interface correctly with other systems in accordance with the Output Specification and the intended use.
- (b) Without limiting Section 2.17(a), Project Co must:
- (i) test all elements of the Electronic Security System, equipment and devices in accordance with the manufacturers' recommended test procedures, State testing requirements and the requirements set out in the Output Specification;
 - (ii) test the function and operation of each and every point and device;
 - (iii) test alarm response and annunciation of each point and device;
 - (iv) check logging and recording of activity for each alarm point and device;

- (v) test required interfaces with other systems for each alarm point and devices;
- (vi) conduct all tests necessary to ensure and otherwise demonstrate:
 - (A) each Electronic Security System unit is time synchronised to a central network time protocol;
 - (B) all interlocking doors function as required, including all override commands;
 - (C) the functionality and integration of all systems deployed across the Site;
 - (D) the functionality of Master Control Points; and
 - (E) the ability to be able to convey information and alarms effectively to an operator;
- (vii) with respect to the Security Management System (**SMS**), conduct all testing necessary to ensure and otherwise demonstrate:
 - (A) the ability of the SMS to handle all alarms;
 - (B) all interfacing to the SMS allowing a central control platform;
 - (C) all redundancy of the SMS including that there is no single point of failure;
 - (D) the ability for any report to be generated from an audit;
 - (E) all user interface abilities and control as specified;
 - (F) the receipt of alarm times from the furthest point of the Correctional Complex;
 - (G) the response procedure and all corresponding actions for the receipt of alarms;
 - (H) the ability of a User (as defined in the Output Specification) to be able to logon within specified time frames and authority levels;
 - (I) that all high and low level interfaces within the SMS are functional and interface correctly;
 - (J) the security reporting interface and exportability;
 - (K) redundant pathways and redundancy practices; and
 - (L) all functionality of each component; and
 - (M) all high and low level interfaces within the SMS to ensure that they function and interface correctly.
- (viii) with respect to the Security Communications Network (**SCN**), conduct all testing necessary to ensure and otherwise demonstrate:
 - (A) the SCN is capable of communicating on every line simultaneously with no slowdown in transmission;
 - (B) the SCN is secured from internal and external breaches;
 - (C) all redundancy of the SCN including that there is no single point of failure;
 - (D) the ability for any report to be generated from an audit;

- (E) the functionality of each component; and
 - (F) testing of redundant pathways and redundancy practices;
- (ix) with respect to the Access Control System (**ACS**), conduct all testing necessary to ensure and otherwise demonstrate:
- (A) the integration of all ACS components into the SMS for the monitoring of all door functions and alarms;
 - (B) the functionality of each component;
 - (C) the ability of the ACS to allow an operator to acknowledge an event and review all associated data, including external systems;
 - (D) the ability of the ACS to control users based on the stated restrictions;
 - (E) the ability of the ACS to remain fully operational in the case of a loss of communication to the master panel;
 - (F) the ability to create and program access control cards; and
 - (G) that audit trails and system event logs record all system event history;
- (x) with respect to the Intruder Detection System (**IDS**), conduct all testing necessary to ensure and otherwise demonstrate:
- (A) the integration of all IDS components into the SMS for the monitoring of all alarms;
 - (B) the functionality of each component;
 - (C) the ability of the IDS to allow an operator to acknowledge an event and review all associated data, including external systems;
 - (D) the ability of the IDS to control components based on varying restrictions; and
 - (E) the ability of the IDS to remain fully operational in the case of a loss of communication to the master panel;
- (xi) with respect to the Perimeter Detection System (**PDS**), conduct all testing necessary to ensure and otherwise demonstrate:
- (A) the perimeter cannot be traversed in any way without an alarm being activated at all times of the day and during all weather conditions;
 - (B) the PDS' resistance to nuisance alarms;
 - (C) that no building forming part of the perimeter can be penetrated from the inside or exterior;
 - (D) the integration of all PDS components into the SMS for the receipt of an alarm for each zone and component;
 - (E) the receipt and all corresponding subsequent actions (across every linked system) undertaken from the receipt of any alarm associated with the PDS;
 - (F) that an intruder within any zone can be identified from the CCTV system (and subsequent control of the CCTV system) at all times of the day and during all weather conditions;

- (G) the CCTV system can respond to the PDS alarm without hindering the use of CCTV cameras assigned to the internal grounds;
 - (H) all tests detailed above can be conducted simultaneously for a minimum of three breaches at distant points around the Correctional Complex;
 - (I) the continued operational ability of the PDS and operator alerts if the entire SMS fails;
 - (J) the functionality of each component; and
 - (K) the ability to review all information across systems on review of a PDS alarm;
- (xii) with respect to the closed circuit television (**CCTV**), conduct all testing necessary to ensure and otherwise demonstrate:
- (A) the CCTV system architecture allows all cameras to be controlled, monitored and recorded simultaneously without any slowing of the system;
 - (B) each camera has been adjusted and commissioned in the environment it is in (including Pan Tilt Zoom (**PTZ**) presets);
 - (C) each camera achieves the view required and can perform to its requirements under all conditions;
 - (D) the recording system can provide footage of the quality, speed and time periods requested;
 - (E) the recording system is capable of providing redundant storage as specified;
 - (F) an Inmate in a camera fitted cell can be monitored 24hr at any point within the cell;
 - (G) the monitors utilised provide an accurate reproduction of the camera outputs;
 - (H) all CCTV cameras are accessible from the SMS;
 - (I) flat panel display screens are configured and numbered correctly, adjusted to similar brightness and contrast settings;
 - (J) recordings are stored at resolution and frame rate for evidentiary purposes, watermarked for certification;
 - (K) the Master Control Room operators can perform all functions;
 - (L) the functionality of each component; and
 - (M) all audit trails and system event logs record all system event history;
- (xiii) with respect to Cell Intercommunication System (**CIS**), conduct all testing necessary to ensure and otherwise demonstrate:
- (A) all intercom points can call through to a local operator post and the Master Control Points;
 - (B) the ability of the CIS to handle call diversion;
 - (C) the CIS can accommodate calls from each intercom simultaneously while continuing to function with no degradation;

- (D) the operation of the technical requirements of the Master Control Points and local operator post including the switching of an associated CCTV camera;
 - (E) the ability to covertly listen and record any intercom point;
 - (F) the self-test functionality;
 - (G) non-contact visits functionality;
 - (H) the functionality of each component; and
 - (I) the recording and playback ability of the CIS;
- (xiv) with respect to Mobile Duress Alarm System (**MDAS**), conduct all testing necessary to ensure and otherwise demonstrate:
- (A) the ability to identify an individual anywhere in the Correctional Complex to the accuracy stipulated;
 - (B) the activation of an alarm and all corresponding actions taken;
 - (C) the MDAS ability to respond to multiple alarms (including stationary and moving);
 - (D) the functionality of each component; and
 - (E) testing of all audit trails and system event logs to ensure they record all system event history;
- (xv) with respect to the Mobile Radio Communication System, conduct all testing necessary to ensure and otherwise demonstrate the functionality of all components and systems;
- (xvi) with respect to the Inmate Movement and Identification System (**IMIS**), conduct all testing necessary to ensure and otherwise demonstrate the functionality of all components and systems;
- (xvii) with respect to the Weapons and Contraband Detection Systems (**WCDS**), conduct all testing necessary to ensure and otherwise demonstrate:
- (A) the screening areas can process the required number of individuals. Tests are to include for individuals not familiar with the systems and carrying contraband objects;
 - (B) the ability of the WCDS to be able to detect contraband and metal items of any type; and
 - (C) the functionality of all components and systems;
- (xviii) with respect to Anti-Vehicle Ramming System (**AVRS**), conduct all testing necessary to ensure and otherwise demonstrate:
- (A) the operation of the AVRS; and
 - (B) the interface and override controls of the AVRS;
- (xix) with respect to Vehicle Screening, conduct all testing necessary to ensure and otherwise demonstrate:
- (A) the ability of the Vehicle Screening systems to be able to detect contraband and individuals;

- (B) the interface and controls of the Vehicle Screening systems;
 - (C) how records are collated and reviewed; and
 - (D) the functionality of all components and systems;
- (xx) with respect to Accoutrement Management and Tracking System (**AMTS**), conduct all testing necessary to ensure and otherwise demonstrate:
- (A) the ability of the AMTS to be able to issue, track and control all accoutrements;
 - (B) the interface and controls of the AMTS;
 - (C) how records are collated and reviewed;
 - (D) how items are secured against removal from the Site; and
 - (E) the functionality of all components and systems; and
- (xxi) with respect to the Mobile Phone Detection System (**MPDS**), conduct all testing necessary to ensure and otherwise demonstrate:
- (A) the ability of the MPDS to be able to detect mobile phone usage and possession; and
 - (B) the functionality of all components and systems.

3. Commercial Acceptance Tests

Project Co must carry out the Commercial Acceptance Tests to demonstrate the full capability of all aspects of the Correctional Complex to meet the Output Specification and to demonstrate that Project Co is suitably resourced to deliver the full suite of Services from the commencement of the Operating Phase.

3.1 Inmate Management

Project Co must:

- (a) **(general)**: ensure that Staff and all persons who work in the Correctional Complex are familiar with:
 - (i) relevant Legislation, including the Corrections Legislation; and
 - (ii) the Operating Phase Plans; and
- (b) ensure all staff have satisfactorily completed a course of training or instruction accredited by the State relevant to the functions they will undertake at the relevant Correctional Centre and Correctional Complex and in the performance of corrective services under the Project Deed.

3.2 Safety and Security

Project Co must:

- (a) **(at risk)**: demonstrate that Staff are able to identify and manage Inmates who are at risk, or who present a risk to themselves or to other persons;
- (b) **(movement control and Inmate counts)**: carry out testing to demonstrate that:
 - (i) the location of all Inmates is known or capable of being determined at all times;
 - (ii) the movement of Inmates and other persons within the Correctional Complex is controlled;
 - (iii) counts of Inmates can be accurately conducted; and
 - (iv) Staff implement appropriate processes in the event that an Inmate cannot be accounted for, whether during a formal count or at any other time;
- (c) **(searches)**: demonstrate that:
 - (i) Staff have been trained in, and are competent in carrying out, searches including searches of persons, vehicles and areas; and
 - (ii) there is a mechanism for recording, managing, storing and/or handing to police any unauthorized items located or seized during a search;
- (d) **(access control)**: demonstrate:
 - (i) the effectiveness of its access control process including any identification requirements; and
 - (ii) that Correctional Complex and Correctional Centre entry points can process people effectively using the technology available and in accordance with the operational procedures including any identification, searching, and recording as appropriate and/or necessary;
- (e) **(key control)**: demonstrate the effectiveness of its key control procedures;

- (f) **(incident reporting)**: demonstrate that Staff understand how and when to record and report an incident;
- (g) **(reception)**: demonstrate that Staff are able to receive Inmates into the Correctional Complex in an effective and safe manner that complies with the Output Specification in respect of Inmate receptions;
- (h) **(perimeter)**: demonstrate that Staff are able to respond to multiple perimeter events and other security events within the nominated period of delay of the Perimeter System;
- (i) **(orientation)**: demonstrate that there is a package of information that will be provided to Inmates who are newly-placed at the Correctional Complex;
- (j) **(classification and placement)**: demonstrate that:
 - (i) there is a process to allocate Inmates to accommodation areas or units; and
 - (ii) there is a process to assess compatibility of Inmates who are to be placed into shared accommodation;
- (k) **(emergency procedures)**:
 - (i) demonstrate that all Staff are trained and understand how to respond in an emergency; and
 - (ii) undertake a series of emergency drills and exercises including both announced and unannounced drills;
- (l) **(drug and alcohol testing)**: demonstrate that the procedures for drug and alcohol testing comply with the Output Specification; and
- (m) **(Staff resourcing)**: demonstrate that all Staff have been engaged and are fully trained and available to deliver services in line with the resourcing model in the Operational Readiness Plan.

3.3 Program and Reintegration Services

Project Co must:

- (a) **(programs and activities)**: demonstrate that:
 - (i) programs have been accredited;
 - (ii) program manuals and equipment are in place;
 - (iii) Staff to deliver programs and activities have been employed or subcontracted; and
 - (iv) relevant Staff are appropriately credentialed and have been trained in the delivery of the programs and activities;
- (b) **(visits)**: demonstrate:
 - (i) the system for Inmates to access personal visits;
 - (ii) the efficient processing of personal and professional visitors; and
 - (iii) that Staff supervising visits are suitably trained; and
- (c) **(release of Inmates)**: demonstrate that:
 - (i) procedures are in place to identify Inmates due for release;

- (ii) Staff are able to process such releases including completion of all relevant records and release requirements; and
- (iii) Staff responsible for releasing Inmates understand requirements relating to Inmate property, transport, *Child Protection (Offenders Registration) Act 2000* (NSW) obligations etc.

3.4 Health Services

Project Co must:

- (a) (**pharmaceuticals**): demonstrate procedures for the procurement, storage and administration of pharmaceuticals, including appropriate record-keeping; and
- (b) (**medical appointments**): demonstrate the processes by which Inmates request and access healthcare.

3.5 Hospitality Services

Project Co must:

- (a) (**food**): carry out testing to demonstrate:
 - (i) that all Inmates are able to be fed at meal times;
 - (ii) feeding Inmates outside meal times (e.g. late court returns); and
 - (iii) food purchasing and delivery for Inmates in self-catering units;
- (b) (**bedding**): carry out testing to demonstrate:
 - (i) that there is sufficient bedding for every Inmate Place (as defined in the Payment Schedule), and that bedding can be laundered and replaced as required; and
 - (ii) the process to ensure that bedding remains clean and in good repair; and
- (c) (**clothing**): carry out testing to demonstrate that:
 - (i) there is sufficient clothing, in a range of sizes, to meet Inmates' needs including any clothing required for specific Inmate employment;
 - (ii) clothing can be laundered and replaced as required; and
 - (iii) there is a process to ensure that Inmates' personal clothing is available for them to wear to court, and can be laundered as required.

3.6 Administration Services

Project Co must:

- (a) (**staffing**): carry out testing to demonstrate that all Staff:
 - (i) are credentialed and have completed the necessary training as specified in the Operational Readiness Plan;
 - (ii) are authorized to carry out activities under the Corrections Legislation; and
 - (iii) are familiar with:
 - (A) the layout of the Correctional Complex;
 - (B) the Correctional Complex's operating philosophy;
 - (C) the Correctional Complex regime; and

- (D) all emergency codes and procedures;
- (b) **(information systems management)**: carry out testing to demonstrate that:
 - (i) the information systems provided by Project Co are in sound operating order;
 - (ii) Staff are able to use the information systems provided by Project Co;
 - (iii) Project Co's information systems interface effectively with CSNSW's information systems; and
 - (iv) Staff are trained and able to use the CSNSW's information systems;
- (c) **(Inmate communications)**: carry out testing to demonstrate the procedure for:
 - (i) allowing Inmates to make telephone calls, including validation processes; and
 - (ii) monitoring Inmates' telephone calls; and
- (d) **(Inmate property)**: carry out testing to demonstrate the process to receive and store Inmate property.

3.7 Facilities Maintenance

Project Co must carry out testing to ensure that all Cell (as defined in the Output Specification) areas meet the minimum requirements in accordance with the Victorian Cell and Fire Safety Guidelines and the Output Specification and are otherwise to the reasonable satisfaction of the State.

Project Co must carry out testing to ensure the Correctional Complex and Site are compliant with condition and performance standards, including but not limited to:

- (a) its condition;
- (b) its cleanliness;
- (c) the occurrence of pests; and
- (d) the aesthetic quality of the grounds.

Project Co must carry out testing to ensure that processes, procedures and systems are provided to:

- (e) log, manage, respond, rectify and report Abatements, queries and requests relating to the FM Services;
- (f) provide accurate notification of all faults, complaints and maintenance events;
- (g) provide accurate notification of all Abatements related to the FM Services;
- (h) manage requests for temporary changes to the delivery and scope of the FM Services;
- (i) monitor and respond to alarms and security systems at the Correctional Complex;
- (j) comply with instructions and notices issued by the State;
- (k) manage requests for information by the State; and
- (l) progress updates regarding faults, complaints, maintenance events or Abatements related to the FM Services.

3.8 Other

Project Co must:

- (a) undertake air quality tests to selected areas subject to noxious, volatile or dangerous fumes including but not limited to the sallyport, chemical store and decanting, enclosed carports and armoury;
- (b) undertake the identification of operational scenario testing, including:
 - (i) riot simulation exercises;
 - (ii) hostage situation exercises;
 - (iii) Inmate disturbance;
 - (iv) event of gas chemical spill;
 - (v) event of power failure;
 - (vi) evacuation procedures; and
 - (vii) event of escape; and
- (c) do such other tests requested by the State Representative pursuant to the terms of this Deed.

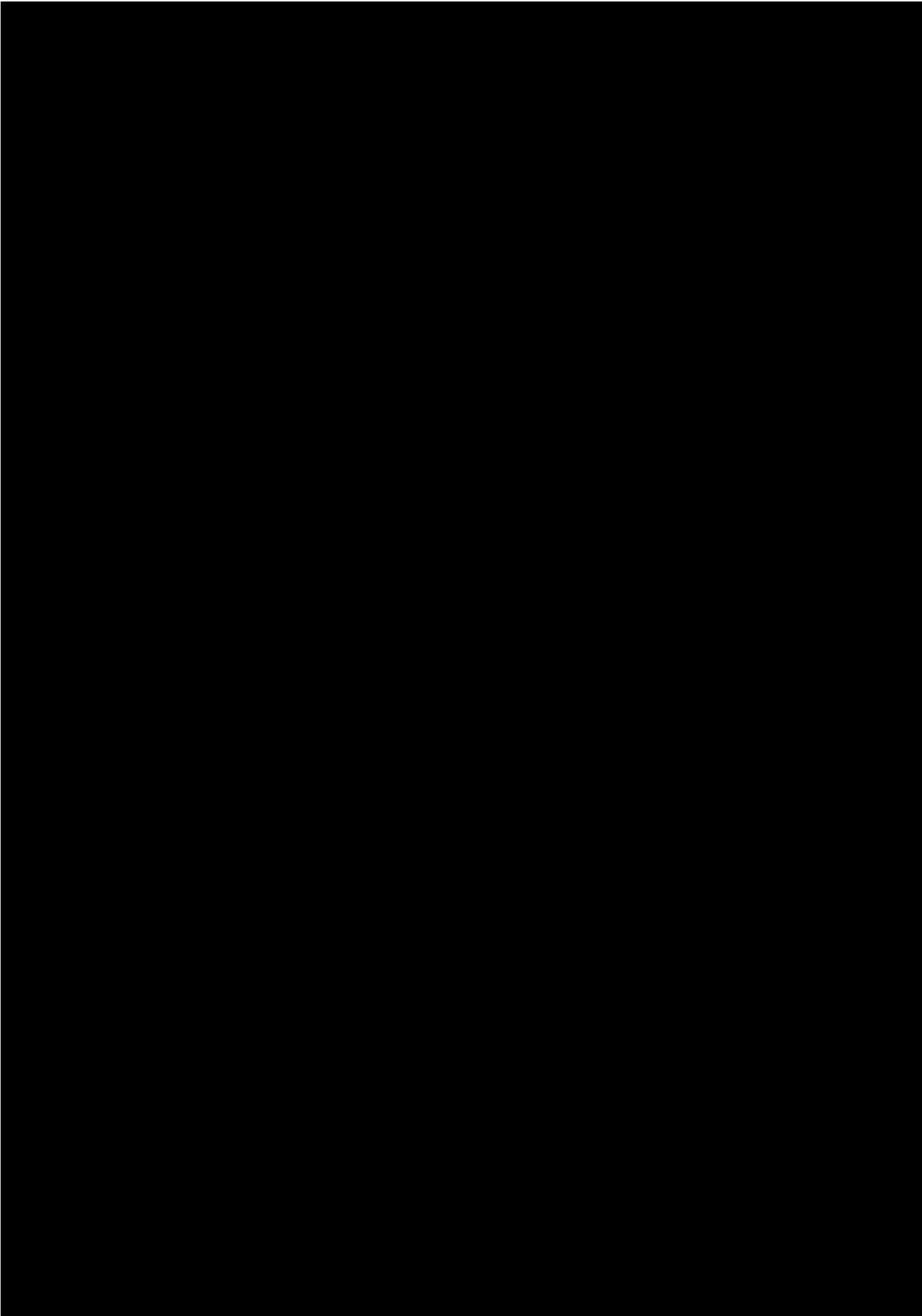
3.9 Commercial Acceptance Criterion 5

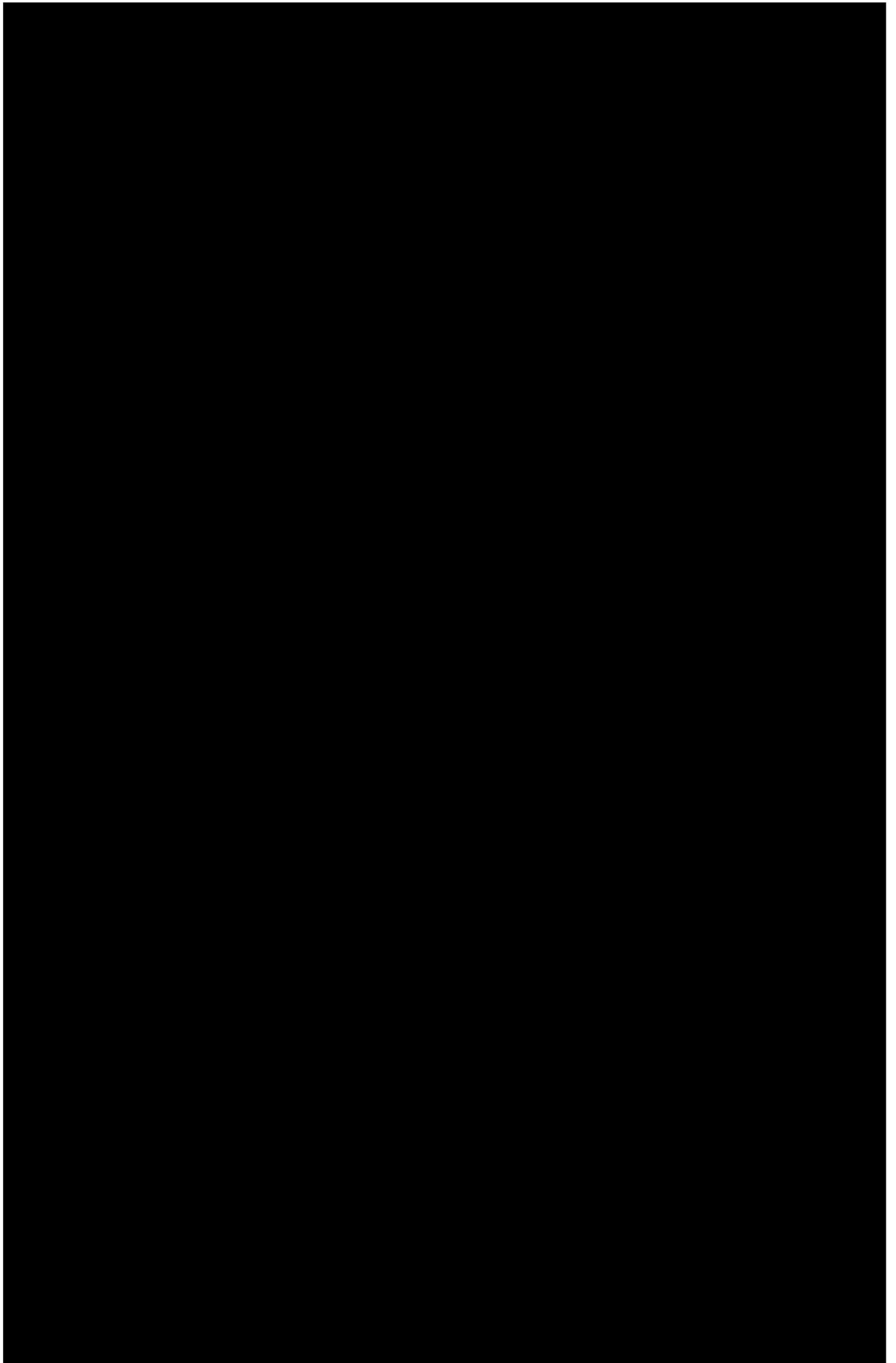
- (a) Project Co (on advice from the Operator and as anticipated in and in accordance with the agreed form Commercial Acceptance Plan) must notify the State Representative when the Fault-Free Period will commence.
- (b) The State Representative must notify Project Co of any Material Defect promptly and in any event within 2 Business Days of becoming aware of a Material Defect.
- (c) The State Representative must notify Project Co that the Fault-Free Period has been successfully completed within 1 Business Day following completion of the Fault-Free Period.
- (d) Notwithstanding sections 3.9(b) and (c) above, Project Co acknowledges and agrees that it will not be entitled to bring any Claim against the State for a failure by the State to comply with its obligations under sections 3.9(b) and (c) above, unless the State wilfully defaulted.

4. **Post Completion Testing**

Without limiting the remainder of this Schedule, Project Co must successfully perform any Post Completion Tests required by the Independent Certifier (acting reasonably) or as described in the Technical Completion Report.

Schedule 13 - CDPD Adjustment Protocol





Schedule 14 — Ramp Up Profile

1. Overview

1. Red figures in the table below mean the cumulative number of Inmates in a Correctional Centre.
2. Blue figures in the table below mean the cumulative number of Inmates in the Correctional Complex.
3. The Ramp Up Schedule is based on the following daily admissions each week:
 - (a) Monday’s – 30 Inmates;
 - (b) Wednesday’s – 30 Inmates; and
 - (c) Friday’s – 30 Inmates.

Total of 90 per week.

Table 1: Ramp Up Schedule

Date	Male Maximum Correctional Centre (1,000 beds)		Female Maximum Correctional Centre (300 beds)		Male Minimum Correctional Centre (400 beds)		Total for the Correctional Complex (1,700 beds)	Comments
	Units	Total	Units	Total	Units	Total		
Operational Commencement Date		0		0				0
Week 1	90	90	0	0	0		90	
Week 2	90	180	0	0	0		180	
Week 3	0	180	40	40	50	50	270	
Week 4	0	180	0	40	0	50	270	Pause to review procedures
Week 5	90	270	0	40	0	50	360	
Week 6	90	360	0	40	0	50	450	
Week 7	0	360	40	80	50	100	540	
Week 8	90	450	0	80	0	100	630	
Week 9	90	540	0	80	0	100	720	
Week 10	0	540	40	120	50	150	810	
Week 11	0	540	0	120	0	150	810	Pause to review procedures

Date	Male Maximum Correctional Centre (1,000 beds)		Female Maximum Correctional Centre (300 beds)		Male Minimum Correctional Centre (400 beds)		Total for the Correctional Complex (1,700 beds)	Comments
	Units	Total	Units	Total	Units	Total		
Week 12	90	630	0	120	0	150	900	
Week 13	90	720	0	120	0	150	990	
Week 14	0	720	40	160	50	200	1080	
Week 15	90	810	0	160	0	200	1170	
Week 16	90	900	0	160	0	200	1260	
Week 17	0	900	40	200	50	250	1350	
Week 18	90	990	0	200	0	250	1440	
Week 19	0	990	40	240	50	300	1530	
Week 20	0	990	40	280	50	350	1620	
Week 21	10	1000	20	300	50	400	1700	

Schedule 15 — Operating Phase Plans and Reports Schedule

The purpose of this Schedule is to set out in detail Project Co's obligations in respect of the Operating Phase Plans and the Operating Phase Reports.

In this Schedule, each individual plan, program, protocol, report or notification forming part of the Operating Phase Plans and Reports is referred to as a "Plan".

1. Reports

TABLE 1: CONTINUOUS ON-LINE REPORTING

Report	Content of report	Time for provision
A. Performance data access	Project Co must provide the State with continuous read and print access to all information, reports and performance data used by Project Co in measuring its performance under the Performance Monitoring Program.	Continuous on-line access.

TABLE 2: DAILY INMATE POPULATION REPORT

Report	Content of report	Time for provision
A. Daily Inmate Population Report	The Daily Inmate Population Report must contain a summary of the number of Inmates and the Available Inmate Places (including a breakdown of the location of any vacant Available Inmate Places within each Correctional Centre). A template will be provided to Project Co.	12.01 am daily from the first day of the Operating Phase

TABLE 3: MONTHLY PERFORMANCE REPORT

Report	Content of report	Time for provision
A. Performance report	The Performance Report is to contain: <ul style="list-style-type: none"> ▪ a holistic overview of the performance of Project Co in relation to the delivery of Services for the previous Month; ▪ information relating to Project Co's performance in delivering the Services in relation to the Month against all Key Performance Indicators in the Performance Regime; and ▪ details of any stakeholder or communication matters, including complaints or concerns raised by the public or Project stakeholders and the status of Project Co's stakeholder and community involvement activities against the 	Within 5 Business Days of the end of the relevant Month

Report	Content of report	Time for provision
	Communications and Community Relations Plan.	
B. Pharmaceuticals Reporting Spreadsheet	Project Co must complete and submit a Pharmaceuticals Reporting Spreadsheet in the form of Attachment 1 (as updated by the State from time to time).	
C. Case management programs and reintegration services update	<p>Project Co must enter all information in relation to case planning and interventions as specified in the Output Specification into the CSNSW Offender Integrated Management System (OIMS), including the following:</p> <ol style="list-style-type: none"> 1) the details and results of all assessments completed as part of the Case Plan development; 2) formulated Case Plan (as required in the Output Specification); 3) details of every Case Plan Intervention offered to Inmates, including: <ol style="list-style-type: none"> a) date of offer; b) Inmate acceptance or non-acceptance of Case Plan intervention; and c) reasons for Inmate non-acceptance of Case Plan intervention; 4) details of all Case Plan interventions, including: <ol style="list-style-type: none"> a) date of session attendances; b) duration of sessions; c) date of Case Plan intervention completion; and d) reasons for non-completion of any Case Plan intervention; 5) details of all health stream alcohol and other drugs programs, criminogenic stream programs and co-morbidity stream programs completed in the relevant Month, the number of Inmates who completed each program divided by the number of Inmates who commenced the program, expressed as percentage; 6) average daily number of Inmates waiting for each of the program types listed in paragraph 5 above; and 7) the total number of individual Inmate Case Plan interventions provided by program type. <p>Project Co must provide a report on the progress and outcomes of Project Co's research into the effectiveness of pre- and post-release reintegration</p>	

Report	Content of report	Time for provision
	programs and their relationship to recidivism rates.	
D. Health Services update	<p>Project Co must provide a report to Justice Health in relation to Health Services that includes the following:</p> <ol style="list-style-type: none"> 1) end of Month health services Staff full time equivalent information, including designation of health services Staff reconciling inward and outward movements in Staff numbers to the previous Month; and 2) non-admitted Custodial Patient occasions of service for the relevant Month. 	
E. Staff deployment	Provide end of month Staff full time equivalent information, reconciling inward and outward movements in Staff numbers to the previous Month.	
F. FM Services update report	<p>Project Co must provide details of any activation of the security systems (including false alarms and nuisance alarms) of any nominated alarm.</p> <p>Project Co must provide a building management report detailing as a minimum:</p> <ol style="list-style-type: none"> 1) works not completed in accordance with the Planned Maintenance Schedule and annual asset works schedule in the Asset Management Plan; 2) the number, type and location of unscheduled maintenance activity; and 3) inspections, statutory and regulatory tests undertaken. 	Within 5 Business Days of the end of the relevant Month for the first 24 Months of the Operating Phase only (unless otherwise directed by the State Representative)

TABLE 4: QUARTERLY PERFORMANCE REPORT

Report	Content of report	Time for provision
A. Quarterly Performance Report	<p>The Quarterly Performance Report is to consolidate the information contained in the last three Monthly Performance Reports, including a consolidated Pharmaceuticals Reporting Spreadsheet.</p> <p>The Quarterly Performance Report must:</p> <ol style="list-style-type: none"> 1) identify areas or items of non-compliance <i>with this Deed</i>; 2) confirm that the Key Subcontractors are maintaining Quality Assurance Systems in accordance with AS/NZS ISO 9001 (or equivalent), ISO 55001, ISO 22000 and ISO 14001 and the Quality Assurance Plans (in accordance with the requirements of this 	Within 5 Business Days of the end of each Quarter

Report	Content of report	Time for provision
	<p>Deed);</p> <p>3) include a summary of the items that have been addressed and remediated since the Quality Assurance Plan submitted in the last Quarter;</p> <p>4) include a summary of the overall performance of the Quality Assurance Systems;</p> <p>5) include Health Services specific reports including:</p> <p>a) Quarterly performance indicators for:</p> <p>i) mental health including:</p> <p>(1) percentage of Custodial Patients discharged from an acute mental health setting to the Correctional Complex who are seen within 7 days by a mental health clinician; and</p> <p>(2) number of Custodial Patients with a mental illness with at least one set of mental health outcome measures collected during a period of care (3 months);</p> <p>ii) women's health including:</p> <p>(1) Percentage of eligible and consenting women who have had a cervical screen;</p> <p>(2) Percentage of eligible and consenting women who have had a breast check; and</p> <p>(3) Percentage of eligible and consenting women who have had a mammogram;</p> <p>iii) oral health including number of Dental Weighted Activity Units (DWAUs);</p> <p>iv) drug and alcohol including:</p> <p>(1) Percentage of new Custodial Patients in this reporting period coming into the Correctional Complex or a Correctional Centre who are maintained on an existing opiate treatment program, unless clinically contraindicated; and</p> <p>(2) Percentage of Custodial Patients on Opiate Substitution Treatment (OST) engaged in community based services, post-release in</p>	

Report	Content of report	Time for provision
	<p style="text-align: center;">relation to clients under the <i>Crimes (High Risk Offenders) Act 2006</i>;</p> <ul style="list-style-type: none"> v) population health, including: <ul style="list-style-type: none"> (1) Number of initiations onto hepatitis C related services; (2) Proportion of Custodial Patients initiated onto hepatitis C related services who are Aboriginal; and (3) Number of Custodial Patients accepting influenza vaccination as part of a winter immunisation program; vi) Aboriginal health including percentage of new Aboriginal Custodial Patients accessing a targeted Aboriginal chronic care program; and <p>b) Auditing requirements including:</p> <ul style="list-style-type: none"> i) monthly audits including: <ul style="list-style-type: none"> (1) Accountable drug registers (schedule 8 and schedule 4 declared); (2) End of Month vaccine refrigerator temperature monitoring (twice daily checks); (3) Needle and syringe register checks (including dental room); and (4) Maintenance checks of glucometers, INR machines, HbA1C machines; ii) Every 2nd month audits including: <ul style="list-style-type: none"> (1) work health and safety workplace inspection of all clinical areas; (2) Therapeutic diet certificate audit; and (3) health record audits - 10 files per Correctional Centre; iii) Quarterly report on results of audits including: <ul style="list-style-type: none"> (1) environmental cleaning audits of the health centre(s) and all satellite health centre(s); (2) medication charts (long stay medication charts) for 10% of the 	

Report	Content of report	Time for provision
	<p>population; and</p> <p>(3) Imprest Stock; and</p> <p>iv) annual audits including:</p> <p>(1) Biomedical equipment testing.</p>	

TABLE 5: BIANNUAL REPORT

Report	Content	Time for provision
A. Australian Industry Participation Compliance Report (Operations)	<p>The Australian Industry Participation Compliance Report (Operations) must be prepared in accordance with the template provided at:</p> <p>http://www.industry.gov.au/industry/IndustryInitiative/AustralianIndustryParticipation/Pages/AIP-plans-required-Jobs-Act-2013.aspx.</p>	Every 6 months

TABLE 6: ANNUAL REPORT

Report	Content	Time for provision
A. Annual Report	<p>Project Co must provide an annual report on Project Co's activities and performance for each Service bundle under this Deed for the previous calendar year.</p> <p>The annual report will include:</p> <ol style="list-style-type: none"> 1) Annualised Key Performance Indicators in relation to the Key Performance Indicators in the Services Linked Fee component; 2) Annualised information in relation to the number of Inmate Places that met the Available Inmate Place standard on each day of the year; 3) Information required to be included by the Department of Justice in its annual report, which information will be notified to Project Co from time to time; 4) annual financial statements for: <ol style="list-style-type: none"> a) Project Co; b) the Operator; and c) Any other Consortium Member as requested by the State; 5) an annualised Pharmaceuticals Reporting Spreadsheet; and 6) annual report on Health Services accreditation 	60 Business Days after the end of each calendar year during the Operating Phase

Report	Content	Time for provision
	status.	
B. Aboriginal Participation Report (Operations)	The Aboriginal Participation Report (Operations) must be in accordance with clause 10.13(c) and 10.13(d) under this Deed.	Annually, as required in accordance with the Deed.
C. Health professional registration checks	Health professional registration checks with AHPRA.	Annually in June

2. Operating Phase Plans

2.1 Overview

The minimum requirements for Operating Phase Plans for the Project are detailed in this Schedule 15.

To avoid repetition of content across multiple Operating Phase Plans, Operations Phase Project Plans, Project Co may use cross-references.

The Operating Phase Plans detailed in this Schedule 15 must be submitted:

- (a) in accordance with Table 7;
- (b) as required by the State Representative or any Authority; and
- (c) to align with changes in:
 - (i) the design, delivery and/or operations of the Correctional Complex;
 - (ii) other related Plans; and
 - (iii) the Plans as requested by the State Representative under this deed.

The Operating Phase Plans detailed in this Schedule 15 must be updated:

- (d) in accordance with Table 7;
- (e) as required by the State Representative or any Authority; and
- (f) to align with changes in:
 - (i) the design, delivery and/or operations of the Correctional Complex;
 - (ii) other related Plans; and
 - (iii) the Plans as requested by the State Representative under this deed; and
- (g) to include a methodology of regular reviews that considers:
 - (i) planned exercises; and
 - (ii) incorporation of lessons learned from actual incidents and events.

TABLE 7 — SUBMISSION AND UPDATE OF OPERATING PHASE PLANS

Plan	Plan submission date	Update frequency
Rehabilitation Plan	1 st draft	Annually (20 Business Days prior
Reintegration Plan	18 Months before the Date for	

Plan	Plan submission date	Update frequency
Safety and Security Plan	Commercial Acceptance 2nd draft 12 Months before the Date for Commercial Acceptance Final version 6 Months before the Date for Commercial Acceptance	to the end of each calendar year)
Emergency Management Plan		
Inmate Needs and Services Plan		
Governance and Administration Plan		
Staff Training Plan		
Staff Deployment Plan		
Health Services Plan		
FM Services Plan		
Asset Management Plan		
Operating Manuals		
Communications and Community Relations Plan		
Quality Assurance Plan		
Environmental Management Plan		
Business Continuity Plan		
Local Industry Participation Plan		
Performance Monitoring Program		
Aboriginal Participation Plan (Operations)		
Reviewable Services Plan		
Correctional Complex Access Protocols		
Work Health Safety (WHS) Management Plan		
Handover Package	24 Months prior to the end of the Final Expiry Date or within 20 Business Days from the date the State issues a termination notice under this Deed.	

Plan	Plan submission date	Update frequency
Disengagement Plan	24 Months prior to the end of the Final Expiry Date or within 20 Business Days from the date the State issues a termination notice under this Deed.	

2.2 Rehabilitation Plan

- (a) Project Co is to provide a Rehabilitation Plan in accordance with outcome 1 (Rehabilitation and Reintegration) of Part B of the Output Specification that sets out its detailed plans and activities.
- (b) As a minimum, this plan must contain:
- (i) details on the case management model;
 - (ii) types of interventions including those culturally specific for Aboriginal and Torres Strait Islander Inmates;
 - (iii) details of offence related programs including delivery methodology and timetables;
 - (iv) details of Vocational Education and Training courses and programs including delivery methodology and timetables; and
 - (v) details of Inmate employment for all cohorts including timetables.

2.3 Reintegration Plan

- (a) Project Co is to provide a Reintegration Plan in accordance with outcome 1 (Rehabilitation and Reintegration) of Part B of the Output Specification that sets out its detailed plans and activities for the next year.
- (b) As a minimum, this plan must contain:
- (i) details of Temporary Leave Programs;
 - (ii) details of pre-release planning and programs including use of community organisations;
 - (iii) details of life skills programs and delivery methodology and timetables; and
 - (iv) details of services provided for remand Inmates.

2.4 Safety and Security Plan

- (a) Project Co is to provide a Safety and Security Plan in accordance with outcome 2 (Safety and Security) of Part B of the Output Specification that sets out its detailed plans and activities for the next year.
- (b) As a minimum, this plan must cover:
- (i) Secure Perimeter and access control systems including testing regimes;
 - (ii) Inmate supervision;
 - (iii) Inmate accountability;
 - (iv) Inmate movement control;
 - (v) incident management and reporting work health and safety;
 - (vi) Searching (Inmates, Staff, Visitors, vehicles and Correctional Complex) including regimes and matrices;

- (vii) contraband detection, prevention, management and disposal;
- (viii) intelligence systems, function and strategies;
- (ix) use of force and security response;
- (x) Firearms and security equipment including serviceability and accountability;
- (xi) humane reception of Inmates;
- (xii) Inmate classification and placement;
- (xiii) Inmate discipline;
- (xiv) drug and alcohol testing regime; and
- (xv) external escorts.

2.5 Emergency Management Plan

- (a) Project Co is to provide an Emergency Management Plan that sets out its detailed plans and activities for the next year.
- (b) As a minimum, this plan must cover:
 - (i) Escape and attempted Escape;
 - (ii) Death in custody;
 - (iii) Serious Assault;
 - (iv) Evacuation;
 - (v) bomb threat;
 - (vi) Hostage situation;
 - (vii) Fire;
 - (viii) Riot, loss of control or major disturbance;
 - (ix) Withdrawal of labour;
 - (x) Natural disaster;
 - (xi) key lock compromise;
 - (xii) Electronic security failure;
 - (xiii) Pandemic outbreak; and
 - (xiv) Public demonstration.

2.6 Inmate Needs and Services Plan

- (a) Project Co must develop, implement and maintain an Inmate Needs and Services Plan in accordance with outcome 3 (Decency and Respect) of Part B of the Output Specification detailing plans and activities for the next year.
- (b) As a minimum, this plan must cover:
 - (i) a timetable for the delivery of Services activities;
 - (ii) Staff Inmate interaction;
 - (iii) Inmate induction program
 - (iv) Inmate requests, enquiries and complaints process;
 - (v) Visits regimes (all Inmate cohorts);

- (vi) Details of service provision for Inmates with specific needs;
- (vii) Time out of cells (all inmate cohorts);
- (viii) Purposeful Day routines (all inmate cohorts);
- (ix) Religious and spiritual needs (services and timetables);
- (x) food Services (menus, cultural and lifestyle diet provision);
- (xi) clothing bedding and hygiene requirements;
- (xii) Inmate communication via telephone and mail (all Inmate cohorts);
- (xiii) Inmate private property;
- (xiv) Inmate cash and purchasing of goods; and
- (xv) library facilities and access to computers, newspapers and magazines.

2.7 Governance and Administration Plan

- (a) Project Co must develop, implement and maintain a Governance and Administration Plan in accordance with outcome 4 (Professionalism and Accountability) of Part B of the Output Specification detailing plans and activities for the next year.
- (b) As a minimum, this plan must cover:
 - (i) professional Conduct;
 - (ii) standards of Professional Behaviour;
 - (iii) Staff recruitment;
 - (iv) Staff training programs and curriculum;
 - (v) Operating Manuals;
 - (vi) sentence administration;
 - (vii) official Visitors;
 - (viii) requests for and disclosure of advice and information;
 - (ix) interface with CSNSW Performance Monitoring;
 - (x) interface with OIMS and other CSNSW Corporate Information Systems;
 - (xi) records Management;
 - (xii) protection of Children and Young people; and
 - (xiii) community engagement.

2.8 Staff Training Plan

- (a) Project Co must develop, implement and maintain a Staff Training Plan in accordance with outcome 4 (Professionalism and Accountability) of Part B of the Output Specification detailing staff training plans and activities for the next year.
- (b) As a minimum this plan must cover:
 - (i) compliance with Registered Training Organisation requirements for the delivery and assessment of current Nationally Accredited training programs including qualifications of staff delivering and assessing the training;
 - (ii) curriculum and assessment activities from the Certificate III level of the correctional services training package for Custodians of Offenders and Certificate IV level of the correctional services training package for Inmate Services and Programs Staff;

- (iii) annual Staff training and development plans / matrices;
- (iv) course content for any training plan or activity submitted annually for endorsement by the State;
- (v) Staff skills and qualifications audit; and
- (vi) records of Staff training activities / programs conducted over the previous year.

2.9 Staff Deployment Plan

- (a) Project Co is to provide a Staff Deployment Plan in accordance with the Output Specifications for the next year.
- (b) As a minimum this plan must:
 - (i) maintain the good order and security of the Correctional Centre and Correctional Complex;
 - (ii) provide a safe environment for Staff, Visitors and Inmates;
 - (iii) facilitate a purposeful daily routine for each Inmate, including Inmate access to and attendance at Offence Related Programs, Education, Vocational Training, Employment, recreation and leisure activities;
 - (iv) maximise Inmate time out of cells; and
 - (v) maintain effective control of each Inmate, including all Inmates' movements.

2.10 Health Services Plan

- (a) Project Co is to provide a Health Services Plan in accordance with outcome 5 (Health Services) of Part B of the Output Specification that sets out its detailed plans and activities for the next year.
- (b) As a minimum, this plan must contain:
 - (i) details on all planned activities; and
 - (ii) a timetable for the delivery of Service activities.

2.11 Facilities Management (FM) Services Plan

- (a) Project Co is to provide an FM Services Plan that sets out its detailed plans and activities for the next year.
- (b) As a minimum, this plan must contain the following (to the extent not covered by the Asset Management Plan):
 - (i) details on all planned activities;
 - (ii) a timetable for the delivery of Service activities;
 - (iii) sub plans to address specific FM services:
 - (A) a General Services Plan that provides the methodology, mechanisms and procedures to address the requirements of section 2.1 of the Output Specification Part C Section 4 Facilities Management Services;
 - (B) a Utilities Management Plan that provides the methodology, mechanisms and procedures to address the requirements of section 2.3 of the Output Specification Part C Section 4 Facilities Management Services;
 - (C) a Waste Management and Disposal Plan including clinical waste that provides the methodology, mechanisms and procedures to address the requirements of section 2.4 of the Output Specification Part C Section 4 Facilities Management Services;

- (D) a Grounds Maintenance Plan that provides the methodology, mechanisms and procedures to address the requirements of section 2.5 of the Output Specification Part C Section 4 Facilities Management Services;
- (E) a Pest Control Plan that provides the methodology, mechanisms and procedures to address the requirements of section 2.6 of the Output Specification Part C Section 4 Facilities Management Services; and
- (F) a Cleaning Plan including environmental cleaning of the health centre(s) that provides the methodology, mechanisms and procedures to address the requirements of section 2.7 of the Output Specification Part C Section 4 Facilities Management Services.

2.12 Asset Management Plan

- (a) Project Co must develop, implement and update an Asset Management Plan in accordance with the requirements of this deed.
- (b) The Asset Management Plan must include:
 - (i) the approach Project Co will undertake to interface and communicate on FM Services matters with the State;
 - (ii) The management structure, responsibilities and lines of communication put in place by Project Co for the management and delivery of the FM Services;
 - (iii) The systems which will be implemented in the delivery of the FM Services, including:
 - (A) Project Co's approach to the development of an Asset Information System that meets the requirements of PAS 1192-3:2014 including data transfer processes to:
 - (I) create an Asset information model (**AIM**);
 - (II) exchange Asset information with the Project information model (**PIM**); and
 - (III) record information relating to the disposal, decommissioning or demolition of an Asset;
 - (B) details on how:
 - (I) AIM will be used to support organisational requirements;
 - (II) AIM will be updated as the Asset changes; and
 - (III) AIM will be used as a resource for Project Co;
 - (C) details on the systems that will be used to monitor and facilitate Service Failure reporting and rectification monitoring including:
 - (I) How Project Co will log, manage, respond, rectify and report Service Failures, queries and requests relating to the FM Services;
 - (II) Notification of and progress updates regarding faults, complaints, maintenance events and Services Failures;
 - (III) Requests for temporary changes to the delivery and scope of the FM Services;
 - (IV) The approach to the delivery of soft FM Services, planned and unscheduled maintenance in the state management unit during business hours and after business hours;
 - (V) The approach to monitoring and response to security systems, fire systems and building systems alarm response; and

- (VI) Requests for information and additional Monthly reporting if required by the State;
- (iv) details of the qualifications and experience of the Staff providing the FM Services;
- (v) details of the collection and storage of FM Services records;
- (vi) **Annual Asset works:** an annual works plan, covering refurbishment and replacement and augmentation of the Correctional Complex for the coming year;
- (vii) **5-year Asset works:** a 5-year high-level works plan, covering refurbishment and replacement and augmentation of the Correctional Complex for the next 5 operating years;
- (viii) Consolidated programmed Planned Maintenance Schedules must:
 - (A) list each Planned Preventative Maintenance activity, for each Asset, and show the frequency at which each maintenance activity is to be undertaken over the coming year;
 - (B) be developed to satisfy the FM Services Specification and in particular the condition and Performance standards; and
 - (C) be entered into the Asset Information System (**AIS**) to facilitate electronic tracking and storage of maintenance information, include the following for each Asset:
 - (I) timing of renewal with supporting justification;
 - (II) location and maintenance type;
 - (III) nature and frequency of the maintenance activity;
 - (IV) duration of work and potential disruption to operations/Inmates; and
 - (V) options to minimise disruption to operations/Inmates;
- (ix) **Inspection and testing schedule:** a schedule of all inspections, statutory and regulatory tests that will be required to be carried out in relation to the Site, and biomedical testing of all medical equipment;
- (x) **Whole-of-life assessment:** a consolidated current and predicted whole-of-life refurbishment and replacement schedule for all Assets for the balance of the Term;
- (xi) **Consumables and chemical agents:** a list of consumables and chemical agents to be used in the provision of FM Services including storage and security requirements; and
- (xii) Project Co's approach and methodology to comply with the Residual life provisions as required by this Deed.

2.13 Operating Manuals

Project Co must develop operating manuals for the State's approval that detail all operating policies and procedures, methods, work instructions and General Manager's orders and directions that apply to the Correctional Complex and which otherwise comply with all relevant Legislation and Policies and directions of the Commissioner in accordance with the requirements of outcome 4 (Professionalism and Accountability) of Part B of the Output Specification.

2.14 Communications and Community Relations Plan

Project Co is to provide a comprehensive Communications and Community Relations Plan for the Operating Phase which includes:

- (a) includes how Project Co intends to respond to media enquiries regarding operational issues, including a protocol for liaison with the State and confirmation that media enquiries regarding operational issues must be handled by Project Co in consultation with the State;
- (b) includes the identification of risks involved with the management of each particular stakeholder, highlighting critical issues that may arise and the proposed approaches to managing these risks and strategies to maintain stakeholder relationships;
- (c) includes a strategy for Project Co's interaction with the local community;
- (d) includes a process for identifying and managing key communication risks and issues including:
 - (i) a process for identifying and responding to potential issues and risks;
 - (ii) an approach for dealing with unplanned events; and
 - (iii) a process for providing timely advice to the State in relation to issues and risks;
- (e) includes an approach to media engagement including both proactive and reactive media, as well as designated media spokespeople;
- (f) addresses the State's proposed community and communications activities (if any) as provided by the State (from time to time); and
- (g) includes a process of regular review of the Communications and Community Relations Plan during the year to ensure it remains relevant.

2.15 Quality Assurance Plan

- (a) Project Co must develop, implement and update an Operating Phase Quality Assurance Plan for the Services, as specified in this Deed.
- (b) The Operating Phase Quality Assurance Plan must satisfy the requirements of the Output Specifications.
- (c) The Operating Phase Quality Assurance Plan must include the:
 - (i) organisational structure identifying Project Co's key personnel with quality management responsibilities and accountabilities, including:
 - (A) lines of communication and interfaces with Project Co's overall organisational structure; and
 - (B) minimum skill levels required;
 - (ii) the interfaces of the Operating Phase Quality Assurance Plan with other Plans;
 - (iii) strategy for inspection, witnessing, monitoring and reporting;
 - (iv) auditing procedures for the Operating Phase Quality Assurance Plan;
 - (v) process for developing and managing quality records;
 - (vi) procedures for rectifying non-conformances and managing improvement opportunities, corrective action and preventative action to prevent recurrence; and
 - (vii) reporting requirements.

2.16 Environmental Management Plan

- (a) Project Co must develop, maintain and update an Environmental Management Plan, which complies with the requirements of this Deed.
- (b) The Environmental Management Plan must include:

- (i) organisational structure identifying Project Co's key environmental personnel and personnel with environmental management responsibilities and accountabilities, including:
 - (A) lines of communication and interfaces with Project Co's overall organisational structure; and
 - (B) minimum skill levels required.
- (ii) the interfaces of the Environmental Management Plan with other Plans;
- (iii) a policy or strategy that adheres to ecological sustainable development;
- (iv) Environmental and sustainability initiatives for the Operating Phase;
- (v) energy monitoring and reporting; and
- (vi) environmental management systems and processes to review and monitor performance.

2.17 Business Continuity Plan

Project Co must develop, implement and update a Business Continuity Plan, which includes:

- (a) organisational structure identifying Project Co's key personnel with business continuity responsibilities, including:
 - (i) roles;
 - (ii) lines of communication and interfaces with Project Co's overall organisational structure; and
 - (iii) minimum skill levels and training required;
- (b) processes and procedures for management and communication of critical information;
- (c) assessment of damage and control measures; and
- (d) the management of critical business processes including work health and safety, security of Inmates, operational performance of the Correctional Complex, human resources and payroll.

2.18 Local Industry Participation Plan

Project Co must develop, implement and update a Local Industry Participation Plan, which meets the requirements set out in outcome 4 (Professionalism and Accountability) of Part B of the Output Specification and includes:

- (a) strategies to ensure economic and business opportunities for local goods and service providers are promoted; and
- (b) the extent to which local goods and services providers will participate in the operation of the Correctional Complex.

2.19 Performance Monitoring Program

- (a) Project Co must prepare a Performance Monitoring Program (**PMP**) containing all the performance monitoring activities (including frequencies, systems, methods and audit tools) that Project Co must undertake:
 - (i) to collect performance data;
 - (ii) monitor the quality of the Services; and
 - (iii) to ensure that the Services are being carried out to the level and quality required by this Deed (including the Services Requirements).

- (b) The PMP must be compatible with the Monthly Performance Report as set out in Table 3. The PMP must include the following:
- (i) the monitoring and reporting frequencies, systems, methods and tools that will be used to monitor the delivery of each Service bundle;
 - (ii) the monitoring and reporting frequencies, systems, methods and tools that will be used to monitor Project Co's performance against the various elements of the payment structure (including Key Performance Indicators) and the Outcome Specification;
 - (iii) the remediation process should there be a failure to accurately measure the performance standards specified in the Output Specification;
 - (iv) a coherent process and procedures to assess, monitor and calculate payment adjustments for failure to meet the Key Performance Indicator benchmarks and Available Inmate Place requirements; and
 - (v) the nominated Staff member responsible for the monitoring of each Key Performance Indicator.
 - (vi) the approach, systems, methods and tools to ensure that:
 - (A) all required performance information is entered into the OIMS CSNSW Offender Integrated Management System as required in the Output Specifications;
 - (B) all records, statistics, registers and journals are maintained, as required in the Output Specifications; and
 - (C) all original performance reports for monitoring and auditing are maintained.

2.20 Aboriginal Participation Plan (Operations)

- (a) Project Co must develop, implement and update an Aboriginal Participation Plan (Operations) for the Services as specified in clause 10.13 of this Deed using the template provided at: <https://www.procurepoint.nsw.gov.au/policy-and-reform/construction-policies/aboriginal-participation-construction-policy>; and
- (b) Project Co must provide detail on the methodology, programs and initiatives they will implement in order to target the minimum level of workforce participation which must be no less than 8%.

2.21 Reviewable Services Plan

The Reviewable Services Plan must include:

- (a) the methodology and approach Project Co will use with respect to Reviewable Services;
- (b) details on how the Reviewable Services regime will be implemented, updated and monitored;
- (c) the assumptions and basis on which Project Co has priced the Reviewable Services for the first Reviewable Services Term, including:
 - (i) details of relevant margins;
 - (ii) details in respect of the allocation of responsibilities and risks between Project Co, the Operator and any other Subcontractors in respect of the performance of the Reviewable Services; and
 - (iii) the staffing profiles and shift patterns in respect of the performance of the Reviewable Services, including details of the number of full time equivalent positions involved in performing the Services, consistent with the Financial Model.

2.22 Correctional Complex Access Protocols

- (a) The Correctional Complex Access Protocols must contain the processes, systems and procedures Project Co will use to provide access for those people entitled to access the Correctional Complex and any Inmates under this Deed; and
- (b) details on how Project Co will ensure that all people who access the Correctional Complex, including Inmates do so in accordance with these protocols.

2.23 Work Health Safety (WHS) Management Plan

The WHS Management Plan must be a documented work health and safety management plan which includes the content required to be included in a WHS management plan prepared under the WHS Legislation (even if Project Co is not a principal contractor under the WHS Legislation) and also provides for:

- (a) arrangements in relation to general construction industry training, work activity based health and safety training and site specific health and safety training;
- (b) arrangements for employees, agents and contractors of Project Co to be made aware of the content of the WHS management plan;
- (c) arrangements for review of the WHS management plan as Project Activities change;
- (d) a statement that the WHS management plan is available for inspection at the Site; and
- (e) arrangements for auditing and monitoring of work health safety and rehabilitation at the Site (including of any Subcontractors).

2.24 Handover Package

The Handover Package is to contain key information to enable the State or other incoming party to take over operations of the Correctional Complex. As a minimum, this plan is to contain the following information:

- (a) **(Contracts)**: a list of all agreements, permits, licences or other documents which are material to the delivery of the Services, including (as appropriate) the contact number, name, address, email address, telephone and facsimile numbers of counterparties, contract price, value and subject matter;
- (b) **(Systems)**: a list of systems (including communication systems) used (computer and otherwise) for the delivery of the Services, together with a description of the systems and master passwords where applicable. Software licences for any software required for continued operation and management of the systems must be transferred to the State at the end of the Operating Phase as part of the final Handover Package or following the State exercising step-in rights in accordance with this Deed;
- (c) **(Daily operations)**: a list of any other information key to the daily operation of the Services, including:
 - (i) updated Plans;
 - (ii) details of the location of keys and access cards to the Correctional Complex; and
 - (iii) lists of plant and other Assets relevant to delivery of the Services to the Correctional Complex;
- (d) **(Staff)**: details of each member of Staff, including:
 - (i) names, work email addresses, work telephone numbers, roles and responsibilities;
 - (ii) the date on which the person became a member of Staff;
 - (iii) evidence of security checks undertaken;
 - (iv) terms and conditions of employment or other contract; and

- (v) all payments, benefits or changes to terms and conditions of employment or other contract promised to any member of Staff;
- (e) **(Correctional Complex information):**
 - (i) records relevant to location plans, boundaries and titles to the Site;
 - (ii) current and accurate 'as built' and 'as installed' drawings and specifications showing all modifications and augmentations, constructed or installed during the Operating Phase, stored in editable electronic format;
 - (iii) all area and buildings volume data;
 - (iv) condition surveys;
 - (v) CAD drawings for architectural, civil/structural, mechanical, electrical and engineering elements ensuring that all systems provided are compatible for access of information by the State; and
 - (vi) records relevant to compliance with Law, Policy and Approvals, licences and registrations maintained by Project Co; and
- (f) **(Approvals correspondence):** copies of all:
 - (i) correspondence with all relevant Authorities, the State, consultants, contractors and Key Subcontractors in relation to Approvals as required under the Communications and Community Relations Plan);
 - (ii) Approvals correspondence related to subsequent building works and alterations and additions to the Services; and
 - (iii) records relevant to any Approvals obtained by Project Co in respect of the Site or the delivery of the Services.

2.25 Disengagement Plan

The Disengagement Plan must:

- (a) specify the tasks, the resources and the personnel to be used to effect disengagement and ensure the seamless migration of responsibility for the provision of the Services during the disengagement period;
- (b) specify the assets, fitout, records, information, data and other tangible or intangible deliverables deliverable to the State on or prior to the last day of the disengagement period; and
- (c) include a detailed description of the following:
 - (i) the items that make up the Handover Package;
 - (ii) the tasks to be performed to effect disengagement;
 - (iii) the disengagement deliverables to be delivered to the State on or prior to the last day of the disengagement period;
 - (iv) the timing and methodology for undertaking a final survey of the Relevant Infrastructure to ensure compliance with the Handover Condition;
 - (v) a timetable (based on the likely scenarios) incorporating staged handovers of different parts of the Services;
 - (vi) key dependencies and risks;
 - (vii) risk mitigation planning including provision of the Services during the disengagement period; and

- (viii) the rights of access to, and use of, any premises owned or leased by Project Co and used in the provision of the Services by the State or other incoming party a new entity (together with the charges payable (if any)).

Schedule 16 – Payment Schedule

1. Definitions

In this Schedule:

Actual Floating Rate means the Base Rate (as defined under the Facility Agreement) for the relevant Month or any corresponding rate under any agreement that replaces the Facility Agreement upon any Refinancing.

Actual Floating Rate Interest Payment means, in respect of the relevant Month, the interest payable at the Actual Floating Rate on the Base Case Floating Rate Debt. The method of calculating the Actual Floating Rate Interest Payment must be consistent with the method for calculating the Base Case Floating Rate Interest Payment in the Financial Close Financial Model. For the purposes of calculating the Floating Rate Adjustment in section 11, the Actual Floating Rate Interest Payment is to be expressed as a positive number.

Availability Failure Abatement means the sum of the Available Inmate Place Failure Abatements and the Meal Availability Failure Abatements for the relevant Month, and is represented by the symbol $\sum AFA_n$.

Availability and **Available Inmate Place** means, on any day during the Operating Phase, an Inmate Place:

- (a) where the Cell or bedroom in which that Inmate Place is located achieves the minimum standards as specified in the Output Specification, VCFSG, the Proposal and Policies, in respect of:
 - (i) lighting (availability, operation, control, and lux levels);
 - (ii) power supply (essential and non essential);
 - (iii) water (availability, operation, temperature, quality);
 - (iv) bathroom amenities (availability, operation, control, and drainage);
 - (v) door;
 - (vi) heating and ventilation (air flow, air quality, operation, control, temperature)
 - (vii) Fire and Life Safety Engineering Services (availability, operation and control) as specified in the Output Specification;
 - (viii) the following Security Systems, as specified in the Output Specification (availability operation and control);
 - A. Access Control System (as specified in the Output Specification);
 - B. CCTV system;
 - C. Mobile Duress Alarm System; and
 - D. Cell Intercommunication System (as specified in the Output Specification);
- (b) all Laws relating to Inmate Places or any Inmate occupying Inmate Places were complied with in full;
- (c) any Inmate occupying an Inmate Place had available appropriate health services in accordance with the Output Specification and the Proposal;
- (d) any Inmate occupying an Inmate Place had available adequate clothes for the prevailing climate conditions, for any industry or work which the Inmate was required to do or to maintain the health of the Inmate in accordance with the Clothing Bedding and Hygiene Requirements in the Services Specification;
- (e) any Inmate occupying that Inmate Place had access to potable water;

- (f) any Inmate occupying an Inmate Place had access to an appropriate mattress, bedding and a pillow;
- (g) no Inmate was required to share a Cell or bedroom except as permitted by this Deed; and
- (h) the levels of safety and security in the Correctional Complex were maintained as required under the Output Specification and Performance Regime.

Available Inmate Place Failure Abatement has the meaning given to it in section 13.4 of this Schedule.

Base Case Floating Rate Debt means, in respect of the relevant Month, the amount of outstanding senior debt labelled as “Base Case Floating Rate Debt” in the Model Output Schedule (as adjusted in accordance with section 11(e) and subject to State consent provided under clause 41 of this Deed) upon which floating rate interest payments are made. For the purposes of calculating the Floating Rate Adjustment in section 11, the Base Case Floating Rate Debt is to be expressed as a positive number.

Base Case Floating Rate Interest Payment means, in respect of the relevant Month, the interest payable at the Base Case Interest Rate on the Base Case Floating Rate Debt, as specified in the Model Output Schedule.

Base Case Interest Rate means, in respect of the relevant Month, the reference floating interest rate (exclusive of any margin) as specified in the Model Output Schedule.

BMS has the meaning given to that term in the Output Specification.

Cell means cellular accommodation as defined in the Output Specification.

Consumer Price Index or **CPI** means the Consumer Price Index (all Groups) for Sydney published quarterly by the Australian Bureau of Statistics or, if section 2.2 applies, the index determined in accordance with that section.

CPI Annual Multiplier at any time means:

- (a) the most recently published CPI for a Quarter ending 30 June; divided by
- (b) the published CPI for the Quarter ended 30 June 2017.

Erroneous Release has the meaning given in the Performance Regime.

Escorts means:

- (a) transportation of one or more Inmates to an external health facility and return travel time for the Staff;
- (b) travel time for the Staff to an external health facility and transportation of one or more Inmates from the external health facility to the Correctional Complex;
- (c) transportation of one or more Inmates for the purposes of compassionate leave within the northern region; or
- (d) transportation to or from authorised locations within the northern region for Temporary Leave.

Floating Rate Adjustment has the meaning given to it in section 11 of this Schedule.

Floating Rate Adjustment Commencement Date means the date specified as such in the Model Output Schedule.

FM Service Failure means any failure to meet, comply with or otherwise satisfy the requirements of the FM Services as defined in the Output Specification.

Health Price Index MDH or **HPI MDH** means the Sydney CPI Medical, Dental and Hospital services Index published quarterly by the Australian Bureau of Statistics or, if section 2.2 applies, the index determined in accordance with that section.

HPI Annual Multiplier at any time means:

- (a) the most recently published HPI MDH for a Quarter ending 30 June; divided by
- (b) the published HPI MDH for the Quarter ended 30 June 2017.

Inmate Place means a unit of accommodation for occupation by an Inmate in a Cell or in a bedroom at the Correctional Complex (which, in the case of dual Cells will be counted as two units when occupied by two Inmates), up to the maximum number of Available Inmate Places to be provided by Project Co in accordance with the Proposal which is no less than 1,700.

Inmate Place Unavailability means an Inmate Place that is not an Available Inmate Place.

Level 1 Performance Range has the meaning given to it in Schedule 17.

Level 2 Performance Range has the meaning given to it in Schedule 17.

Meal Availability Failure means a failure to provide any Inmate a meal (to the extent that the Inmate is physically present at the Correctional Complex at the time of the meal) in accordance with the minimum services requirements for Food Services set out in the Output Specification.

Meal Availability Failure Abatement means the amount calculated in accordance with section 13.3.

Minimum Population means:

- (a) for the 1,000 bed, male maximum security Correctional Centre, [REDACTED]
- (b) for the 300 bed, female maximum security Correctional Centre, [REDACTED] and
- (c) for the 400 bed, male minimum security Correctional Centre, [REDACTED]

NSW Ambulance Charges means the cost of emergency ambulance treatment or transport charged to Project Co by the Ambulance Service of NSW, except to the extent such treatment is required as a result of a failure by Project Co to perform the Project Activities in accordance with this Deed.

Pharmacy Costs means Project Co's third party costs in relation to:

- (a) the purchase of Pharmaceuticals or Pharmaceutical Related Items; and
- (b) any Pharmaceutical Supply or Urgent Pharmaceutical Supply,

inclusive of all discounts, rebates, allowances and deductions but excluding any Project Co or Project Co's Associates mark-ups, profit margin or administration, management or other fees.

Pharmaceutical Related Items means dose administration aids.

Pharmaceutical Reporting Spreadsheet means the spreadsheet titled as such in Schedule 15.

Pharmaceutical Supply means the freight, transport and delivery of Pharmaceutical and Pharmaceutical Related Items to the Correctional Complex within standard delivery times.

Pharmaceuticals means:

- (a) all prescription medications determined or prescribed by:
 - (i) a registered medical practitioner;
 - (ii) a registered dentist; or
 - (iii) a registered optometrist;
 - (iv) a registered (and suitably endorsed) podiatrist; and
 - (v) an authorised registered nurse practitioner,including those Pharmaceuticals issued from Imprest Stock; and
- (b) nurse initiated medication issued from Imprest Stock.

Quality Failure has the meaning given to it in section 13.7 of this Schedule.

Rectification Period means:

- (a) for Unavailability, the aggregate of:
 - (i) the period from the commencement of the Inmate Place Unavailability, as determined in accordance with section 13.5(b), up to (and including) midnight on that calendar day; and

- (ii) subject to extensions granted under section 13.5(d), 24 hours from midnight on the calendar day in which the period of Inmate Place Unavailability commenced; and
- (b) for an FM Service Failure, subject to extensions granted under section 13.5(d), the period of time set out in the FM Table in section 3.16 of Schedule 17 (Performance Regime) for the relevant categorisation of the FM Service Failure.

Rectification Notice has the meaning given to it in section 13.5(f)(i).

Rectify, Rectified, Rectifying or Rectification means Project Co doing all that is required to rectify a FM Service Failure or an Inmate Place Unavailability (as the case may be), including in order to ensure that the Correctional Complex (or any part of it) is Fit For Purpose and Project Co otherwise meets or exceeds the performance standards set out in the Output Specification.

Remand Threshold has the meaning given to it in section 6(b).

Respond, Response or Responded means Project Co does all of the following:

- (a) establishes the nature, location and cause of the Unavailability or FM Service Failure (as the case may be);
- (b) commences all necessary actions to address the Unavailability or FM Service Failure (as the case may be) and fulfil health and safety requirements;
- (c) if applicable, appoints a suitably qualified, experienced and accountable person to pursue a Rectification;
- (d) assesses the situation and, within reasonable time, takes or authorises any required action; and
- (e) records an assessment of the Unavailability or FM Service Failure (as the case may be) in the performance monitoring program in accordance with the minimum requirements for General Services as set out in the Output Specification.

Target Performance Range has the meaning given to it in Schedule 17.

Temporary Fix has the meaning given to it in section 13.6.

Unavailability means an Inmate Place Unavailability, and **Unavailable** will be construed accordingly.

Urgent Pharmaceutical Supply means the freight, transport and delivery of Pharmaceuticals and Pharmaceutical Related Items outside of standard delivery times in exceptional circumstances where necessitated by clinical need as determined by suitably qualified Staff of Project Co or any of its Associates.

Wage Price Index or **WPI** means the Wage Price Index: Total Hourly Rates of Pay Excluding Bonuses (New South Wales, All Industries, Public and Private) published quarterly by the Australian Bureau of Statistics or, if section 2.2 applies, the index determined in accordance with that section.

WPI Annual Multiplier at any time means:

- (a) the most recently published WPI for a Quarter ending 30 June; divided by
- (b) the published WPI for the Quarter ended 30 June 2017.

2. Indexation

2.1 Indexation

All amounts to be “Indexed” under this Deed are indexed by multiplying the relevant number by the CPI Annual Multiplier or, if expressly specified, the WPI Annual Multiplier or HPI Annual Multiplier (as applicable).

2.2 Changes to Indexes

The following rules apply to all of the indices referred to in section 2.1:

- (a) if there is a change in the coverage of the index from that applying at the date of this Deed and the new index is linked to another index, the defined term is to be referable to the new index;
- (b) if the index is published and there is a change in its:
 - (i) coverage and it is not linked to another index; or
 - (ii) periodicity,the parties must request the President of the Institute of Actuaries of Australia (or the President’s nominee) to determine:
 - (iii) whether the index remains appropriate as a general indicator of the rate of price change for the relevant goods and services; and
 - (iv) if it is not, what other index should be used as a substitute index for the purpose of the defined term’s use in this Deed,and that determination is final and binding on the parties;
- (c) if there is a change in the reference base of the index from that applying at the date of this Deed and the Australian Bureau of Statistics provides a conversion factor, that conversion factor must be applied to calculate revised figures for the purpose of the defined term’s use in this Deed, in terms of the new reference base. Where possible the conversion factor should be applied to both (a) and (b) in the definitions of CPI Annual Multiplier, WPI Annual Multiplier or HPI Annual Multiplier (as applicable) so that going forward both are expressed in the terms of the new reference base;
- (d) if there is a change in the reference base of the index from that applying at the date of this Deed and the Australian Bureau of Statistics does not provide a conversion factor, the parties must request the President of the Institute of Actuaries of Australia (or the President’s nominee) to calculate a revised index for the purposes of the defined term’s use in this Deed, and that calculation is final and binding on the parties;
- (e) if the index ceases to be published and the Australian Bureau of Statistics publishes another index which is:
 - (i) a replacement of that index; and
 - (ii) linked to the index,the defined term must be re-calculated to the same reference base as the replacement index;
- (f) if the index ceases to be published and the Australian Bureau of Statistics does not publish another index which is linked to the index, the parties must request the President of the Institute of Actuaries of Australia (or the President’s nominee) to calculate a revised index for the purposes of the defined term’s use in this Deed, and that calculation is final and binding on the parties;
- (g) if the index ceases to be published and the Australian Bureau of Statistics does not publish another index in place of the index, the parties must request the President of the Institute of Actuaries of Australia (or the President’s nominee) to determine an appropriate index which is a general indicator of the rate of price change for the relevant goods and services, and that determination is final and binding on the parties; and

- (h) if a Change in Law causes a material aberration in the index, the index must be adjusted to remove the impact of that material aberration in accordance with any such methodology published by a responsible Authority for adoption by business or, in the absence of such publication, within six months of the occurrence of the material aberration as agreed by the parties or, in the absence of agreement, as determined by an independent expert in accordance with clause 52 of this Deed.

3. Monthly Service Payment

3.1 Calculation of the Monthly Service Payment

- (a) The Monthly Service Payment for the nth Month of the Operating Phase (MSP_n) is:

$$MSP_n = BF_n + VA_n + CA_n + LC_n + PTC_n + EP_n + IP_y + FRA_n + AF_n - TD_n$$

where:

- BF_n = the Base Fee for Month n, calculated in accordance with section 4;
- VA_n = the Volumetric Adjustment for Month n, calculated in accordance with section 5;
- CA_n = the Cohort Adjustment for Month n, calculated in accordance with section 6;
- LC_n = the Lifecycle Charge for Month n, calculated in accordance with section 7;
- PTC_n = Pass Through Costs for Month n, calculated in accordance with section 8;
- EP_n = Escort Payments for Month n, calculated in accordance with section 9;
- IP_y = for the month envisaged by section 10, the Incentive Payment for the relevant Re-incarceration Year, calculated and payable (if applicable) in accordance with section 10;
- FRA_n = Floating Rate Adjustment for Month n, calculated in accordance with section 11;
- AF_n = Activity Fee for Month n, calculated in accordance with section 12;
- and
- TD_n = the Total Deductions for Month n, calculated in accordance with section 13.

- (b) MSP_n cannot be a negative number. If MSP_n is a negative number, it is deemed to be zero.

3.2 First and Last Month of the Operating Phase

- (a) Where the Operating Phase does not commence on the first day of a Month, $MRSP_n$, U_n , I_n (each as defined in section 4.1(a)) and CA_n will be adjusted proportionately for:

- (i) the first Month in the Operating Phase; and
- (ii) the last Month in the Operating Phase,

having regard to the number of days in the relevant partial Month as a percentage of the total number of days in the full calendar Month.

- (b) Where the Operating Phase does not commence on the first day of a Month, MAP_n and $MNRSP_n$ (each as defined in section 4.1(a)) will be adjusted proportionately for the first Month and last Month in the Operating Phase having regard to the number of days in the relevant partial Month as a percentage of the total number of days in the full calendar Month.

3.3 Treatment of time series payments and indexing factors in Model Output Schedule

- (a) MAP_n , $MNRSP_n$, AIF_n and SIF_n (each as defined in section 4.1(a)) and LC_n (as defined in section 3.1(a)) are set out in time series format over the life of the Operating Phase in the Model Output Schedule. For the avoidance of doubt:
- (i) if the Date of Commercial Acceptance is later than the Date for Commercial Acceptance, it is intended that Project Co will forgo the payments, indexed at the relevant indexing factors, in the date range between these two dates (adjusted in accordance with section 3.2(b) for the first Month in the Operating Phase, if applicable); or
 - (ii) if the Date for Commercial Acceptance is changed as a result of an Extension Event, it is intended that the dates in the Model Output Schedule will be amended, pursuant to clause 59 of the Project Deed, such that the time series payments remain whole and shift in time.

4. Base Fee

4.1 Calculation of the Base Fee

- (a) The Base Fee for the nth Month of the Operating Phase (BF_n) is calculated as:

$$BF_n = (MAP_n \times AIF_n) + ((MNRSP_n + MRSP_n) \times SIF_n) + U_n + (I_n \times CPI_n)$$

where:

MAP_n = prior to the CDPD Payment Date, the Monthly Availability Payment as set out in the Model Output Schedule or following the CDPD Payment Date, the Monthly Availability Payment as adjusted in accordance with clause 59.3(a)(i) of the Project Deed;

$MNRSP_n$ = Monthly Non-Reviewable Service Payment, as set out in the Model Output Schedule;

$MRSP_n$ = Monthly Reviewable Service Payment, as set out in the Model Output Schedule;

AIF_n = the Availability Indexing Factor for Month n calculated as:
 $N\% + C\% \cdot CPI_n + W\% \cdot WPI_n + H\% \cdot HPI_n$

where N%, C%, W% and H% are the proportions of each indexing element of the fee as set out in the Model Output Schedule and following the CDPD Payment Date, adjusted in accordance with clause 59.3(a)(i) of the Project Deed;

SIF_n = the Services Indexing Factor for Month n calculated as:
 $J\% + K\% \cdot CPI_n + L\% \cdot WPI_n + M\% \cdot HPI_n$

where J%, K%, L% and M% are the proportions of each indexing element of the fee as set out in the Model Output Schedule;

U_n = Monthly Utilities fee, calculated in accordance with section 4.2;

I_n = Monthly Insurance fee, as set out in the Model Output Schedule;

CPI_n = CPI Annual Multiplier applicable for Month n;

WPI_n = WPI Annual Multiplier applicable for Month n; and

HPI_n = HPI Annual Multiplier applicable for Month n.

4.2 Calculation of the Monthly Utilities fee

- (a) The Monthly Utilities fee will be calculated one Month in arrears for each Month n in the Operating Phase except for the final Month in the Operating Phase, whereby the Monthly Utilities fee is calculated with reference to Month n-1 and Month n.
- (b) The Monthly Utilities fee for the nth Month of the Operating Phase (U_n) is calculated as:

$$U_n = \sum_k UP_k$$

Where UP_k is the Utilities Payment for the kth Utility and is calculated as the lesser of:

- (i) The actual third party costs incurred by Project Co for the Month n-1 in respect of the kth Utility inclusive of all discounts, rebates, allowances and deductions but excluding any default or late interest, balancing charges, charges due to extraordinary peaks in usage, Project Co or Project Co's Associates mark-ups, profit margins or administration, management or other fees; and
- (ii) The Monthly Utility fee calculated in the Model Output Schedule (as updated in accordance with clause 34(f) of the Deed) in respect of the kth Utility and Month n-1 as multiplied by the CPI Annual Multiplier (adjusted in accordance with section 3.2(a), as required).
- (c) Where Project Co receives statements for the kth Utility from the supplier on a quarterly basis, UP_k will be equal to [REDACTED] for all Months other than the Month in which the statement is received. For the purposes of section 4.2(b)(ii), the Monthly Utility fee calculated in the Model Output Schedule for the kth Utility will be adjusted appropriately to represent a quarterly amount to provide a like for like comparison with the statement received for the kth Utility.
- (d) As part of its Payment Claim prepared under clause 36.2(a) of this Deed, Project Co must prepare calculations to show the amounts for each of 4.2(b)(i) and 4.2(b)(ii) for each Utility and provide third party evidence of the costs incurred by Project Co in respect of the relevant Month in accordance with section 4.2(b)(i).

5. Volumetric Adjustment

5.1 Calculation of the Volumetric Adjustment

- (a) The purpose of the Volumetric Adjustment is to compensate Project Co for the additional costs of operation in accordance with this section where the number of Inmates at any Correctional Centre exceeds the relevant Minimum Population and clause (b)(ii) of the definition of Modification does not apply.
- (b) The Volumetric Adjustment will not be negative (i.e. the Volumetric Adjustment will either be zero or will be positive).
- (c) The Volumetric Adjustment will be calculated with reference to the bands of Inmate numbers and fixed and variable fees set out in the Model Output Schedule for each Correctional Centre (as Indexed by SIFn) (as defined in section 4.1(a)) and in accordance with section 5.1(e).
- (d) If the State forecasts:
- (i) an increase to the Inmate numbers at any Correctional Centre above the Minimum Population; or
- (ii) an increase or decrease in the Inmate numbers at any Correctional Centre beyond the upper or lower limit of the band as previously adjusted in accordance with this section 5.1,

then the State must use reasonable endeavours to provide Project Co with as much notice as is practicably possible of the forecast banding for the relevant Correctional

Centre and the date whereby the forecast banding is expected to apply (**VA Change Date**).

- (e) The Volumetric Adjustment for Month n (VA_n) for a Correctional Centre is calculated as follows:
 - (i) **Step 1 (VA Population):** For each day, calculate the VA Population which is the higher of:
 - A. the actual number of Inmates at the Correctional Centre as measured at 12am (**Actual Population**); and
 - B. the lower limit of the band forecast by the State to apply from that VA Change Date in accordance with section 5.1(d) or, where no forecast was provided in accordance with section 5.1(d), the lower limit of the band previously adjusted in accordance with this section 5.1 and active the day immediately preceding the VA Change Date;

except that the VA Population will be equal to the Actual Population from the date that falls:
 - C. four weeks after the date that the State gave notice in respect of that VA Change Date in accordance with section 5.1(d); or
 - D. where the State did not give notice in accordance with section 5.1(d), four weeks after the actual date the Inmate population in that Correctional Centre changed beyond the upper or lower limit of the band as previously adjusted in accordance with this section 5.1.
 - (ii) **Step 2:** Deduct the Minimum Population for that Correctional Centre to find the daily Variance in Population (**VIP**);
 - (iii) **Step 3:** Multiply the VIP by the relevant Variable Fee per Inmate per day and add to this the Fixed Fee per day (**DVA**), as determined by the bandings in the applicable table of rates in the Model Output Schedule; and
 - (iv) **Step 4:** Sum DVA for every day in the Month.
- (f) For the avoidance of doubt, the Volumetric Adjustment can increase or decrease over time as the Inmate population at each Correctional Centre fluctuates.

6. Cohort Adjustment

- (a) The purpose of the Cohort Adjustment is to enhance value for money and provide flexibility to the State in the event that the number of Inmates on remand at the Correctional Complex exceeds the Remand Threshold.
- (b) The Cohort Adjustment for Month n (CA_n) is calculated as:

$$\text{If } RI_n / TP_n \leq RT, CA_n = 0$$

$$\text{If } RI_n / TP_n > RT, CA_n = (RI - (RT * TP)) \times CAR \times CPI_n$$

Where:

RI_n means the daily average number of Inmates on remand in Month n;

RT means the Remand Threshold of ██████████

TP_n means the daily average Inmate population at the Correctional Complex in Month n;

CAR means the monthly Cohort Adjustment Rate as set out in the Model Output Schedule; and

CPI_n means the CPI Annual Multiplier for Month n.

- (c) For the purposes of this section, an Inmate in custody under sentence and under remand is to be treated as an Inmate in custody under sentence.

7. Lifecycle Charge

- (a) The Lifecycle Charge for Month n (LC_n) is calculated as:

$LC_n = LP_n \times CPI_n$

where:

LP_n = the Lifecycle Payment for Month n (as set out in the Model Output Schedule); and

CPI_n = CPI Annual Multiplier for Month n.

8. Pass Through Costs

- (a) The Pass Through Costs for the nth Month of the Operating Phase will be the sum of the following:
- (i) Pharmacy Costs which Project Co is entitled to claim in accordance with section 8(b); and
 - (ii) NSW Ambulance charges which Project Co is entitled to claim in accordance with section 8(f).

Pharmaceuticals

- (b) Project Co will only be entitled to claim reimbursement of Pharmacy Costs after Pharmaceuticals have been administered to Custodial Patients (regardless of whether or not a Custodial Patient completes a course of Pharmaceuticals).
- (c) It is a condition precedent to Project Co's entitlement to claim reimbursement of Pharmacy Costs that:
- (i) the Pharmacy Costs were properly and necessarily incurred in accordance with the Services Specification; and
 - (ii) Project Co has complied with its obligations under this Deed in incurring the Pharmacy Costs (including submission of the Pharmaceuticals Reporting Spreadsheet).
- (d) As part of its Payment Claim prepared under clause 36.2(a) of this Deed, Project Co must provide evidence of all Pharmacy Costs actually incurred and paid for by Project Co during the relevant Month.
- (e) Project Co acknowledges and agrees that it is only entitled to claim reimbursement of Pharmacy Costs up to the relevant unit price or rates, or in accordance with the applicable charging formula (as applicable), specified in the terms of the Pharmaceuticals Supplier's appointment in respect of:
- (i) each Pharmaceutical item;
 - (ii) those items of Imprest Stock that have been approved by the State in accordance with clause 29.7(h) of this Deed;
 - (iii) each Pharmaceutical Related Item;
 - (iv) each Pharmaceutical Supply; and
 - (v) each Urgent Pharmaceutical Supply.

NSW Ambulance

- (f) Project Co will only be entitled to claim reimbursement of NSW Ambulance Charges to the extent that the NSW Ambulance Charges were properly and necessarily incurred for the provision of emergency care.
- (g) As part of its Payment Claim prepared under clause 36.2(a) of this Deed, Project Co must provide evidence of all NSW Ambulance Charges actually incurred and paid for by Project Co during the relevant Month.

9. Escort Payments

- (a) Project Co will be paid for each Escort in accordance with this section.
- (b) The amount payable by the State for each Escort is calculated based on the duration of the Escort and the relevant price per one hour interval (or part thereof) as identified in the Model Output Schedule depending on the number of Inmates escorted in that Escort and the security classification of the Inmates escorted (as the case may be).
- (c) The price per one hour interval in the Model Output Schedule will be Indexed by the WPI Annual Multiplier.

10. Incentive Payments

10.1 Definitions

In this section 10:

ATSI means Aboriginal and Torres Strait Islanders

Benchmark Re-Incarceration Rate means the State Re-Incarceration Rate less three percentage points.

Inmates In-Scope means Inmates:

- (a) who were in custody under sentence at a State Correctional Centre for at least three months prior to their release date;
- (b) who did not die within 24 months of their Release Date;
- (c) who were not deported within 24 months of their Release Date;
- (d) who were Released from custody and that Release did not constitute an Erroneous Release; and
- (e) whose Release Dates were in Re-Incarceration Year y-2.

Release or Released means the release of an Inmate from a custodial sentence to re-enter the community whether on completion of a custodial sentence or on parole.

Release Date means the date on which the Inmate was Released from a State Correctional Centre or the Correctional Complex (as the case may be).

Re-Incarceration Rate means the number of RR Eligible Inmates returning to custody under sentence in the NSW correctional centre system within 24 months of their Release Date expressed as a percentage of the total number of RR Eligible Inmates.

Re-Incarceration Year means:

- (a) for the first Re-Incarceration Year, the period of 12 Months commencing from the third anniversary of the Operational Commencement Date;
- (b) subject to paragraph (c) below, each subsequent period of 12 Months; and
- (c) for the final Re-Incarceration Year, the period of 12 Months which expires on the second anniversary of the Final Expiry Date unless terminated earlier, in which case no Incentive Payment will be payable after the Expiry Date.

RR Eligible Inmates means Inmates:

- (a) who were in custody under sentence at the Correctional Complex for a minimum of three months immediately prior to their Release Date;
- (b) who did not die within 24 months of their Release Date;
- (c) who were not deported within 24 months of their Release Date;
- (d) who were Released from custody and that Release did not constitute an Erroneous Release; and
- (e) whose Release Dates were in Re-Incarceration Year y-2.

RR Inmate Group means each of the following groups of Inmates:

- (a) ATSI Inmates;
- (b) Non ATSI Inmates.

State Correctional Centre means any correctional centre operated by the State or a third party provider in the State of New South Wales other than the Correctional Complex.

State Re-Incarceration Rate means the number of Inmates In-Scope returning to custody under sentence in the NSW correctional centre system within 24 months of their Release Date expressed as a percentage of the total number of Inmates In-Scope.

10.2 Incentive Payments

- (a) Incentive Payments will be calculated for each Re-Incarceration Year in accordance with sections 10.2(b) and 10.2(c) and, if relevant, payable in accordance with section 10.2(f).
- (b) Incentive Payments for Re-Incarceration Year y are calculated as follows:

$$IP_y = \sum ((BRR_{y,c} - RR_{y,c}) \times NR_{y,c} \times \text{[REDACTED]} \times CPI_n)$$

where:

BRR_{y,c} means the Benchmark Re-Incarceration Rate for RR Inmate Group c in Re-Incarceration Year y;

RR_{y,c} means the Re-Incarceration Rate for RR Inmate Group c in Re-Incarceration Year y; and

NR_{y,c} means the number of RR Eligible Inmates in RR Inmate Group c.

- (c) Where IP_y is negative:
 - (i) no Incentive Payment will be payable by the State; and,
 - (ii) Project Co will not be required to make a payment to the State.
- (d) Within four weeks of the end of the Re-Incarceration Year, the State will provide Project Co with the Benchmark Re-Incarceration Rate for each RR Inmate Group, the Re-Incarceration Rate for each RR Inmate Group and the number of RR Eligible Inmates for each RR Inmate Group.
- (e) Project Co is then responsible for calculating IP_y and providing these calculations to the State with the next Payment Claim in accordance with section 36.2(a) of the Deed.
- (f) The National counting rules used to measure re-incarceration for the Productivity Commission's Report on Government Services will apply.

11. Floating Rate Adjustment

- (a) This section 11 applies for the purposes of calculating the Floating Rate Adjustment.
- (b) The Floating Rate Adjustment will equal zero for all Months prior to the Floating Rate Adjustment Commencement Date.
- (c) The Floating Rate Adjustment for all Months after and including the Month in which the Floating Rate Adjustment Commencement Date falls is calculated as follows:

$$FRA_n = Int_{actual} - Int_{base}$$

where:

FRA_n = the Floating Rate Adjustment for the Month.

Int_{actual} = the Actual Floating Rate Interest Payment for the Month.

Int_{base} = the Base Case Floating Rate Interest Payment for the Month.

- (d) The Floating Rate Adjustment may be a positive or negative amount.
- (e) Upon a Refinancing, Project Co may request an amendment to the schedule of the Base Case Floating Rate Debt and the Base Case Interest Rate, such that the net present cost to the State of paying the Floating Rate Adjustment for the remainder of the Term based upon the schedule of Base Case Floating Rate Debt and the Base Case Interest Rate as at Financial Close, is equal to the net present cost to the State of paying the Floating Rate Adjustment based upon the revised schedule of Base Case Floating Rate Debt and the revised Base Case Interest Rate. In each case, the net present cost will be calculated at the time of the Refinancing, based upon prevailing market rates, using generally accepted market conventions and Treasury Corporation of New South Wales swap margin pricing methodologies. For the avoidance of doubt, this may include an upfront payment to or from the State as mutually agreed.

12. Activity Fee

The Activity Fee for the nth Month of the Operating Phase is calculated as:

$$AF_n = \sum T \times CPI_n$$

where:

T = The fee corresponding to the following relevant completed task as identified in Section 10 of the Model Output Schedule for the initial or subsequent competitive tender process (as the case may be):

- A. Initial meeting (as per clause 33.6 (c)), Consultation (as per clause 33.6 (d)) and Review of Request for Tender (as per clause 33.6 (e)).
- B. Collaboration with the State (as per clause 33.6 (f)), Offers (as per clause 33.6 (g)) and Content of Offers (as per clause 33.6 (h))
- C. Project Co's obligations if the State was to manage the tender process as per clause 33.6(i).

13. Total Deductions

13.1 Calculation of the Total Deductions

- (a) With the exception of the first three Months of the Operating Phase where TD_n is deemed to be equal to zero provided that clause 29.6(d) of the Deed does not apply, Total Deductions for the nth Month of the Operating Phase (TD_n) are calculated as:

$$TD_n = \sum AFA_n + \sum QFA_n$$

where:

$\sum AFA_n$ = Availability Failure Abatement for the relevant Month, calculated in accordance with section 13.2;

$\sum QFA_n$ = Quality Failure Abatement for the relevant Month, calculated in accordance with section 13.7.

- (b) If an event occurs which causes both Unavailability and a Quality Failure, then an Availability Failure Abatement will be calculated in accordance with section 13.2 of this

Schedule and a Quality Failure Abatement will be calculated in accordance with section 13.7 of this Schedule.

- (c) Any errors or omissions that are found to be deliberate instances of concealing or omitting to report an Availability Failure Abatement or a Quality Failure Abatement will attract a reporting failure factor equal to [REDACTED] of the relevant Availability Failure Abatement or Quality Failure Points.
- (d) In the Month that a reporting failure is identified (regardless of when or how it is identified) Project Co is required to record the correct details regarding the Availability Failure Abatement or Quality Failure Abatement in an amended monthly report for the Month in which the error occurred. The Monthly Service Payment for the Month in which the reporting failure is identified will be adjusted to take account of any overpayment by the State in the Month that the reporting failure relates to.

13.2 Calculation of the Availability Failure Abatement

The Availability Failure Abatement for the relevant Month ($\sum AFA_n$) is calculated as:

$$\sum AFA_n = \sum MAA_n + \sum AIPFA_n$$

where:

$\sum MAA_n$ = the sum of Meal Availability Failure Abatements calculated in accordance with section 13.3.

$\sum AIPFA_n$ = the sum of Available Inmate Place Failure Abatements for the relevant Month, calculated in accordance with section 13.4.

13.3 Calculation of the Meal Availability Failure Abatement

The Meal Availability Failure Abatement for the nth Month of the Operating Phase ($\sum MAA_n$) is calculated as:

$$\sum MAA_n = \sum_n (MAF_n \times MAFA) \times AIF_n$$

where:

MAF_n = The number of Meal Availability Failures in the relevant Month;

MAFA = the Meal Availability Failure Amount of [REDACTED] per Meal Availability Failure.

13.4 Calculation of the Available Inmate Place Failure Abatement

- (a) The Available Inmate Place Failure Abatement amount for each Inmate Place Unavailability in the nth Month of the Operating Phase ($AIPFA_n$) is calculated as:
 - (i) [REDACTED] per day, or part thereof, (as Indexed by AIF_n) for the first seven days; plus
 - (ii) [REDACTED] per day, or part thereof, (as Indexed by AIF_n) for any subsequent days, from the expiry of the Rectification Period for that Inmate Place Unavailability until the Inmate Place Unavailability is Rectified.
- (b) To the extent that an Inmate Place Unavailability continues beyond the end of the nth Month:
 - (i) an Available Inmate Place Failure Abatement amount will be calculated for that Inmate Place Unavailability in the nth Month and any subsequent Month until the Inmate Place Unavailability is Rectified; and
 - (ii) the calculation of $AIPFA_{n+1}$ will utilise the higher abatement amount set out in section 13.4(a)(ii) from the eighth consecutive day of the expiry of the Rectification Period for that Inmate Place Unavailability (taking into consideration the number of days the Inmate Place was Unavailable following the expiry of the Rectification Period in any previous Month(s)).

13.5 Rectification

- (a) This section sets out provisions in respect of the Rectification of Inmate Place Unavailability (as relevant to section 13.4) and FM Service Failures (as relevant to the calculation of Quality Failure Abatements in section 13.7).
- (b) The Rectification Period will commence at the moment that the Unavailability or the FM Service Failure (as the case may be):
- (i) first comes to the attention of any member of Staff (including by notification by the State, a Monitor, an Inmate or a Visitor to a member of Staff);
 - (ii) is detected by the BMS or any other automatic monitoring or alarm system; or
 - (iii) should have come to the attention of any member of Staff or should have been detected by the BMS or any other automatic monitoring or alarm system, if Project Co was complying with its obligations under this Deed,
- whichever is the earlier.
- (c) If, at any time during the Operating Phase, Project Co refuses to accept an Inmate to occupy any Available Inmate Place, that Available Inmate Place is deemed to be an Inmate Place Unavailability from the time of such refusal by Project Co until the date on which Project Co makes that Inmate Place Available.
- (d) Project Co may request an extension to the Rectification Period in respect of each Inmate Place Unavailability and each FM Service Failure. The State Representative will not unreasonably refuse to grant such extensions provided that:
- (i) Project Co has promptly Responded and, where applicable, has diligently pursued and effected a Temporary Fix in accordance with section 13.6 to the State Representative's satisfaction;
 - (ii) the Unavailability or FM Service Failure (as the case may be) was not caused by an act or omission of Project Co or a Project Co Associate (including the provision of inadequate resources) or an act or omission of an Inmate, to the extent arising from a failure to perform the Services in accordance with the Deed;
 - (iii) Project Co has diligently pursued a remedy or cure; and
 - (iv) the need for the extension is not due to a failure on the part of Project Co to adhere to Best Services Practices, including the identification, purchasing and storage of spare parts for plant and Equipment whose failure may have a significant impact upon the operation of the Correctional Complex in accordance with this Deed.
- (e) For so long as any Unavailability or FM Service Failure (as the case may be) continues, Project Co must provide to the State a daily update on the progress made in Rectification, together with any revised estimate of the likely date of Rectification.
- (f) The period of the Unavailability or FM Service Failure (as the case may be) will be determined in accordance with the following procedure:
- (i) Project Co must immediately notify the State when it believes that any Unavailability or FM Service Failure (as the case may be) has been Rectified (the "**Rectification Notice**"); and
 - (ii) the time of such Rectification Notice will, subject to section 13.5(i), constitute the time of Rectification.
- (g) The State will be entitled to inspect the area of the Correctional Complex that is the subject of the Rectification Notice and notify Project Co of whether or not it agrees that the Unavailability or FM Service Failure (as the case may be) has been Rectified by no later than 2 Business Days after receipt by the State of the Rectification Notice.
- (h) If the State:
- (i) notifies Project Co that it agrees with the Rectification Notice; or

- (ii) does not notify Project Co in accordance with section 13.5(i),
the relevant Unavailability of FM Service Failure (as the case may be) ceases from the time of the Rectification Notice;
- (i) If the State notifies Project Co that it does not agree with the Rectification Notice in accordance with section 13.5(g), the relevant Inmate Place Unavailability or FM Service Failure (as the case may be) is deemed to continue until Rectification in accordance with section 13.5(h).

13.6 Temporary Fix

- (a) This section sets out provisions in respect of a Temporary Fix for Inmate Place Unavailability (as relevant to section 13.4) and FM Service Failures (as relevant to the calculation of Quality Failure Abatements in section 13.7).
- (b) If Project Co considers that it is not able to Rectify an Inmate Place Unavailability or FM Service Failure (as the case may be) within the relevant Rectification Period, it may seek approval from the State Representative for a course of action that will temporarily ameliorate the consequences of the Unavailability or FM Service Failure (as the case may be) whilst the problem is being Rectified (**Temporary Fix**). Project Co must specify the proposed time by which the Rectification must occur (**Permanent Fix Time**).
- (c) If:
 - (i) the State Representative is unavailable to approve the Temporary Fix; and
 - (ii) prior approval would allow Project Co to avoid any breach of Law and any imminent Service Failures being incurred,

Project Co may proceed to pursue a Temporary Fix, at its risk, pending the State's approval. This section 13.6(c) will only apply where Project Co has sought prior approval and made reasonable efforts to contact the State Representative to request that the approval be granted and a response has not been received.

- (d) Where Project Co has pursued a Temporary Fix in accordance with section 13.6(c), Project Co must by notice in writing to the State, as soon as is reasonably practicable (and in any case at the start of the next day) following the relevant Inmate Place Unavailability or FM Service Failure (as the case may be) confirm the details of the unapproved Temporary Fix and Permanent Fix Time requested, together with details of the attempts to obtain prior approval under section 13.6(b).
- (e) The parties acknowledge that the State is entitled to reject or amend a Temporary Fix request under sections 13.6(b), 13.6(c) and 13.6(d) at its sole discretion
- (f) If the State allows a Temporary Fix, then Project Co must diligently pursue the Temporary Fix within the time frames agreed as part of the Temporary Fix and must ensure that the Unavailability or FM Service Failure (as the case may be) is Rectified by the Permanent Fix Time.
- (g) No approval of a Temporary Fix or Permanent Fix Time, or extension of the Permanent Fix Time or Rectification Period, by the State will:
 - (i) relieve Project Co of any of its obligations or liabilities under this Deed; or
 - (ii) entitle Project Co to make a Claim against the State or its Associates.

13.7 Calculation of the Quality Failure Abatement

- (a) A Quality Failure will arise when:
 - (i) Project Co fails to meet the Target Performance Range for any Key Performance Indicator as set out in section 3 of Schedule 17 (Performance Regime); or
 - (ii) where there is no Target Performance Range for a Key Performance Indicator, where the formula in section 3 of Schedule 17 applicable to that Key Performance Indicator (or that part of the Key Performance Indicator) results in a value greater than zero.

- (b) Where a Quality Failure occurs in a Month, Quality Failure Points (**QFPs**) will accrue and will be calculated with reference to the relevant Key Performance Indicator and methodology for the calculation of QFPs set out in section 3 of Schedule 17 (Performance Regime).
- (c) Where two or more Quality Failures arise from the same incident, the higher of the calculated QFPs will apply.
- (d) To the extent that:
- (i) the same Quality Failure occurs in two or more Months within a period of six consecutive Months; and
 - (ii) Project Co's performance falls within the Level 2 Performance Range for each of those Months,
- the QFPs which accrue in respect of that KPI or that part of the KPI for the second Month and any subsequent Months where 13.7(d)(ii) continues to apply will be multiplied by a factor of two.
- (e) The Quality Failure Abatement for the Month ($\sum QFA_n$) will be calculated as:

$$\sum QFP \times \blacksquare \times SIF_n$$

where the resultant value will either be \blacksquare or positive (such that it increases Total Deductions and reduces the Monthly Service Payment).

13.8 Review of Key Performance Indicators

- (a) At the end of each Operating Year, Project Co must consult in good faith and use all reasonable endeavours to review the operation of each part of each Key Performance Indicator with the State, taking into consideration the following factors:
- (i) the Target, Level 1 and Level 2 Performance Ranges may be adjusted to account for industry improvements to maintain Project Co's performance targets relative to publicly operated correctional centre performance levels, taking into consideration the specific characteristics of the Correctional Complex and Inmates;
 - (ii) the outcome of:
 - A. any audit performed in accordance with clause 11.3; and
 - B. the State exercising any rights under clause 28.2, of this Deed; and
 - (iii) the Project Objectives.
- (b) To the extent that, in the course of their review, the parties agree that:
- (i) a Key Performance Indicator or a part of a Key Performance Indicator should be omitted, replaced or otherwise amended;
 - (ii) a new Key Performance Indicator should be inserted;
 - (iii) the Target, Level 1 and/or Level 2 Performance Ranges (as set out for each Key Performance Indicator in Schedule 17) should be increased, decreased or otherwise amended; or
 - (iv) the Quality Failure Points associated with a Key Performance Indicator or any part of a Key Performance Indicator (as set out in Schedule 17) should be amended,
- then:
- (v) the State must prepare and provide Project Co with an amended version of Schedule 17 which clearly identifies any amendments (Amended Schedule 17); and
 - (vi) both parties must sign the Amended Schedule 17,
- and from the date on which the Amended Schedule 17 has been signed by both parties:

- (vii) the Amended Schedule 17 will be deemed to have replaced Schedule 17; and
- (viii) Quality Failure Abatements will be calculated with reference to the Amended Schedule 17.

Schedule 17 – Performance Regime

1. Introduction

- (a) This Schedule sets out:
 - (i) the Charge Events; and
 - (ii) the Key Performance Indicators.

During the Operating Phase, Project Co will be required to report its performance against each of these components monthly.

- (b) The charges specified for each Charge Event will be Indexed by the CPI Annual Multiplier.

1.2 Format of the Performance Regime

For the purpose of providing context only, the State has set out below:

- (a) a summary of the format which has been used in respect of each Charge Event or Key Performance Indicator; and
- (b) a description of how each element of the Charge Event or Key Performance Indicator is intended to operate.

Charge Event / KPI number	Title of Charge Event or Key Performance Indicator
Formula	<p>Sets out the formula which will be used to calculate the relevant Charge Event or Key Performance Indicator.</p> <p>Where this formula includes “x 100”, this is to convert the result from a decimal number into a percentage (as indicated in the example set out in section 1.3) to align with the Target, Level 1 and Level 2 Performance Ranges (as the case may be) for the purposes of calculating Quality Failure Points.</p>
Charge / Calculation of Quality Failure Points	Sets out the charge associated with the Charge Event or, in the case of Key Performance Indicators, the methodology for determining the applicable number of Quality Failure Points (if any) for that Key Performance Indicator for the purpose of calculating Quality Failure Abatements in accordance with Schedule 16 (Payment Schedule).
Definitions	Sets out definitions which are relevant to the Charge Event or Key Performance Indicator.
Counting rules	Sets out the rules which will be used to determine Project Co's performance in respect of the Charge Event or Key Performance Indicator. Examples used in the counting rules may be used as an aid to interpretation.
Reporting requirements of Project Co	Sets out Project Co's non-exhaustive reporting obligations in respect of the relevant Charge Event or Key Performance Indicator.
Reporting Period	Sets out the period in which Project Co is required to report in respect of the relevant Charge Event or Key Performance Indicator.

1.3 Calculation of Quality Failure Points - example

For the purpose of aiding interpretation, the State has set out below an example of the calculation of Quality Failure Points where percentage thresholds apply.

Example: KPI 1: Current Case Plans

The following table sets out the Quality Failure Points which Project Co will accrue each Month depending on its performance relative to the Target, Level 1 and Level 2 Performance Ranges.

KPI 1	Performance Range	Quality Failure Points
Target		
Level 1		
Level 2		

The formula is as follows:

$$(\text{Number of Eligible Inmates with a Current Case Plan}) / (\text{Number of Eligible Inmates}) \times 100$$

Assume that for Month n:

- (a) The number of Eligible Inmates with a Current Case Plan is equal to 225; and
- (b) The number of Eligible Inmates is equal to 300.

The KPI result is 75% (i.e. $225/300 \times 100$) which represents 75 failures (i.e. 300 less 225). In this case, [REDACTED]. The Quality Failure Points are calculated to be [REDACTED] based on the methodology set out below:

	Failures in this Range ¹	Applicable Failures in this Range	Calculated Quality Failure Points
Target			
Level 1			
Level 2			
Total			
¹ Calculated by reference to the KPI denominator – 300 in this example			

1.4 Definitions

In this Schedule, unless the context otherwise requires:

Assault means:

- (a) physical violence that results in physical injury but does not require admission to hospital or any off Site medical centre that serves as an equivalent of a hospital;
- (b) indecent assault; or
- (c) deliberate transfer (e.g. spitting) of blood or other bodily fluids which is not captured within the definition of Serious Assault or Significant Assault.

Cellular Accommodation means accommodation of the type described in Schedule 3, Part C, Section 1, clause 6.3.2.

Custodial Patients means all Inmates.

Daily Average Inmate Population is calculated in accordance with the following formula:

Total number of Inmates at the Correctional Complex as at midnight of each day of the reporting period

Total number of days in the reporting period

JHeHS means the Justice Health electronic Health Service.

OIMS means the CSNSW Offender Integrated Management System.

Open Custody means any Correctional Centre classified by the State as minimum security.

PAS means the Patient Administration System.

Non-Inmate includes any person at the Correctional Complex who is not an Inmate including Staff, Official Visitors, Associates, and Visitors.

Residential Accommodation means accommodation of the type described in Schedule 3, Part C, Section 1, clause 6.3.3

Secure Custody means any Correctional Centre classified by the State as maximum security or medium security.

Serious Assault means physical violence that results in physical injury requiring:

- (a) immediate transfer to hospital or any off Site medical centre that serves as an equivalent of a hospital for the Inmates; and
- (b) medical treatment as an inpatient (regardless of whether this treatment is received in the emergency department or otherwise).

Notwithstanding the previous sentence, Serious Assault is deemed to include:

- (c) any instance of sexual intercourse without consent;
- (d) deliberate transfer (e.g. spitting) of blood or other bodily fluids or matter that results in infection or the transmittal of disease; or
- (e) any deliberate incident of skin being punctured with a syringe (i.e. "a needle stick injury").

Services Specification means the Services Requirements.

Significant Assault means the deliberate transfer of blood or other bodily fluids or matter that has the potential to cause infection or transmit disease where the transfer has occurred by:

- (a) spitting or transferring by another means the relevant blood or other bodily fluid or matter into a person's face or on an unhealed (e.g. open) wound; or
- (b) biting.

Substantiated means:

- (a) there is evidence that a Serious Assault, Significant Assault or Assault (as the case may be) took place because at least one of the following circumstances applies:
 - (i) there is at least one witness to the Serious Assault, Significant Assault or Assault (as the case may be) or there is other evidence of the Serious Assault, Significant Assault or Assault (as the case may be) (such as CCTV footage); or
 - (ii) the victim claims that a Serious Assault, Significant Assault or an Assault (as the case may be) has occurred and there is no obvious reason to doubt this claim; or
- (b) the victim has a visible injury and claims that a Serious Assault, Significant Assault or Assault (as the case may be) has occurred and there is sufficient circumstantial or other evidence to conclude that a Serious Assault, Significant Assault or an Assault (as the case may be) is the most likely cause of the injury on the balance of probabilities.

1.5 OIMS

Unless this Schedule or the Output Specification expressly provides otherwise all information, data or reports which are to be submitted by Project Co in accordance with this Schedule are to be entered in OIMS.

2. Charge Events

2.1 Charge Event 1 – Unnatural Deaths

Charge Event 1	Unnatural Deaths
Formula	Number of Unnatural Deaths
Charge	Each Unnatural Death results in a charge of [REDACTED]
Definitions	<p>Unnatural Death means a death of an Inmate:</p> <ul style="list-style-type: none"> • in the Correctional Complex or when escorting an Inmate, which the State Coroner or the Commissioner determines is the result of an Unnatural Cause; or • in Correctional Centre Custody, which the State Coroner or the Commissioner determines is the result of an Unnatural Cause. <p>Correctional Centre Custody means in the Correctional Complex, or outside the Correctional Complex during participation in a temporary leave program or when the Inmate is being (or is required to be) escorted by Project Co or its Associates.</p> <p>Unnatural Cause includes homicide, suicide, accidental cause or drug overdose.</p>
Counting Rules	<p>Count the number of Unnatural Deaths in the reporting period.</p> <p>If there is an Unnatural Death in, or on route to a hospital or any off Site medical centre that serves as an equivalent of a hospital for the Inmates (whether the Inmate is or is not in the legal or physical custody of Project Co or its Associates at the time), and the Unnatural Death was caused by something that occurred in Correctional Centre Custody or in the Correctional Complex, the Unnatural Death is to be counted.</p> <p>Where more than one Unnatural Death occurs during the one incident or event, the death of each individual will be recorded as an individual death.</p>
Reporting Requirements of Project Co	<ul style="list-style-type: none"> • Compliance with the Output Specification. • A summary of the Unnatural Death, including its cause, its discovery and the response by Project Co or its Associates. • Project Co's intended action to enhance the levels of safety and security to prevent future Unnatural Deaths of a similar nature from occurring (including having regard to any report or recommendations of the Commissioner). If none, a detailed rationale supporting this decision is required. • A report from the General Manager of the Correctional Centre regarding the Unnatural Death.
Reporting Period	Monthly

2.2 Charge Event 2 - Escapes

Charge Event 2	Escapes
Formulae	Number of Escapes from Secure Custody Number of Escapes from Open Custody
Charge	Each Escape from Secure Custody results in a charge of [REDACTED] Each Escape from Open Custody results in a charge of [REDACTED]
Definitions	Escape means the departure (regardless of duration), without lawful authority, of an Inmate: <ul style="list-style-type: none"> from the perimeter or declared boundary of a Correctional Centre, regardless of whether or not there was a breach of a physical barrier; or from any approved locations when outside of the perimeter or declared boundary of a Correctional Centre when the Inmate is being (or is required to be) escorted by Project Co or its Associates.
Counting Rules	Count the number of each type of Escape during the reporting period. If two or more Inmates Escape at the same time or together, then this is counted as two or more Escapes (as the case may be). If an Inmate Escapes, the Escape is classified as an Escape from Open Custody or Secure Custody depending on the security level of the area of the Correctional Centre at which the Inmate was held immediately prior to the Escape except for Escapes by female Inmates which are always to be classified as Escapes from Secure Custody. For example, where a male Inmate with an individual security classification of Minimum Security is held in the Secure Custody area of the Correctional Centre prior to Escape, that Escape is to be counted as a Secure Custody Escape. Where a female Inmate is held in an Open Custody area of the Correctional Complex prior to Escape, the Escape is to be counted as an Escape from Secure Custody. If an Inmate Escapes whilst being escorted by Project Co or its Associates, the Escape is classified as an Escape from Open Custody or Secure Custody depending on the security level of the area of the Correctional Centre at which the Inmate was held immediately prior to the commencement of the escort by Project Co or its Associates except for Escapes by female Inmates which are always to be classified as Escapes from Secure Custody.
Reporting Requirements of Project Co	<ul style="list-style-type: none"> Compliance with the Output Specification. Summary of the Escape, the events preceding the Escape, detection and the response by Project Co or its Associates. Project Co or its Associates' intended actions to enhance the levels of safety and security to prevent future Escapes from occurring. If none, the rationale for this decision. A report from the General Manager of the Correctional Centre regarding the Escape.
Reporting Period	Monthly

2.3 Charge Event 3 - Major Disruption to Correctional Operations

Charge Event 3	Major Disruption to the operation of the Correctional Complex
Formula	Number of Major Disruptions to the operation of the Correctional Complex
Charge	Each Major Disruption results in a charge of ████████ per day.
Definitions	<p>Major Disruption means an incident involving defiance or disorder by one or more Inmates which results in:</p> <ul style="list-style-type: none"> (a) a loss of effective control by Project Co or its Associates (whether or not by physical or electronic failure or otherwise) of any part of a Correctional Centre or Correctional Complex (such as an accommodation area, common area, recreational area, work area or yard, rather than a cell), or the effective control of an Inmate while that Inmate is on temporary leave or is being (or required to be) escorted by Project Co or its Associates; (b) the taking of a hostage (whether an Inmate or Non-Inmate); (c) a riot in the Correctional Complex; or (d) the State lawfully intervening to restore good order or security to any part of the Correctional Centre or Correctional Complex (such as an accommodation area, common area, recreational area, work area or yard, rather than a cell), or any other location while an Inmate is on temporary leave or being (or is required to be) escorted by Project Co or its Associates.
Counting Rules	<p>Count any incident of Major Disruption that occurred during the reporting period. Count the number of consecutive 24 hour periods for which a Major Disruption subsisted, rounded up to the nearest whole 24 hour period.</p> <p>Count the number of incidents, not the number of Inmates involved in the incident. For example, if three Inmates assume control of the roof of one of the Correctional Centres from Thursday afternoon until Saturday morning, count one incident for two days.</p>
Reporting Requirements by Project Co	<ul style="list-style-type: none"> • Complete Incident Report Module requirements (as set out in the Output Specification). • Date and time of incident. • Location of incident. • Events preceding the incident. • Inmates, Non-Inmates or any other person involved in the incident. • Details of any injuries to Inmates, Non-Inmates or any other person. • Details of any hostages involved. • Attempted interventions to resolve incident. • Details on how the incident was resolved. • Damage to the Correctional Complex or any other location where the incident occurred.
Reporting Period	Monthly

2.4 Charge Event 4 - Compliance with Release Dates

Charge Event 4	Compliance with Release Dates
Formulae	Number of Erroneous Releases Number of Erroneous Detentions
Charge	Each Erroneous Release results in a charge of ██████ per day from the date of the Erroneous Release until the Inmate is taken into physical custody, up to a maximum of ██████. Each Erroneous Detention results in a charge of ██████ per day from the date of the Erroneous Detention until the Inmate is released from custody.
Definitions	Erroneous Release means an Inmate is released from custody prior to the date on which the Inmate was legally entitled to be released, except to the extent this is the direct result of an act or omission of the State or its Associates. Erroneous Detention means an Inmate is held in custody after the date from when the Inmate should have been legally released, except to the extent this is the direct result of an act or omission of the State or its Associates.
Counting Rules	For Erroneous Release, count the number of Inmates that are released from custody prior to the date on which they were legally entitled to be released and the number of days for which they have been released. For Erroneous Detention, count the number of Inmates that are held beyond the date from when they should have been legally released and the number of days for which they have been detained.
Reporting Requirements	For each Erroneous Detention: <ul style="list-style-type: none"> • details of the Inmate; • details of the legal release date and actual release date; and • reason for Erroneous Detention. For each Erroneous Release: <ul style="list-style-type: none"> • details of relevant Inmate; • details of the legal release date, actual release date, and date when the Inmate is taken into legal custody following the Erroneous Release; • details of the period during which the Inmate was erroneously released; and • reason for Erroneous Release.
Reporting Period	Monthly

3. Key Performance Indicators

3.1 KPI 1 – Current Case Plans

KPI 1	Current Case Plans
Formulae	(Number of Eligible Inmates with a Current Case Plan) / (Number of Eligible Inmates) x 100

KPI 1	Current Case Plans												
Calculation of Quality Failure Points	<p>The following table sets out the Quality Failure Points which Project Co will accrue each Month depending on its performance relative to the Target, Level 1 and Level 2 Performance Ranges.</p> <table border="1"> <thead> <tr> <th></th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td></td> <td></td> </tr> <tr> <td>Level 1</td> <td></td> <td></td> </tr> <tr> <td>Level 2</td> <td></td> <td></td> </tr> </tbody> </table>		Performance Range	Quality Failure Points	Target			Level 1			Level 2		
	Performance Range	Quality Failure Points											
Target													
Level 1													
Level 2													
Definitions	<p>Current Case Plan means:</p> <p>(a) a Complete Case Plan which exists within six weeks of the date of:</p> <p>(i) sentence, for newly sentenced Inmates who were on remand at the Correctional Centre; or</p> <p>(ii) reception into the Correctional Centre, for sentenced Inmates transferred to the Correctional Centre; and</p> <p>(b) a Complete Case Plan which has been reviewed and updated as required by the Services Specification and, in any case, no less frequently than once every six Months.</p> <p>Eligible Inmates means all sentenced Inmates at the Correctional Complex who have three months or more remaining on their sentence (before the earliest possible release date) and who have been at the Correctional Complex under sentence for at least six weeks.</p> <p>Complete Case Plan means a case plan for each sentenced Inmate which complies with the Corrections Legislation and the Services Specification and is entered in OIMS.</p>												
Counting Rules	<p><u>Numerator</u>: Number of Eligible Inmates with a Current Case Plan</p> <p><u>Denominator</u>: Number of Eligible Inmates.</p>												
Reporting Requirements of Project Co	<p>For each Eligible Inmate:</p> <ul style="list-style-type: none"> • date of Case Plan assessments; • results of Case Plan assessments; • date the Case Plan was finalised and the date the Case Plan should have been finalised in accordance with the Services Specification; • Case Plan goals including priority rating; • formulated interventions for each Case Plan goal; • date expected to complete each intervention; and • dates Case Plan reviewed. 												
Reporting Period	Monthly												

3.2 KPI 2 – Outstanding Case Plan Interventions

KPI 2	Outstanding Case Plan Interventions																								
Formulae	<p>A. (Number of Outstanding Case Plan Interventions for High/Medium Risk Inmates) / (Number of Case Plan Interventions scheduled to be Completed for High/Medium Risk Inmates) x 100</p> <p>B. (Number of Outstanding Case Plan Interventions for Low Risk Inmates) / (Number of Case Plan Interventions scheduled to be Completed for Low Risk Inmates) x 100</p>																								
Calculation of Quality Failure Points	<p>The following table sets out the Quality Failure Points which Project Co will accrue each Month for A and B depending on its performance against each sub-component relative to the Target, Level 1 and Level 2 Performance Ranges.</p> <table border="1"> <thead> <tr> <th>A – Medium/High Risk</th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td></td> <td></td> </tr> <tr> <td>Level 1</td> <td></td> <td></td> </tr> <tr> <td>Level 2</td> <td></td> <td></td> </tr> </tbody> </table> <table border="1"> <thead> <tr> <th>B – Low Risk</th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td></td> <td></td> </tr> <tr> <td>Level 1</td> <td></td> <td></td> </tr> <tr> <td>Level 2</td> <td></td> <td></td> </tr> </tbody> </table>	A – Medium/High Risk	Performance Range	Quality Failure Points	Target			Level 1			Level 2			B – Low Risk	Performance Range	Quality Failure Points	Target			Level 1			Level 2		
A – Medium/High Risk	Performance Range	Quality Failure Points																							
Target																									
Level 1																									
Level 2																									
B – Low Risk	Performance Range	Quality Failure Points																							
Target																									
Level 1																									
Level 2																									
Definitions	<p>Case Plan Interventions means:</p> <ul style="list-style-type: none"> (a) Offence Related Programs: a structured intervention that addresses the factors directly linked to offending behaviour. (b) Adult Basic Education (ABE): a structured intervention that develops skills to improve reading, writing, oral communication and numeracy. (c) Vocational Education and Training (VET): a course or traineeship that teaches skills and qualifications for employment. (d) Services that support Inmate wellbeing: one-to-one services that address psychological, motivational or welfare factors that impact on an Inmate’s well-being. (e) Personal Development and Life Skills Programs: a structured program that addresses the life skills and well being of the Inmate’s needs. (f) Re-integration Services and Community Referrals: provision of services and referrals to service providers to assist the Inmate to successfully re-integrate into the community upon release. <p>Outstanding Case Plan Interventions means Case Plan Interventions scheduled to be completed in the reporting period where Completion of Case Plan Interventions has not been achieved by the time contemplated in the Case Plan.</p> <p>Completion of Case Plan Interventions or Completed Case Plan Interventions means:</p> <ul style="list-style-type: none"> (a) in respect of an Offence Related Program: 																								

KPI 2	Outstanding Case Plan Interventions
	<p>(i) determination in writing by the program facilitator that the participating Inmate has satisfied the components of the program; and</p> <p>(ii) the Inmate attended at least [REDACTED] of program sessions;</p> <p>(g) in respect of Adult Basic Education, attainment by the participating Inmate of a higher level on the Australian Core Skills Framework;</p> <p>(h) in respect of Vocational Education and Training, attainment by the participating Inmate of a course module or attainment of a recognised qualification;</p> <p>(i) in respect of services that support Inmate wellbeing, evidence that contact between the participating Inmate and the relevant service provider has taken place that addresses psychological, motivation or welfare factors for the participating Inmate and the relevant service provider determines in writing that the intervention is complete; and</p> <p>(j) in respect of a Personal Development and Life Skills Program:</p> <p>(i) determination in writing by the program facilitator that the participating Inmate has satisfied the components of the program; and</p> <p>(ii) the Inmate attended at least [REDACTED] of program sessions; and</p> <p>(k) in respect of Reintegration Services and Community Referrals, evidence of referral of the participating Inmate to a relevant service, and in each case entered in OIMS.</p> <p>High/Medium Risk Inmates means the Inmates in the Correctional Complex who are assessed by Project Co or its Associates as having a high or medium Likelihood of Reoffending having regard to the requirements of the Corrections Legislation and the Services Specification.</p> <p>Likelihood of Reoffending means the risk of the Inmate further offending. It does not take into account the seriousness of further offending or the degree of damage it may cause.</p> <p>Low Risk Inmates means the Inmates in the Correctional Complex who are assessed by Project Co or its Associates as having a low Likelihood of Reoffending having regard to the requirements of the Corrections Legislation and the Services Specification.</p>
Counting Rules	<ul style="list-style-type: none"> • Numerator: Count the number of Case Plan Interventions scheduled to be completed but not completed in the reporting period for High/Medium Risk Inmates or Low Risk Inmates (as the case may be). • Denominator: Count the number of Case Plan Interventions scheduled to be completed in the reporting period for High/Medium Risk Inmates or Low Risk Inmates (as the case may be).
Reporting Requirements	<p>Details of each failure to complete a Case Plan Intervention in the reporting period including:</p> <ul style="list-style-type: none"> • scheduled date of Case Plan Intervention; • type and nature of Case Plan Intervention; • attendance by the Inmate at each session of intervention (if applicable); • reason(s) for non-completion of the Case Plan Intervention; and • revised scheduled date for completion of the Case Plan Interventions.
Reporting Period	Monthly

3.3 KPI 3 – Specified Serious Incidents

KPI 3	Specified Serious Incidents
Formulae	<p>A. Number of Deliberately Lit Fires, Security Breaches and Non-Fatal Drug Overdoses</p> <p>B. Number of Serious Contraband Breaches identified by the State</p>
Calculation of Quality Failure Points	<p>The Quality Failure Points which Project Co will accrue each Month are as follows:</p> <p>(a) Deliberately Lit Fires, Security Breaches and Non-Fatal Drug Overdoses - [REDACTED] per incident</p> <p>(b) Serious Contraband Breaches – [REDACTED] per item, [REDACTED] [REDACTED] subject to a cap of [REDACTED] per search.</p>
Definitions	<p>Serious Contraband means any contraband which has the potential to threaten the security or good order of any part of the Correctional Complex or the secure custody of an Inmate, and is deemed to include mobile phones or any part of them, illicit drugs, alcohol, matches, lighters, syringes, illegal pornographic material and Weapons.</p> <p>Serious Contraband Breach means the identification of an item of Serious Contraband within the Correctional Complex by the State as part of a random search carried out in accordance with the Deed, the Corrections Legislation or a Policy.</p> <p>Deliberately Lit Fire means a fire that causes injury or death to a person, or damage to any part of the Correctional Complex (such as an accommodation area, common area, recreational area, work area or yard, rather than a cell), that was, in the opinion of the State or the General Manager, deliberately lit.</p> <p>Non-Fatal Drug Overdose means an Inmate requires medical intervention and is admitted to hospital (including a correctional centre hospital or clinic, infirmary or any off Site medical centre that serves as an equivalent of a hospital for the Inmates) after ingesting an illicit substance including non-prescription medication, prescription medication not prescribed to the Inmate or in quantities other than as prescribed, illicit drugs, chemicals or fermented substances.</p> <p>Security Breach means an incident or event that has the potential to seriously affect the security or good order of any part of the Correctional Complex or Correctional Centre or the secure custody of an Inmate and is deemed to include:</p> <p>(a) where an Inmate is found in an unauthorised area of the Correctional Complex (but does not breach or otherwise pass the outer most secure perimeter of the Correctional Complex) or breaches a Security Barrier in the Correctional Centre;</p> <p>(b) a failure for any reason to secure an Inmate during lock-in;</p> <p>(c) failure by Project Co or its Associates to account for an Inmate at the times required in accordance with the Output Specification; or</p> <p>(d) an unauthorised discharge of a firearm by any person within the Correctional Complex or while an Inmate is on temporary leave or being (or required to be) escorted by Project Co or its Associates.</p> <p>Security Barrier means a physical structure designed to limit movement to and from a secure area.</p> <p>Specified Serious Incident means a Deliberately Lit Fire, Security Breach, Serious Contraband Breach or Non-Fatal Drug Overdose.</p>

KPI 3	Specified Serious Incidents
	<p>Weapons means any offensive weapon or instrument (as defined by the <i>Crimes Act 1900</i> (NSW)).</p>
<p>Counting Rules</p>	<p>Deliberately Lit Fire Count the number of Deliberately Lit Fires during the reporting period, regardless of the number of Inmates or Non-Inmates involved in the incident.</p> <p>Security Breach Count the number of Security Breaches by reference to the number of Inmates involved in each and every incident or event during the reporting period, except in relation to the unauthorised discharge of a firearm, which will be counted with reference to the number of events or incidents during the reporting period. For example:</p> <ul style="list-style-type: none"> (a) if two Inmates are found together in unauthorised areas of the Correctional Complex, then count two Security Breaches; (b) if there were two lock-ins during the reporting period and each time two Inmates were not secured, count four Security Breaches; (c) if there are three incidents whereby Project Co or its Associates cannot account for two Inmates, count six Security Breaches; or (d) if one incident results in the unauthorised discharge of multiple firearms then count this as one Security Breach. <p>Serious Contraband Breach Count the number of Serious Contraband identified by the State during the reporting period. For example, if 10 mobile phones are found by the State within the Correctional Complex within a reporting period (whether they are found during one inspection or on multiple occasions), count 10 Serious Contraband Breaches during the reporting period.</p> <p>Non-Fatal Drug Overdose Count the number of Inmates that suffer a Non-Fatal Drug Overdose during the reporting period.</p>
<p>Reporting Requirements</p>	<p>Details of each Specified Serious Incident must include:</p> <ul style="list-style-type: none"> • date and time of the Specified Serious Incident; • location of the Specified Serious Incident; • details of Inmate(s) involved in the Specified Serious Incident; • details of Non-Inmate(s) involved in the Specified Serious Incident; • summary of incident or event; • details of response to the Specified Serious Incident; • Project Co's or its Associates' intended actions to minimise future risk of Specified Serious Incidents; and • General Manager's report regarding the Specified Serious Incident in accordance with the Corrections Legislation.
<p>Reporting Period</p>	<p>Monthly</p>

3.4 KPI 4 – Assaults on Non-Inmates

KPI 4	Assaults on Non-Inmates												
Formulae	<p>A. Number of Non-Inmate victims of Substantiated Serious Assault.</p> <p>B. Number of Non-Inmate victims of Substantiated Significant Assault.</p> <p>C. Number of Non-Inmate victims of Substantiated Assault by Inmates.</p>												
Calculation of Quality Failure Points	<p>The Quality Failure Points which Project Co will accrue each Month is as follows:</p> <p>A. Substantiated Serious Assaults – [REDACTED] per Non-Inmate victim</p> <p>B. Substantiated Significant Assaults – [REDACTED] per Non-Inmate victim</p> <p>C. Substantiated Assault – the following table sets out the Quality Failure Points which Project Co will accrue each Month depending on its performance relative to the Target, Level 1 and Level 2 Performance Ranges.</p> <table border="1" data-bbox="523 645 1490 909"> <thead> <tr> <th></th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>Level 1</td> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>Level 2</td> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> </tbody> </table>		Performance Range	Quality Failure Points	Target	[REDACTED]	[REDACTED]	Level 1	[REDACTED]	[REDACTED]	Level 2	[REDACTED]	[REDACTED]
	Performance Range	Quality Failure Points											
Target	[REDACTED]	[REDACTED]											
Level 1	[REDACTED]	[REDACTED]											
Level 2	[REDACTED]	[REDACTED]											
Definitions	N/A												
Counting Rules	<p>Serious Assault</p> <p>Count the number of Non-Inmates who were victims of a Serious Assault that was Substantiated during the reporting period. For example, if two Inmates perpetrate a Serious Assault on one Non-Inmate, count one Non-Inmate. If a Serious Assault takes place in a reporting period but this is not Substantiated until another reporting period, count the Serious Assault in the period in which it is Substantiated.</p> <p>Significant Assault</p> <p>Count the number of Non-Inmates who were victims of a Significant Assault that was Substantiated during the reporting period. For example, if two Inmates perpetrate a Significant Assault on one Non-Inmate, count one Non-Inmate. If a Significant Assault takes place in a reporting period but this is not Substantiated until another reporting period, count the Significant Assault in the period in which it is Substantiated.</p> <p>Assault</p> <p>Count the number of Non-Inmates who were victims of an Assault during the reporting period. If two Inmates perpetrate an Assault on one Non-Inmate, count one Non-Inmate. If an Assault takes place in a reporting period but is not Substantiated until another reporting period, count the Assault in the period in which it was Substantiated.</p>												
Reporting Requirements	<p>Details of each Substantiated Serious Assault, Significant Assault or Assault (as the case may be) must include:</p> <ul style="list-style-type: none"> • date and time of the Substantiated Serious Assault, Significant Assault or Assault (as the case may be); • location of the Substantiated Serious Assault, Significant Assault or Assault (as the case may be); • details of Inmates involved in the Substantiated Serious Assault, Significant Assault or Assault (as the case may be); 												

KPI 4	Assaults on Non-Inmates
	<ul style="list-style-type: none"> • details of Non-Inmates involved in the Substantiated Serious Assault, Significant Assault or Assault (as the case may be), including as victim; • summary of the Substantiated Serious Assault, Significant Assault or Assault (as the case may be); • details of Project Co's or its Associates' response to the Substantiated Serious Assault, Significant Assault or Assault (as the case may be); • details of Non-Inmate injury; • Project Co's intended actions to minimise future risk to Non-Inmates; and • General Manager's report regarding the Substantiated Serious Assault, Significant Assault or Assault (as the case may be) in accordance with the Corrections Legislation.
Reporting Period	Monthly

3.5 KPI 5 – Assaults on Inmates by other Inmates

KPI 5	Assaults on Inmates by Inmates												
Formulae	<p>A. Number of Inmate victims of Substantiated Serious Assault.</p> <p>B. Number of Inmate victims of Substantiated Significant Assault</p> <p>C. (Number of Inmate victims of Substantiated Assault by Inmates) / (Daily Average Inmate Population) x 100.</p>												
Calculation of Quality Failure Points	<p>The Quality Failure Points which Project Co will accrue each Month is as follows:</p> <p>A. Substantiated Serious Assaults – [REDACTED] per Inmate victim</p> <p>B. Substantiated Significant Assaults – [REDACTED] per Inmate victim</p> <p>C. Substantiated Assault - The following table sets out the Quality Failure Points which Project Co will accrue each Month depending on its performance relative to the Target, Level 1 and Level 2 Performance Ranges.</p> <table border="1" data-bbox="523 680 1485 954"> <thead> <tr> <th></th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>Level 1</td> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>Level 2</td> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> </tbody> </table>		Performance Range	Quality Failure Points	Target	[REDACTED]	[REDACTED]	Level 1	[REDACTED]	[REDACTED]	Level 2	[REDACTED]	[REDACTED]
	Performance Range	Quality Failure Points											
Target	[REDACTED]	[REDACTED]											
Level 1	[REDACTED]	[REDACTED]											
Level 2	[REDACTED]	[REDACTED]											
Definitions	N/A												
Counting Rules	<p>Serious Assault</p> <p>Count the number of Inmates who were victims of a Serious Assault that was Substantiated during the reporting period. For example, if two Inmates perpetrate a Serious Assault on three Inmates, count three Inmates. If a Serious Assault takes place in a reporting period but this is not Substantiated until another reporting period, count the Serious Assault in the period in which it is Substantiated.</p> <p>Significant Assault</p> <p>Count the number of Inmates who were victims of a Significant Assault that was Substantiated during the reporting period. For example, if two Inmates perpetrate a Significant Assault on three Inmates, count three Inmates. If a Significant Assault takes place in a reporting period but this is not Substantiated until another reporting period, count the Significant Assault in the period in which it is Substantiated.</p> <p>Assault</p> <p>Count the number of Inmates who were victims of an Assault during the reporting period. If four Inmates perpetrate an Assault on one Inmate, count one Inmate. If an Assault takes place in a reporting period but is not Substantiated until another reporting period, count the Assault in the period in which it was Substantiated.</p>												
Reporting Requirements	<p>Details of each Substantiated Serious Assault, Significant Assault or Assault (as the case may be) must include:</p> <ul style="list-style-type: none"> • date and time of the Substantiated Serious Assault, Significant Assault or Assault (as the case may be); • location of the Substantiated Serious Assault, Significant Assault or Assault (as the case may be); 												

KPI 5	Assaults on Inmates by Inmates
	<ul style="list-style-type: none"> • details of Inmate(s) involved in the Substantiated Serious Assault, Significant Assault or Assault (as the case may be), including as victim(s). • details of Non-Inmate(s) involved in the Substantiated Serious Assault, Significant Assault or Assault (as the case may be); • summary of the Substantiated Serious Assault, Significant Assault or Assault (as the case may be); • details of response to the Substantiated Serious Assault, Significant Assault or Assault (as the case may be); • details of any injury; • Project Co's or its Associates' intended actions to minimise future risk to Inmates; and. • General Manager's report regarding the Substantiated Serious Assault, Significant Assault or Assault (as the case may be) in accordance with the Corrections Legislation.
Reporting Period	Monthly

3.6 KPI 6 – Illicit Drug Use

KPI 6	Illicit Drug Use												
Formulae	(Number of Positive Random Drug Tests) / (Number of Random Drug Tests) x 100												
Calculation of Quality Failure Points	<p>The following table sets out the Quality Failure Points which Project Co will accrue each Month depending on its performance relative to the Target, Level 1 and Level 2 Performance Ranges.</p> <table border="1"> <thead> <tr> <th></th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td></td> <td></td> </tr> <tr> <td>Level 1</td> <td></td> <td></td> </tr> <tr> <td>Level 2</td> <td></td> <td></td> </tr> </tbody> </table>		Performance Range	Quality Failure Points	Target			Level 1			Level 2		
	Performance Range	Quality Failure Points											
Target													
Level 1													
Level 2													
Definitions	<p>Random Drug Test means a random drug test to identify illicit drug use conducted by Project Co or its Associates in respect of a ■■■ sample of the population of Eligible Inmates as randomly selected by the State each Month and notified to Project Co in accordance with the Deed.</p> <p>Eligible Inmates include all Inmates except Inmates who have been in custody for less than 30 days.</p> <p>Positive means samples for which the pathology identifies positive findings for drug use except positive findings attributed to prescribed medication for that Inmate, Residual Effects, Nil Creatinine Detected or Window Periods.</p> <p>Nil Creatinine Detected means the pathology results find that the sample does not contain the enzyme found in urine and cannot be tested.</p> <p>Residual Effects means where the pathology results find a positive result but the drug use by the Inmate has previously been detected and on subsequent testing the level is shown to be less than the previous pathology results.</p> <p>Window Periods means that the pathology results find that the drug use was due to drugs taken by the relevant Inmate prior to reception into the Correctional Complex.</p>												
Counting Rules	<p><u>Numerator</u>: Count the number of Positive Random Drug Test samples collected during the reporting period.</p> <p><u>Denominator</u>: The number of Random Drug Tests collected at the Correctional Complex during the reporting period.</p>												
Reporting Requirements	<ul style="list-style-type: none"> • Date Random Drug Test was administered • Details of each Inmate tested; • Results of each Random Drug Test; and • Details of each Inmate who refused testing. 												
Reporting Period	Monthly												

3.7 KPI 7 – Serious Self Harm

KPI 7	Serious Self-Harm												
Formulae	Number of incidents of Serious Self-Harm												
Calculation of Quality Failure Points	<p>The following table sets out the Quality Failure Points which Project Co will accrue each Month depending on its performance relative to the Target, Level 1 and Level 2 Performance Ranges.</p> <table border="1"> <thead> <tr> <th></th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td></td> <td></td> </tr> <tr> <td>Level 1</td> <td></td> <td></td> </tr> <tr> <td>Level 2</td> <td></td> <td></td> </tr> </tbody> </table>		Performance Range	Quality Failure Points	Target			Level 1			Level 2		
	Performance Range	Quality Failure Points											
Target													
Level 1													
Level 2													
Definitions	<p>Serious Self-Harm means deliberate injury to oneself that results in:</p> <ul style="list-style-type: none"> (a) immediate transfer to hospital or any off Site medical centre that serves as an equivalent of a hospital for the Inmates; and (b) medical treatment as an inpatient (regardless of whether this treatment is received in the emergency department or otherwise), <p>but excluding Unnatural Deaths (as defined in Charge Event 1 (Unnatural Deaths)) and Non-Fatal Drug Overdoses (as defined in KPI 3 (Specified Serious Incidents)).</p>												
Counting Rules	<p>Count the number of incidents of Serious Self-Harm that occur during the reporting period.</p> <p>If an Inmate suffers multiple separate injuries that results in one Serious Self-Harm incident, then count as one incident. If an Inmate suffers multiple incidents in the reporting period, each incident is counted separately.</p>												
Reporting Requirements	<ul style="list-style-type: none"> • Date and time of the Serious Self-Harm. • Location of the Serious Self-Harm. • Details of each Inmate involved in the Serious Self-Harm. • Summary of the Serious Self-Harm. • Details of response to the Serious Self-Harm. • Report from the medical professional attending to the Inmate injury including where an Inmate is admitted to hospital, correctional centre clinic, infirmary or correctional centre hospital. • Details of the Inmate injury. • Project Co's intended action to minimise or avoid the future risk to Inmates. • Report from the General Manager of the Correctional Centre in respect of the Serious Self-Harm. 												
Reporting Period	Monthly												

3.8 KPI 8 – Temporary Leave Programs

KPI 8	Temporary Leave Programs and Compliance with Temporary Leave Orders												
Formulae	<p>A. (Number of Inmates participating in Temporary Leave Programs) / (Number of Inmates Eligible for Temporary Leave Programs) x 100</p> <p>B. Number of Temporary Leave Orders Breached</p>												
Calculation of Quality Failure Points	<p>A. The following table sets out the Quality Failure Points which Project Co will accrue each Month for A and B depending on its performance against each sub-component relative to the Target, Level 1 and Level 2 Performance Ranges.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 40%;"></th> <th style="width: 30%;">Performance Range</th> <th style="width: 30%;">Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td></td> <td></td> </tr> <tr> <td>Level 1</td> <td></td> <td></td> </tr> <tr> <td>Level 2</td> <td></td> <td></td> </tr> </tbody> </table> <p>B. Temporary Leave Orders Breached – [redacted] points per breach</p>		Performance Range	Quality Failure Points	Target			Level 1			Level 2		
	Performance Range	Quality Failure Points											
Target													
Level 1													
Level 2													
Definitions	<p>A. Temporary Leave Programs</p> <p>Temporary Leave Program means the following programs for Inmates Eligible for Temporary Leave Programs:</p> <ul style="list-style-type: none"> (a) weekend and day leave; (b) external work release program; or (c) education release under a local leave permit for education. <p>Inmates Eligible for Temporary Leave Programs means Inmates who are identified as being eligible for Temporary Leave Programs in accordance with the Output Specification and the Corrections Legislation, and Eligible Inmates will be construed accordingly.</p> <p>B. Temporary Leave Orders Breached</p> <p>Temporary Leave Order Breached means an Inmate has failed to comply with the conditions of the Inmate's temporary leave order except to the extent that the failure relates to the late return by an Inmate:</p> <ul style="list-style-type: none"> (a) arising from circumstances which are beyond the reasonable control of the Inmate, except to the extent that such failure was caused by a failure by Project Co or its Associates to provide the Services in accordance with this Deed; (b) during the period which is up to 30 minutes after the designated return time specified in the temporary leave order; or (c) arising from an Escape from Temporary Leave (as defined in KPI 12). 												
Counting Rules	<p>A. <u>Numerator</u>: Number of Eligible Inmates participating in a Temporary Leave Program.</p> <p><u>Denominator</u>: Number of Inmates Eligible for Temporary Leave Programs.</p> <p>B. Temporary Work Orders - Count the number of Temporary Leave Orders Breached in the reporting period.</p> <p>If an Inmate has multiple Temporary Leave Orders Breached, each Temporary Leave Order Breached is counted separately.</p>												

KPI 8	Temporary Leave Programs and Compliance with Temporary Leave Orders
Reporting Requirements	<p>A. Temporary Leave Programs</p> <ul style="list-style-type: none"> • Details of Temporary Leave Program participation. <p>B. Temporary Leave Orders</p> <ul style="list-style-type: none"> • Date of the Temporary Leave Order Breached. • Details of the conditions the Inmate failed to comply with that resulted in the Temporary Leave Order Breached. • Assessment of suitability for Temporary Leave Program for those Inmates who have a Temporary Leave Order Breached during the reporting period.
Reporting Timeframe	Monthly

3.9 KPI 9 – Time out of cells

KPI 9	Time out of Cells
Formulae	The number of Out of Cell Hour Failure Periods
Calculation of Quality Failure Points	■ Quality Failure Points per Failure Period
Definitions	<p>Failure Periods are calculated as $(A - B)$, rounded up to the nearest whole number where:</p> <p>A = the sum of the Variance in Out of Cell Hours per day per Inmate over the course of the Month</p> <p>B = $2 \times$ Daily Average Inmate Population for the Month.</p> <p>The minimum number of Failure Periods is zero i.e. Failure Periods cannot be negative.</p> <p>Variance in Out of Cell Hours is calculated on a daily basis for each Inmate as the Minimum Out of Cell hours less the Actual Out of Cell hours, expressed in 30 minute intervals or part thereof. The minimum number of Variance in Out of Cell Hours is zero i.e. Variance in Out of Cell Hours cannot be a negative number.</p> <p>Actual Out of Cell hours is calculated on a daily basis for each Inmate as the number of hours that the Inmate is not confined to their cell or Residential Accommodation. If an Inmate opts to remain in the Inmate's cell or Residential Accommodation during a time when the Inmate is permitted to leave the cell or Residential Accommodation, that period is included in the calculation of Actual Out of Cell hours.</p> <p>Minimum Out of Cell hours for Inmates is specified in section 3.7.2.1 of the Services Specification, subject to Approved Exceptions.</p> <p>Approved Exceptions means:</p> <ul style="list-style-type: none"> (a) monthly scheduled searches of the Correctional Complex in accordance with the Deed; (b) Inmates in segregated custody; and (c) variations to the daily operating routine following a Critical Incident, Serious Incident (as specified in the Services Specification) or Serious Assault, provided these affect the fewest number of Inmates and for the shortest period practicable.
Counting Rules	<p><u>Example:</u></p> <ul style="list-style-type: none"> • Minimum Out of Cell Hours per day for Secure Custody Inmate = 9 hours • Actual Out of Cell Hours for 1,000 Inmates held in Secure Custody each day in January = 6.5 hours • Assume the Daily Average Inmate Population for January is 1,700 • The Variance in Out of Cell Hours for each of those 1,000 Inmates for each day in January is calculated as $(9 - 6.5) = 2.5$ hours = $5 \times$ 30 minute intervals • Failure Periods = $(5 \times 1,000 \text{ Inmates} \times 31 \text{ days}) - (2 \times 1,700) = 151,600$ • Quality Failure Points are calculated as ■
Reporting Requirements	<ul style="list-style-type: none"> • Actual Out of Cell Hours based on the approved Correctional Centre routine for Inmates. • Details of all irregular lockdowns, including: <ul style="list-style-type: none"> ○ Date of lockdown; ○ Area of lockdown and Inmates affected by lockdown; ○ Reason for lock down;

KPI 9	Time out of Cells
	<ul style="list-style-type: none">○ Number of Inmates affected by lock-down; and○ Duration of the lockdown.
Reporting Period	Monthly

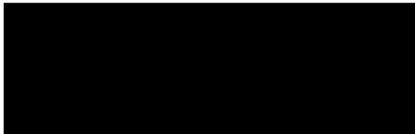
3.10 KPI 10 – Purposeful Activity

KPI 10	Purposeful Activity																								
Formulae	<p>A. (Total sentenced Inmate hours in Purposeful Activity) / (Daily average sentenced Inmate population) / (Number of days in reporting period)</p> <p>B. (Total remand Inmate hours in Purposeful Activity) / (Daily average remand Inmate population) / (Number of days in reporting period)</p>																								
Calculation of Quality Failure Points	<p>The following table sets out the Quality Failure Points which Project Co will accrue each Month for A and B depending on its performance against each sub-component relative to the Target, Level 1 and Level 2 Performance Ranges.</p> <table border="1"> <thead> <tr> <th>A.</th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td></td> <td></td> </tr> <tr> <td>Level 1</td> <td></td> <td></td> </tr> <tr> <td>Level 2</td> <td></td> <td></td> </tr> </tbody> </table> <table border="1"> <thead> <tr> <th>B.</th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td></td> <td></td> </tr> <tr> <td>Level 1</td> <td></td> <td></td> </tr> <tr> <td>Level 2</td> <td></td> <td></td> </tr> </tbody> </table>	A.	Performance Range	Quality Failure Points	Target			Level 1			Level 2			B.	Performance Range	Quality Failure Points	Target			Level 1			Level 2		
A.	Performance Range	Quality Failure Points																							
Target																									
Level 1																									
Level 2																									
B.	Performance Range	Quality Failure Points																							
Target																									
Level 1																									
Level 2																									
Definitions	<p>Purposeful Activity means:</p> <p>(a) the following activities on any day of the week:</p> <ul style="list-style-type: none"> (i) Commercial Industries, Service Industries or Work Release; (ii) Offence Related Programs: a structured intervention that addresses the factors directly linked to offending behaviour; (iii) Adult Basic Education (ABE): a structured intervention that develops skills to improve reading, writing, oral communication and numeracy; (iv) Vocational Education and Training (VET): a course or traineeship that teaches skills and qualifications for employment; 																								

KPI 10	Purposeful Activity
	<p>(v) Services that support Inmate wellbeing: one-to-one services that assess or address psychological, motivational, pre-release or welfare factors that impact on an Inmate’s well-being;</p> <p>(vi) Personal Development and Life Skills Programs: a structured program that addresses the life skills and well-being of the Inmate's needs;</p> <p>(vii) Re-integration Programs and Services: provision of programs and/or one-to-one services that assist the Inmate to successfully re-integrate into the community upon release, as contemplated by an Inmate's case plan for a sentenced Inmate or as otherwise approved by the State in respect of paragraph (a)(i) to (a)(vii); or</p> <p>(viii) Exercise: not more than one hour each day for exercise in the open air; or</p> <p>(b) the following activities on weekends and public holidays:</p> <p>(i) Recreational Activities including sports activities and any other recreational activities provided within the Correctional Complex to create a sense of community and to provide recreation for the Inmates; or</p> <p>(ii) Community and social activities including any activities which provide the opportunity for Inmates to purposefully engage with each other for leisure purposes.</p> <p>Commercial Industries means programs run by Project Co or its Associates at the Correctional Complex which operate on a commercial fee for service basis (e.g. sale of products/services to external clients and sale of products/services to the correctional system).</p> <p>Service Industries means employment to maintain the self-sufficiency of the Correctional Complex which are not subject to a fee for service (e.g. kitchens, laundries, gardening). This includes community projects and other unpaid work.</p> <p>Work Release means employment in the community under industrial award conditions as part of temporary leave.</p>
Counting Rules	<p>For each of A and B, count the total number of relevant Inmate hours engaged in Purposeful Activity during the reporting period. For the avoidance of doubt, any time spent travelling to or from Purposeful Activity (e.g. any time spent in transit or route movement) is not to be counted in the number of hours an Inmate is engaged in Purposeful Activity.</p> <p>Divide this by the Daily Average Inmate Population for sentenced Inmates (A) or remand Inmates (B), excluding any exempt Inmates (as listed below).</p> <p>Divide this by the number of days in reporting period to find the average number of hours of Purposeful Activity per sentenced Inmate (A) and remand Inmate (B) per day.</p> <p>The following Inmates are exempt from this KPI:</p> <ul style="list-style-type: none"> • Inmates who are 65 years of age or over and who elect not to participate in Purposeful Activities, either in whole or part; • Inmates with chronic ill health, a debilitating condition, a disability or some other medical condition (as assessed by a medical health professional) to

KPI 10	Purposeful Activity
	<p>the extent that it prevents that Inmate from participating in Purposeful Activities, either in whole or part;</p> <ul style="list-style-type: none"> • Inmates who for specified reasons cannot reasonably achieve a minimum of ██████ (for sentenced Inmates) or ██████ (for remand Inmates) of Purposeful Activities, provided those reasons have been approved by the State. • Inmates, to the extent serving a period of loss of privileges; • Inmates attending court (whether in person or via an audio visual link) but only for the day(s) during the reporting period on which they are attending court. For the avoidance of doubt, Inmates who attend court in the reporting period are not exempt for the whole reporting period; • Inmates accommodated in a high security or management unit of the Correctional Complex (and alternative arrangements are in place in accordance with the Output Specification or as agreed with the State in writing); or • Inmates subject to a temporary leave order where the purpose of the temporary leave order is not for Purposeful Activity (including compassionate leave or hospital appointments).
Reporting Requirements	N/A
Reporting Period	Monthly

3.11 KPI 11 – Staff Misconduct

KPI 11	Staff Misconduct
Formulae	<p>A. Number of incidents of Staff Misconduct</p> <p>B. Number of Staff Misconduct not known to Project Co or its Associates</p> <p>C. Number of Staff Misconduct incidents Not Reported or Misreported</p>
Calculation of Quality Failure Points	<p>The Quality Failure Points which Project Co will accrue each Month is as follows:</p> 
Definitions	<p>Staff Misconduct means:</p> <p>(a) a member of Staff is convicted of an offence, whether or not such a conviction is recorded and whether or not such an offence was committed in connection with the employment of the Staff member at the Correctional Complex, subject only to the Exceptions; or</p> <p>(b) a finding of misconduct of a member of Staff, including:</p> <p>(i) any finding of misconduct by the General Manager or the State (acting reasonably) as a consequence of an event that arises in connection with the employment of the Staff member at the Correctional Complex including any breach of Law, Policies or procedures or any professional standards or guidelines applicable to the position of that Staff member; or</p> <p>(ii) any finding of professional misconduct, negligence or malpractice by an appropriate professional regulatory body or a court or tribunal against any member of Staff.</p> <p>Exceptions means:</p> <p>(a) any convictions for traffic related offences that have not arisen from, during or in connection with the employment of the Staff member at the Correctional Complex; or</p> <p>(b) any conviction for which the Staff member has received a pardon or which has been quashed.</p> <p>Staff Misconduct not known to Project Co or its Associates means identification by the State of Staff Misconduct which, based on the findings of a State investigation, Project Co or its Associates did not know of, but ought reasonably to have known of, at the time the State identified the Staff Misconduct.</p> <p>Staff Misconduct Not Reported or Misreported means failure by Project Co or any of its Associates to report or to correctly report any Staff Misconduct found, proven or substantiated whether in the reporting period or in a prior reporting period.</p>
Counting Rules	<p>A. Count the number of incidents for which Staff Misconduct.</p> <p>B. Count the number of incidents of Staff Misconduct not known to Project Co or its Associates during the reporting period.</p> <p>C. Count the number of incidents of Staff Misconduct Not Reported or Misreported during the reporting period.</p>
Reporting Requirements	Report all findings of staff misconduct to the CSNSW Professional Standards Branch (PSB) as they occur.

KPI 11	Staff Misconduct
Reporting Period	Monthly

3.12 KPI 12 – Escapes from Temporary Leave

KPI 12	Escapes from Temporary Leave
Formula	Number of Escapes from Temporary Leave Programs
Calculation of Quality Failure Points	Project Co will accrue [REDACTED] Quality Failure Points for each Escape from Temporary Leave.
Definitions	<p>Escape from Temporary Leave means when a minimum security Inmate:</p> <p>(a) departs, without lawful authority, from the location of an authorised temporary leave program (whether supervised or unsupervised), and is subsequently charged by NSW Police with escape from lawful custody; or</p> <p>(b) fails to return from an authorised temporary leave program (whether supervised or unsupervised) or returns late and is subsequently charged by NSW Police with escape from lawful custody.</p>
Counting Rules	<p>The number of Escapes from temporary leave during the reporting period.</p> <p>If two or more Inmates Escape from temporary leave at the same time or together, then this is counted as two or more Escapes from Temporary Leave (as relevant).</p>
Reporting Requirements of Project Co	<ul style="list-style-type: none"> • Compliance with relevant Services Requirements. • Summary of the incident, events leading to the Escape from Temporary Leave, detection and the response by Project Co or its Associates. • Project Co or its Associates' intended actions to prevent future Escapes from Temporary Leave. If none, the rationale supporting this decision. • Report of the General Manager regarding the Escape from Temporary Leave.
Reporting Period	Monthly

3.13 KPI 13 – Accuracy of Reporting

KPI 13	Accuracy of Reporting
Formulae	A. Number of Non-Compliant Incident Reports B. Number of Critical Reporting Failures
Calculation of Quality Failure Points	The Quality Failure Points which Project Co will accrue each Month is as follows: A. [REDACTED] points per Non-Compliant Incident Report B. [REDACTED] points per Critical Reporting Failure
Definitions	Non-Compliant Incident Reports means those incident reports provided to the State in accordance with Legislation, Policy or the Deed that do not comply with relevant Legislation, Policy or the Deed (as applicable). Critical Reporting Failure means a failure by Project Co to provide critical incident reports to the State in accordance with Legislation, Policy or the Deed within the timeframes specified in Legislation, Policy or the Deed (as applicable).
Counting Rules	A. Count the number of Non-Compliant Incident Reports during the reporting period. B. Count the number of Critical Reporting Failures during the reporting period.
CSNSW Validation	Review by Monitors including a qualitative review of reports.
Reporting Requirements	For each Non-Compliant Incident Report: <ul style="list-style-type: none"> • details of the relevant incident report; • details of the relevant Legislation, Policy or section of the Deed that it does not comply with including specific clause references; and • details of the reasons why the Non-Compliant Incident Report arose. For each Critical Reporting Failure: <ul style="list-style-type: none"> • details of the relevant critical incident report; • details of the timeframe specified in Legislation, Policy or the Deed including specific clause references; • details of the timeframe in which the relevant critical incident report was provided; and • details of the reasons why the Critical Reporting Failure arose.
Reporting Period	Monthly

3.14 KPI 14 – Adherence to Performance Improvement Notice cure plans

KPI 14	Adherence to Performance Improvement Notice cure plans
Formulae	Number of failures to comply with a Performance Improvement Notice cure plan
Calculation of Quality Failure Points	Project Co will accrue [REDACTED] Quality Failure Points for each failure to comply with a Performance Improvement Notice cure plan.
Definitions	If the State has not issued a Major Default Notice or Default Termination Notice in respect of the failure to comply, the State may issue a performance improvement notice to Project Co if it fails to comply with the Services Requirements (Performance Improvement Notice or PIN).

	<p>If the State issues a Performance Improvement Notice, Project Co must develop a cure plan to remedy the failures identified in the Performance Improvement Notice, which PIN cure plan must be provided to the State for review in accordance with the Review Procedures.</p> <p>All PIN cure plans must identify the timeframe for remedy.</p> <p>For the avoidance of doubt, the issue of a Performance Improvement Notice does not, in any way, affect or limit the State's rights to issue Major Default Notices or Default Termination Notices in accordance with this Deed.</p>
Counting Rules	Count the number of Performance Improvement Notice cure plans not complied with during the reporting period. If the State subsequently issues a Major Default Notice or Default Termination Notice in respect of the failure to comply with the Services Requirements for which a PIN has been issued, that PIN is to be disregarded for the purposes of these counting rules.
Reporting Requirements	<p>For each Performance Improvement Notice cure plan not complied with:</p> <ul style="list-style-type: none"> • the steps or actions which were not completed in accordance with the PIN cure plan; and • the reason why the PIN cure plan was not complied with.
Reporting Period	Monthly

3.15 KPI 15 – Carrying out scheduled FM Service tasks

KPI 15	Carrying out scheduled FM Service tasks																								
Formulae	<p>A. Number of Type 1 Failures</p> <p>B. Number of Type 2 Failures</p>																								
Calculation of Quality Failure Points	<p>The following tables set out the Quality Failure Points which Project Co will accrue each Month depending on its performance relative to the Target, Level 1 and Level 2 Performance Ranges.</p> <p>A. Number of Type 1 Failures</p> <table border="1"> <thead> <tr> <th></th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td></td> <td></td> </tr> <tr> <td>Level 1</td> <td></td> <td></td> </tr> <tr> <td>Level 2</td> <td></td> <td></td> </tr> </tbody> </table> <p>B. Number of Type 2 Failures</p> <table border="1"> <thead> <tr> <th></th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td></td> <td></td> </tr> <tr> <td>Level 1</td> <td></td> <td></td> </tr> <tr> <td>Level 2</td> <td></td> <td></td> </tr> </tbody> </table>		Performance Range	Quality Failure Points	Target			Level 1			Level 2				Performance Range	Quality Failure Points	Target			Level 1			Level 2		
	Performance Range	Quality Failure Points																							
Target																									
Level 1																									
Level 2																									
	Performance Range	Quality Failure Points																							
Target																									
Level 1																									
Level 2																									
Definitions	<p>Type 1 Failures means incidents of failure to undertake Non-Critical Maintenance Tasks in accordance with the Asset Management Plan, in the reporting period.</p> <p>Type 2 Failures means incidents of failure to undertake Critical Planned Maintenance Tasks in accordance with the Asset Management Plan in the reporting period.</p> <p>Critical Planned Maintenance Tasks means any planned maintenance tasks identified in the Asset Management Plan undertaken to the following:</p> <ul style="list-style-type: none"> (a) communication systems; (b) electrical services; (c) fire and life safety engineering services; (d) medical equipment; or (e) security systems. <p>Non-Critical Maintenance Tasks means any planned maintenance tasks which are not Critical Planned Maintenance Tasks.</p>																								
Counting Rules	Count the number of Type 1 and Type 2 Failures that occur in the reporting period																								
Reporting Requirements	Report of planned maintenance tasks completed in accordance with the Asset Maintenance Schedule																								
Reporting Period	Monthly																								

3.16 KPI 16 – Rectifying FM Service Failures

For the purposes of this KPI, the following definitions will apply:

FM Service Failure has the meaning given to it in Schedule 16 (Payment Schedule).

FM Table means the definitions set out in the following table:

FM Table	
Level A FM Service Failure – Emergency	Level A Rectification Period
<p>means any FM Service Failure which:</p> <ul style="list-style-type: none"> • is life threatening or, if not remedied immediately, will potentially be life threatening; • is serious enough to cause significant damage to the Site or Correctional Complex; • poses, or has the potential to pose, an infection or health and safety risk to Inmates, Staff, Visitors or other users if not Rectified immediately; • may result in a partial or total lock-down if not Rectified immediately; or • is otherwise deemed by the State as requiring Rectification within the Level A Rectification Period. 	60 minutes
Level B FM Service Failure – Urgent/High Priority	Level B Rectification Period
<p>means any FM Service Failure that is not categorised as a Level A FM Service Failure and:</p> <ul style="list-style-type: none"> • is interrupting, or if not Rectified within the Level B Rectification Period, has the potential to interrupt the operation or functionality of the Site or Correctional Complex; or • may develop into a Level A FM Service Failure if not Rectified within the Level B Rectification Period. 	6 hours
Level C FM Service Failure – Medium Priority	Level C Rectification Period
<p>means any FM Service Failure which is not categorised as a Level A or B FM Service Failure and:</p> <ul style="list-style-type: none"> • does not pose an immediate risk (health and safety or otherwise) to Inmates, Staff, Visitors or other users and is not likely to pose an immediate risk (health and safety or otherwise) to the users if not remedied within the Level C Rectification Period; or • causes no more than very minor disruption, inconvenience or loss of amenity to the Site or Correctional Complex; or • potentially causes more than minor disruption, inconvenience to Project Co or its Associates in carrying out the operations if not Rectified within the Level C Rectification Period. 	24 hours
Level D FM Service Failure – Low Priority	Level D Rectification Period

FM Table	
<p>means any FM Service Failure which is not categorised as a Level A, B or C Service Failure and:</p> <ul style="list-style-type: none"> • does not pose any immediate or potential danger or risk in any way to Inmates, Staff, Visitors or other users; • will not immediately disrupt the Site, or the purposes, functions and uses of the Correctional Complex if not Rectified; or • is considered highly unlikely to develop into a Level A, Level B or Level C Service Failure even if not Rectified until the expiry of the Level D Rectification Period. 	<p>Within 5 calendar days</p>

Rectification Period has the meaning attributed to it in Schedule 16 (Payment Schedule).

Rectify has the meaning attributed to it in Schedule 16 (Payment Schedule).

Respond has the meaning attributed to it in Schedule 16 (Payment Schedule).

- (a) On becoming aware of an FM Service Failure, Project Co must:
 - (i) Respond as soon as practicable; and
 - (ii) categorise the FM Service Failure in accordance with the FM Table.
- (b) Once categorised, an FM Service Failure cannot be re-categorised as a lower FM Service Failure level unless agreed with the State. If an FM Service Failure has occurred and Project Co does not categorise the FM Service Failure, then the level of the FM Service Failure may be determined by the State. The State may alter the level of an FM Service Failure assigned by Project Co by notifying Project Co. If Project Co disputes the changed level, then Project Co may refer for resolution in accordance with the Project Deed. In the interim, Project Co must Rectify the FM Service Failure in accordance with the level given by the State.
- (c) Project Co is entitled to request a Temporary Fix in accordance with Schedule 16 (Payment Schedule).
- (d) The Quality Failure Points attributable to each incident of failure to Rectify an FM Service Failure within the relevant Level A-D Rectification Periods are calculated in accordance with the following table

KPI 16	Rectifying facilities management failure events						
Formulae	<p>A. Number of incidents of failure to Rectify a Level A FM Service Failures within the Level A Rectification Period</p> <p>B. Number of incidents of failure to Rectify a Level B FM Service Failures within the Level B Rectification Period</p> <p>C. Number of incidents of failure to Rectify a Level C FM Service Failures within the Level C Rectification Period</p> <p>D. Number of incidents of failure to Rectify a Level D FM Service Failures within the Level D Rectification Period</p>						
Calculation of Quality Failure Points	<p>The following tables set out the Quality Failure Points which Project Co will accrue each Month depending on its performance relative to the Target, Level 1 and Level 2 Performance Ranges.</p> <p>A. Number of incidents of failure to Rectify a Level A FM Service Failure within the Level A Rectification Period</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="background-color: #9e9e9e;"></th> <th style="background-color: #9e9e9e;">Performance Range</th> <th style="background-color: #9e9e9e;">Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td style="background-color: #9e9e9e;"> </td> <td style="background-color: #9e9e9e;"> </td> <td style="background-color: #9e9e9e;"> </td> </tr> </tbody> </table>		Performance Range	Quality Failure Points			
	Performance Range	Quality Failure Points					

KPI 16	Rectifying facilities management failure events	
	Target	
	Level 1	
	Level 2	
	B. Number of incidents of failure to Rectify a Level B FM Service Failure within the Level B Rectification Period	
	Performance Range	Quality Failure Points
	Target	
	Level 1	
	Level 2	
	C. Number of incidents of failure to Rectify a Level C FM Service Failure within the Level C Rectification Period	
	Performance Range	Quality Failure Points
	Target	
	Level 1	
	Level 2	
	D. Number of incidents of failure to Rectify a Level D FM Service Failure within the Level D Rectification Period	
	Performance Range	Quality Failure Points
	Target	
	Level 1	
	Level 2	
Counting Rules	<p>For each of A-D, count the number of incidents of failure to Rectify an FM Service Failure within the relevant Rectification Period.</p> <p><u>Example:</u></p> <p>A Level A FM Service Failure is detected by the BMS at 3pm on a Thursday. The Level A Rectification Period is 60 minutes and no Temporary Fix is agreed with the State.</p> <p>The Level A FM Service Failure is Rectified at 5.30pm on the same Thursday. This represents two incidents of failure to Rectify the Level A FM Service Failure within the Level A</p>	

KPI 16	Rectifying facilities management failure events
	Rectification Period which equates to [REDACTED] Quality Failure Points [REDACTED]
Reporting Requirements	<p>Project Co must provide a reporting system capable of undertaking comprehensive and complete self-monitoring of the delivery of the Services in accordance with the Performance Monitoring Program and must ensure that for each FM Service Failure, Project Co must record the following:</p> <ul style="list-style-type: none"> • a unique identification number; • the nature of the FM Service Failure; • the date, time, extent and duration of the FM Service Failure; • the specific location of the FM Service Failure; • the applicable FM Service Failure level; • the required and actual Rectification Period; and • the Quality Failure Points attributable to the FM Service Failure. <p>Where the FM Service Failure gives rise to Critical Incidents, Project Co is to separately provide a critical incident report.</p>
Reporting Period	Monthly

3.17 KPI 17 – Chronic Healthcare Plans

KPI 17	Chronic Healthcare Plans												
Formula	(Number of Eligible Custodial Patients with an Up to Date Chronic Healthcare Plan) / (Number of Eligible Custodial Patients) x 100												
Calculation of Quality Failure Points	<p>The following table sets out the Quality Failure Points which Project Co will accrue each Month depending on its performance relative to the Target, Level 1 and Level 2 Performance Ranges.</p> <table border="1" data-bbox="564 470 1366 725"> <thead> <tr> <th data-bbox="564 470 746 512"></th> <th data-bbox="746 470 1042 512">Performance Range</th> <th data-bbox="1042 470 1366 512">Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td data-bbox="564 512 746 566">Target</td> <td data-bbox="746 512 1042 566"></td> <td data-bbox="1042 512 1366 566"></td> </tr> <tr> <td data-bbox="564 566 746 645">Level 1</td> <td data-bbox="746 566 1042 645"></td> <td data-bbox="1042 566 1366 645"></td> </tr> <tr> <td data-bbox="564 645 746 725">Level 2</td> <td data-bbox="746 645 1042 725"></td> <td data-bbox="1042 645 1366 725"></td> </tr> </tbody> </table>		Performance Range	Quality Failure Points	Target			Level 1			Level 2		
	Performance Range	Quality Failure Points											
Target													
Level 1													
Level 2													
Definitions	<p>Up to Date Chronic Healthcare Plan means:</p> <ul style="list-style-type: none"> (a) a plan has been prepared in accordance with the Services Requirements within the Required Timeframe and which includes: <ul style="list-style-type: none"> (i) the identification of the health needs of the Custodial Patient; (ii) the specification of the health care interventions and treatments that the Custodial Patient is likely to need; (iii) the inclusion of a date when the plan will be reviewed; (iv) the appropriate linkage with other agencies and organisations for all necessary health care follow-ups on the Custodial Patient’s release from the Correctional Complex; (v) goals agreed with the Custodial Patient relating to ongoing health management; and (vi) evidence of discussion of the goals and nature of the plan with the Custodial Patient, <p>(Chronic Healthcare Plan); and</p> (b) the plan has been adhered to such that the required health care and treatment interventions, referrals and follow ups have been implemented in accordance with the Chronic Healthcare Plan; and (c) the Chronic Healthcare Plan has been updated and revised as appropriate based on the passage of time and the chronic health condition of the Custodial Patient, including further assessments of the necessity for other interventions. <p>Required timeframe means:</p> <ul style="list-style-type: none"> (a) 29 days from (as applicable) reception at the Correctional Complex or diagnosis by Project Co or its Associates of the chronic illness; or (b) where a Custodial Patient has been identified as having a chronic health condition by an alternative health care provider prior to reception at the Correctional Complex, the later of: <ul style="list-style-type: none"> (i) 29 days from the date of identification of the chronic health condition; or (ii) 14 days from the date of the Custodial Patient's transfer to the Correctional Complex. 												

KPI 17	Chronic Healthcare Plans
	<p>Eligible Custodial Patients means Custodial Patients who have been at the Correctional Complex for at least 29 days and:</p> <ul style="list-style-type: none"> (a) have chronic conditions, as determined in accordance with the Services Specification; or (b) are identified as requiring a Chronic Healthcare Plan in accordance with the Services Specification, <p>but do not include Custodial Patients who have been released or transferred from the Correctional Complex prior to the last calendar day of the Month.</p>
Counting Rules	<p><u>Numerator</u>: The number of Eligible Custodial Patients with an Up to Date Chronic Healthcare Plan.</p> <p><u>Denominator</u>: The number of Eligible Custodial Patients.</p>
Reporting Requirements of Project Co	For each Eligible Custodial Patient without an Up to Date Chronic Healthcare Plan, Project Co or its Associates' intended actions to ensure the Eligible Custodial Patient has an Up to Date Chronic Healthcare Plan in the following Month.
Reporting Period	Monthly

3.18 KPI 18 – Timely Primary Health Services

KPI 18	Provision of timely primary health services
Formulae	A. Number of Failure Periods for Priority 1 Custodial Patients B. Number of Failure Periods for Priority 2 Custodial Patients
Calculation of Quality Failure Points	A. ■■■ Quality Failure Points per Failure Period B. ■■■ Quality Failure Points per Failure Period
Definitions	<p>Failure Periods means the number of days (or part of them) in excess of the Required Timeframes that a Custodial Patient in the Month had to wait for non-emergency primary health referrals. For the avoidance of doubt, non-emergency primary health referrals do not include the initial reception assessment process to the Correctional Complex or urgent/emergency treatment (where shorter time periods apply).</p> <p>Priority 1 Custodial Patients means Custodial Patients whose health condition is deteriorating and who require attention within one to three days.</p> <p>Priority 2 Custodial Patients means Custodial Patients where lack of immediate intervention may result in an adverse health outcome and who require attention within three to fourteen days.</p> <p>Required Timeframes means:</p> <p>(a) For Priority 1 Custodial Patients, 72 hours; and</p> <p>(b) For Priority 2 Custodial Patients, 14 days.</p>
Counting Rules	<p>For each of A and B above, count the number of Failure Periods that each Custodial Patient had to wait in excess of the Required Timeframes.</p> <p>For example, if a Priority 1 Custodial Patient is identified at 5pm on a Friday and that patient does not receive a primary health referral until 2pm on the following Tuesday, count 0.88 (being (93-72)/24 rounded to two decimal places) Failure Periods.</p> <p>Where a Custodial Patient received a non-urgent primary health referral within the Required Timeframe, count zero Failure Periods.</p> <p>Exclude Failure Periods which arise due to non-attendance of the Custodial Patient (other than where the non-attendance arises as a result of a failure by Project Co or its Associates to perform the Services in accordance with this Deed) provided that, if it were not for the non-attendance of the Custodial Patient, the Required Timeframe would have been met for the Custodial Patient.</p>
Reporting Requirements of Project Co	Number of Failure Periods for Priority 1 Custodial Patients Number of Failure Periods for Priority 2 Custodial Patients
Reporting Period	Monthly

3.19 KPI 19 – Health Discharge Plans

KPI 19	Health discharge plans																								
Formulae	<p>A. (Number of In-Scope Sentenced Custodial Patients provided with a Health Discharge Plan)/(Number of In-Scope Sentenced Custodial Patients) x 100</p> <p>B. (Number of In-Scope Remand Custodial Patients provided with a Health Discharge Plan)/(Number of In-Scope Remand Custodial Patients) x 100</p>																								
Calculation of Quality Failure Points	<p>The following table sets out the Quality Failure Points which Project Co will accrue each Month for A and B above depending on its performance against each sub-component relative to the Target, Level 1 and Level 2 Performance Ranges.</p> <table border="1" data-bbox="564 689 1414 981"> <thead> <tr> <th data-bbox="564 689 799 770">A – Sentenced Inmates</th> <th data-bbox="799 689 1091 770">Performance Range</th> <th data-bbox="1091 689 1414 770">Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td data-bbox="564 770 799 819">Target</td> <td colspan="2" data-bbox="799 770 1414 819" style="background-color: black;"></td> </tr> <tr> <td data-bbox="564 819 799 891">Level 1</td> <td colspan="2" data-bbox="799 819 1414 891" style="background-color: black;"></td> </tr> <tr> <td data-bbox="564 891 799 981">Level 2</td> <td colspan="2" data-bbox="799 891 1414 981" style="background-color: black;"></td> </tr> </tbody> </table> <table border="1" data-bbox="564 1034 1414 1330"> <thead> <tr> <th data-bbox="564 1034 799 1115">B – Remand Inmates</th> <th data-bbox="799 1034 1091 1115">Performance Range</th> <th data-bbox="1091 1034 1414 1115">Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td data-bbox="564 1115 799 1164">Target</td> <td colspan="2" data-bbox="799 1115 1414 1164" style="background-color: black;"></td> </tr> <tr> <td data-bbox="564 1164 799 1236">Level 1</td> <td colspan="2" data-bbox="799 1164 1414 1236" style="background-color: black;"></td> </tr> <tr> <td data-bbox="564 1236 799 1330">Level 2</td> <td colspan="2" data-bbox="799 1236 1414 1330" style="background-color: black;"></td> </tr> </tbody> </table>	A – Sentenced Inmates	Performance Range	Quality Failure Points	Target			Level 1			Level 2			B – Remand Inmates	Performance Range	Quality Failure Points	Target			Level 1			Level 2		
A – Sentenced Inmates	Performance Range	Quality Failure Points																							
Target																									
Level 1																									
Level 2																									
B – Remand Inmates	Performance Range	Quality Failure Points																							
Target																									
Level 1																									
Level 2																									
Definitions	<p>Health Discharge Plan means a health discharge plan that meets the requirements of the Services Specification.</p> <p>In-scope Sentenced Custodial Patients means all sentenced Custodial Patients where the known date of release from the Correctional Complex is in the subsequent Month and for whom a health discharge plan is required in accordance with the Services Specification, and includes Specified Custodial Patients.</p> <p>In-scope Remand Custodial Patients means all remand Custodial Patients where the next known court date is in the subsequent Month and for whom a health discharge plan is required in accordance with the Services Specification, and includes Specified Custodial Patients.</p> <p>Specified Custodial Patients means Custodial Patients:</p> <ul style="list-style-type: none"> • with chronic health issues; • with mental illness or significant mental health issues; • with alcohol and other drug issues; • with a Chronic Healthcare Plan (as defined in KPI 17); • with prescribed pharmacotherapy treatments; or • who are Aboriginal and Torres Strait Islander Custodial Patients. 																								

KPI 19	Health discharge plans
Counting Rules	<p>In the case of Custodial Patients presented to court and released by the court, the Health Discharge Plan will be deemed to have been provided if it is documented in Project Co or its Associates' records and OIMS and is available to the Custodial Patient upon request.</p> <p>Exclude:</p> <ul style="list-style-type: none"> • In-scope Remand Custodial Patients who were presented to court within 24 hours of being received at the Correctional Complex and for whom no health screening was conducted; or • In-scope Remand Custodial Patients where the Custodial Patient was released in advance of the next booked court date.
Reporting Requirements of Project Co	<ul style="list-style-type: none"> • Number of In-Scope Sentenced Custodial Patients provided with a Health Discharge Plan • Number of In-Scope Sentenced Custodial Patients • Number of In-Scope Remand Custodial Patients provided with a Health Discharge Plan • Number of In-Scope Remand Custodial Patients
Reporting Period	Monthly

3.20 KPI 20 – Early Detection Programs and Immunisation Services

KPI 20	Early detection programs and immunisation services																								
Formulae	<p>A. (Number of Eligible Custodial Patients provided with Immunisations)/(Number of Eligible Custodial Patients) x 100</p> <p>B. (Number of High Risk Custodial Patients provided with EDP)/(Number of High Risk Custodial Patients) x 100</p>																								
Calculation of Quality Failure Points	<p>The following table sets out the Quality Failure Points which Project Co will accrue each Month for A and B above depending on its performance against each sub-component relative to the Target, Level 1 and Level 2 Performance Ranges.</p> <table border="1" data-bbox="564 602 1414 896"> <thead> <tr> <th data-bbox="564 602 796 680">A – Immunisations</th> <th data-bbox="796 602 1091 680">Performance Range</th> <th data-bbox="1091 602 1414 680">Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td data-bbox="564 680 796 734">Target</td> <td colspan="2" data-bbox="796 680 1414 734" style="background-color: black;"></td> </tr> <tr> <td data-bbox="564 734 796 813">Level 1</td> <td colspan="2" data-bbox="796 734 1414 813" style="background-color: black;"></td> </tr> <tr> <td data-bbox="564 813 796 896">Level 2</td> <td colspan="2" data-bbox="796 813 1414 896" style="background-color: black;"></td> </tr> </tbody> </table> <table border="1" data-bbox="564 949 1414 1211"> <thead> <tr> <th data-bbox="564 949 796 1003">B – EDP</th> <th data-bbox="796 949 1091 1003">Performance Range</th> <th data-bbox="1091 949 1414 1003">Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td data-bbox="564 1003 796 1057">Target</td> <td colspan="2" data-bbox="796 1003 1414 1057" style="background-color: black;"></td> </tr> <tr> <td data-bbox="564 1057 796 1135">Level 1</td> <td colspan="2" data-bbox="796 1057 1414 1135" style="background-color: black;"></td> </tr> <tr> <td data-bbox="564 1135 796 1211">Level 2</td> <td colspan="2" data-bbox="796 1135 1414 1211" style="background-color: black;"></td> </tr> </tbody> </table>	A – Immunisations	Performance Range	Quality Failure Points	Target			Level 1			Level 2			B – EDP	Performance Range	Quality Failure Points	Target			Level 1			Level 2		
A – Immunisations	Performance Range	Quality Failure Points																							
Target																									
Level 1																									
Level 2																									
B – EDP	Performance Range	Quality Failure Points																							
Target																									
Level 1																									
Level 2																									
Definitions	<p>Eligible Custodial Patients means all Custodial Patients who provide voluntary informed consent for Immunisations and who are:</p> <ul style="list-style-type: none"> (a) received into custody at the Correctional Complex in the last 14 days of the previous Month; or (b) received into custody at the Correctional Complex in the current Month excluding the last 14 days of the Month. <p>Immunisations means immunisation services in accordance with the Services Specification.</p> <p>High Risk Custodial Patients means Custodial Patients:</p> <ul style="list-style-type: none"> (a) identified as at risk of a blood borne virus or a sexually transmissible infection; and (b) who voluntarily undergo screening, <p>who are:</p> <ul style="list-style-type: none"> (c) received into custody at the Correctional Complex in the last 14 days of the previous Month; or (d) received into custody at the Correctional Complex in the current Month excluding the last 14 days of the Month. 																								

KPI 20	Early detection programs and immunisation services
	EDP means early detection programs for blood borne viruses and sexually transmissible infections in accordance with the Services Specification.
Counting Rules	<p><u>A. Immunisations</u></p> <p><u>Numerator:</u> Number of Eligible Custodial Patients provided with Immunisations</p> <p><u>Denominator:</u> Number of Eligible Custodial Patients</p> <p><u>B. EDP</u></p> <p><u>Numerator:</u> Number of High Risk Custodial Patients provided with EDP</p> <p><u>Denominator:</u> Number of High Risk Custodial Patients</p>
Reporting Requirements of Project Co	<ul style="list-style-type: none"> • Number of Eligible Custodial Patients provided with Immunisations • Number of Eligible Custodial Patients • Number of High Risk Custodial Patients provided with EDP • Number of High Risk Custodial Patients
Reporting Period	Monthly

3.21 KPI 21 – Health Related Incident Reporting

KPI 21	Health Related Incident Reporting
Formulae	<p>A. Number of Failure Periods for submitting RCA incident reports to the State within the Required Timeframe</p> <p>B. Number of Failure Periods for Resolving Custodial Patient complaints within the Required Timeframe</p> <p>C. Number of Incorrect Incidents in the Month</p>
Calculation of Quality Failure Points	<p>The Quality Failure Points which Project Co will accrue each Month is as follows:</p> <p>A. Root Cause Analysis – [REDACTED] points per Failure Period</p> <p>B. Complaints – [REDACTED] per Failure Period</p> <p>C. Incidents – [REDACTED] per Incorrect Incident</p>
Definitions	<p>Failure Periods are calculated as the number of 24 hour periods in excess of the Required Timeframes before the Root Cause Analysis incident report is submitted or the Custodial Patient complaint is Resolved in accordance with the requirements of the Services Specification.</p> <p>Root Cause Analysis or RCA means contemporary root cause analysis processes in accordance with the Deed in respect of all serious adverse incidents, where requested by the State through IIMS.</p> <p>IIMS means the NSW Ministry of Health Incident Information Management System.</p> <p>Incorrect Incidents means Health Procedures which were performed:</p> <ul style="list-style-type: none"> (a) at the incorrect site (i.e. body part); (b) on the incorrect Custodial Patient; (c) which should not have been performed in accordance with NSW Health Policies; or (d) were performed using equipment that was not in accordance with NSW Health Policies. <p>Health Procedures means diagnostic and surgical procedures including dentistry, minor invasive procedures, radiology, chemotherapy and dialysis.</p> <p>Resolve, Resolved and Resolving means meeting with the Custodial Patient to discuss their complaint (whether made orally to Staff at the Correctional Complex or submitted in writing including through external services such as the NSW Health Care Complaints Commission or the NSW Ombudsman’s Office) and providing (as appropriate) an explanation, apology or proposed rectification to the Custodial Patient. A written complaint also requires a written response.</p> <p>Required Timeframes means:</p> <ul style="list-style-type: none"> (a) for Performance Target A, within 70 days of notification by the State through IIMS;

KPI 21	Health Related Incident Reporting
	(b) for Performance Target B, within 35 days of Project Co or its Associates being notified of the complaint.
Counting Rules	<p>A. Example:</p> <p>Project Co is notified of the requirement to submit an RCA through IIMS on 15 March 2025. Project Co submits the RCA to the Ministry of Health on 27 May 2025 i.e. 73 days later. Count three Failure Periods.</p> <p>B. Example:</p> <p>A written complaint is lodged by an Inmate on 15 March 2025. Project Co meets with the Inmate on 17 April 2025 (i.e. 33 days later) to discuss the complaint and apologise. Project Co does not provide a written response to the Inmate until 20 April 2025 (i.e. 37 days after the complaint is lodged). Count two Failure Periods.</p> <p>C. Example:</p> <p>An Inmate is referred to hospital for an X-Ray of their left arm. They are suspected of having a broken right arm and therefore the referral was incorrect. Count one Incident.</p> <p>If a Health Procedure is performed on a Custodial Patient at the incorrect site and the Health Procedure should have been performed on a different Custodial Patient, count two Incidents.</p>
Reporting Requirements of Project Co	<ul style="list-style-type: none"> • Number of Failure Periods for submitting RCA incident reports to the State within the Required Timeframe • Number of Failure Periods for Resolving Custodial Patient complaints within the Required Timeframe • Relevant details of each Incorrect Incident
Reporting Period	Monthly

3.22 KPI 22 – Drug and Alcohol Referrals for Pregnancies

KPI 22	Drug and Alcohol Referrals for Pregnancies
Formula	Number of pregnant Custodial Patients with a history of drug and or alcohol use received into custody at the Correctional Complex and not Referred within 12 hours in accordance with the Services Specification (Failure).
Calculation of Quality Failure Points	The Quality Failure Points which Project Co will accrue each Month is ■■■ per Failure
Definitions	<p>Referred means:</p> <p>(a) advice is sought from the addictions specialist or drug and alcohol medical officer in respect of treatment for the pregnant Custodial Patient; and</p> <p>(b) the pregnant Custodial Patient meets with the addictions specialist / drug and alcohol medical officer.</p>
Counting Rules	The 12 hour period commences at the time of the Custodial Patient's initial reception
Reporting Requirements of Project Co	<ul style="list-style-type: none"> • Number of pregnant Custodial Patients with a history of drug and alcohol use received into custody at the Correctional Complex in the reporting period. • Number of pregnant Custodial Patients with a history of drug and alcohol use received into custody at the Correctional Complex in the reporting period and not referred to the addictions specialist or drug and alcohol medical officer within 12 hours in accordance with the Services Specification.
Reporting Period	Monthly

3.23 KPI 23 – Health Screening

KPI 23	Health Screening												
Formula	(Number of Custodial Patients received into custody at the Correctional Complex in the Period who undergo a Health Assessment within 24 hours) / (Number of Custodial Patients received into custody at the Correctional Complex in the Period) x 100												
Calculation of Quality Failure Points	<p>The following table sets out the Quality Failure Points which Project Co will accrue each Month depending on its performance relative to the Target, Level 1 and Level 2 Performance Ranges.</p> <table border="1"> <thead> <tr> <th></th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td></td> <td></td> </tr> <tr> <td>Level 1</td> <td></td> <td></td> </tr> <tr> <td>Level 2</td> <td></td> <td></td> </tr> </tbody> </table>		Performance Range	Quality Failure Points	Target			Level 1			Level 2		
	Performance Range	Quality Failure Points											
Target													
Level 1													
Level 2													
Definitions	<p>Health Assessment means:</p> <ul style="list-style-type: none"> (a) a comprehensive health assessment in accordance with the Services Specification for Custodial Patients whose reception at the Correctional Complex is their initial reception into the NSW correctional system; (b) a health assessment review in accordance with the Services Specification for Custodial Patients transferred to the Correctional Complex from another correctional centre or from a hospital; or (c) gross health observations for Custodial Patients who are physically or mentally unwell or violent until such time as the Custodial Patient is sufficiently well or non-violent for the assessments in (a) or (b) above to be completed. <p>Period means:</p> <ul style="list-style-type: none"> (a) the last day of the preceding Month; and (b) all days in the Month excluding the last day of the Month 												
Counting Rules	<p><u>Numerator</u>: Number of Custodial Patients received into custody at the Correctional Complex in the Period who undergo a Health Assessment within 24 hours of reception into the Correctional Centre.</p> <p><u>Denominator</u>: Number of Custodial Patients received into custody at the Correctional Complex in the Reporting Period.</p>												
Reporting Requirements of Project Co	<ul style="list-style-type: none"> • Number of Health Assessments undertaken for each of (a), (b) and (c) in the Definitions. • Total number of Custodial Patients received into custody at the Correctional Complex in the period. 												
Reporting Period	Monthly												

Schedule 18 — Residual Life Schedule

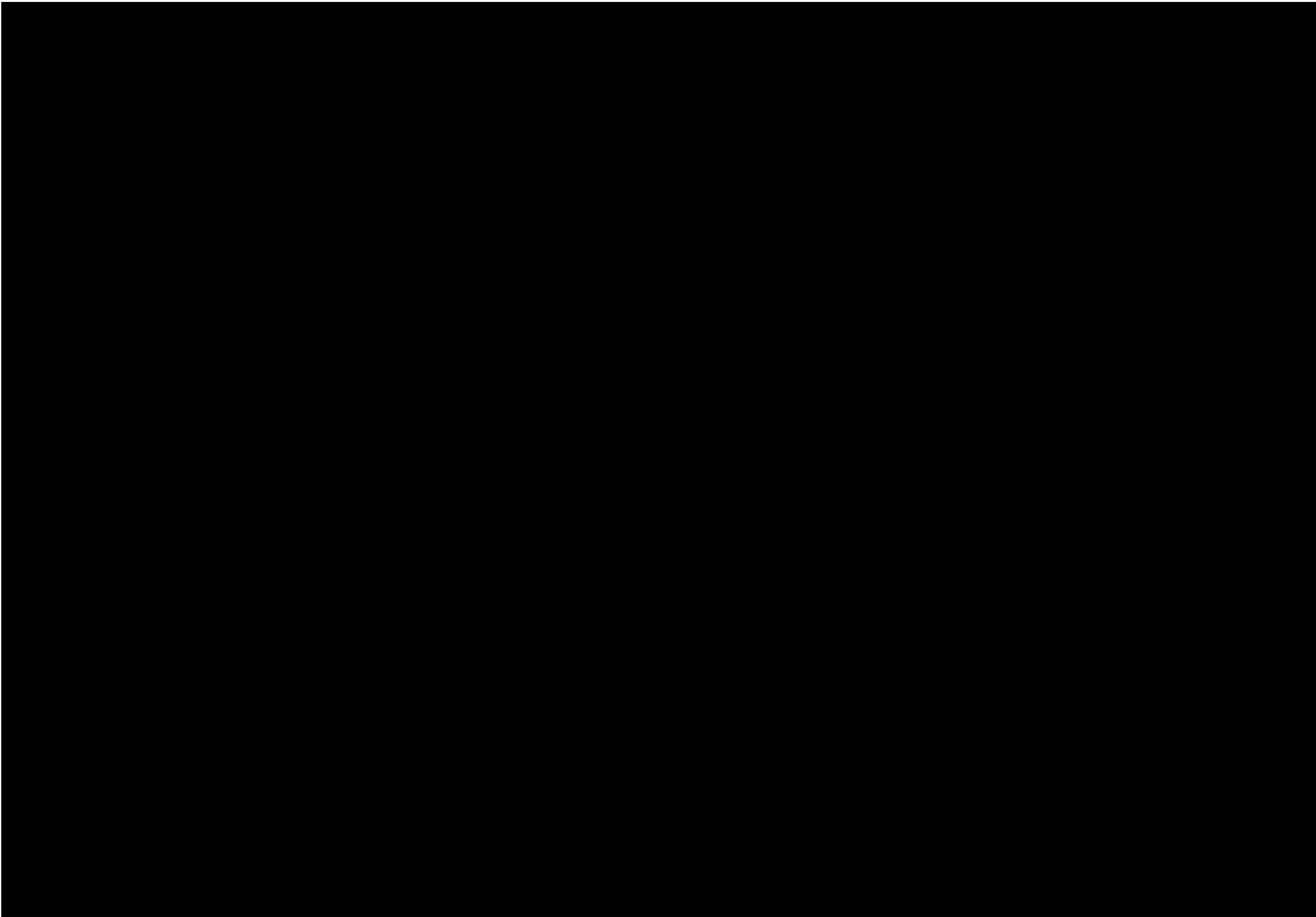
In addition to Project Co's Handover obligations under this Deed, Project Co must ensure at the end of the Operating Phase that the items identified in the table below have the Required Residual Life as set out in Column 2.

Required Residual Life is the period measured from the Final Expiry Date during which the item must be free from Defects and otherwise Fit For Purpose (without any major maintenance or refurbishment works) when operated and maintained in accordance with comparable requirements to those in this Deed.

Item	Required Residual Life (Years)
Architectural	
Structural elements including substructures	25
Floor structures	25
Roof structures (excluding secondary steel, purlins, girts)	25
Internal structural walls	25
Internal partitions including openings	15
Drainage and below ground civil engineering infrastructure	10
Roof finishes (including secondary structural steel, purlins, girts)	10
External hard services (including concrete pathways, playing courts)	10
Flexible pavements (including perimeter road)	10
Rigid pavements (including pavements)	10
Engineering services	
Packaged air conditioners	10
Chillers	15
Boilers	15
Calorifier	15
Ductwork	10
Dampers	15
Fans/ventilators	15
Electric motors	15
Condensing water coolers	15
Tanks	10
Reciprocating engines/compressors	15
Switchboards	10

Item	Required Residual Life (Years)
Pumps	5
Valves	5
Valve actuators	5
Piping	10
Heating/cooling coils	10
BMS system	10
Fire detection	5
Fire suppression	15
Fire hoses	5
Switchboards and panels	15
Power factor correction	15
UPS system	5
Generators	15
Meters	5
Light fittings (internal)	5
Light fittings (external)	7
Fibre cabling	20
Structured cabling	20
Network equipment	5
IPTV	5
Public address	5
Audio visual equipment	5
Video conferencing equipment	5
Security services	
All hardware	5

Schedule 19 — Ownership Schedule



Schedule 20 - Equity Documents Schedule

Unless the context otherwise requires, capitalised terms used in this Schedule and not otherwise defined in this Deed have the meanings given to them in the [REDACTED] (defined below).

Each of the following is an Equity Document:

1. [REDACTED]
2. the document titled [REDACTED] dated on or about the date of this Deed between, among others, the Equity Investors and Project Co (the [REDACTED]);
3. the [REDACTED] and [REDACTED] (as applicable) of each Group Member;
4. any document which amends, novates or replaces any other Equity Document; and
5. any other document the Equity Investors agree in writing is an Equity Document.

Schedule 21 - Finance Documents Schedule

Unless the context otherwise requires, capitalised terms used in this Schedule and not otherwise defined in this Deed have the meanings given to them in the [REDACTED] (defined below).

Each of the following is a Finance Document:

1. the document titled [REDACTED] dated on or about the date of this Deed between, among others, Project Co, the Agent and the Security Trustee (the [REDACTED]);
2. the [REDACTED]
3. each [REDACTED]
4. each [REDACTED]
5. each [REDACTED]
6. each [REDACTED]
7. the [REDACTED]
8. each [REDACTED]
9. each [REDACTED]
10. any document which amends, novates or replaces any other Finance Document; and
11. any other document the Agent and Project Co nominate as a Finance Document prior to the date of this Deed.

Schedule 22 — Insurance

Introduction

There are two parts to this Schedule:

- Part A — Insurance during the Delivery Phase; and
- Part B — Insurance during the Operating Phase.

Part A — Insurance during the Delivery Phase

Project Co must procure, or caused to be procured, and thereafter maintained, each of the Insurances specified in this Part A on the terms set out in this Part A. Where any sub-limits are not expressly specified in any such Insurance, the policy limit specified for that Insurance applies.

Summary of cover required:

- (a) Contract Works Insurance (Material Damage);
- (b) Contract Works Insurance (Public Liability);
- (c) not used;
- (d) Contract Works Insurance (Advance Loss of Profits);
- (e) Marine Transit (Material Damage);
- (f) Design and Construct Professional Indemnity Insurance;
- (g) Workers' Compensation Insurance;
- (h) Motor Vehicle Insurance; and
- (i) D&C Subcontractor Temporary Equipment Insurance.

(a) Contract Works Insurance (Material Damage)

Insurance element	Minimum Requirement
Party responsible for procuring the insurance	Project Co.
Insured	<p>Each of:</p> <ul style="list-style-type: none"> ▪ Project Co and its Associates; ▪ the State and its Associates; ▪ the Security Trustee; and ▪ the D&C Subcontractor; and ▪ Subcontractors engaged in respect of the Works, <p>and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Delivery Phase Activities to Technical Completion.</p>
Sum insured	The full cost of reinstatement or replacement of the Works based on the capital cost at the date of this Deed, amended in accordance with this Deed (including as a result of a Modification).
Scope of cover	<p>Physical loss, destruction or damage to the Works or in respect of the Delivery Phase Activities to Technical Completion, including construction and reinstatement of the Works, and testing and commissioning of plant and equipment insofar as it relates to the Delivery Phase Activities to Technical Completion.</p> <p>Insurance to include coverage at a minimum for the following:</p> <ul style="list-style-type: none"> ▪ materials, plant and equipment on the Delivery Phase Sites; ▪ principal owned materials; ▪ continuation of cover for physical loss, destruction or damage to the Works post Technical Completion which occurs during the defects liability period and:

Insurance element	Minimum Requirement
	<ul style="list-style-type: none"> - is caused by the Insured in the course of complying with its obligations in respect of the defects liability provisions of this Deed; or - is due to a cause arising prior to the commencement of the defects liability period; ▪ tunnelling (if part of the Delivery Phase Activities to Technical Completion) subject to a sub limit of at least \$50 million; ▪ trenching and dewatering; ▪ off site fabrication; ▪ professional fees with a sub limit of at least \$45 million; ▪ removal of debris with a sub limit of at least \$45 million; ▪ expediting expenses with a minimum sub limit of 125% of normal costs or \$15,000,000 for any one occurrence whichever is the lesser; ▪ 15% contract price escalation; ▪ inland transit, off-site storage with a sub limit of at least \$5 million in respect of inland transit and \$10 million in respect of off-site storage; ▪ subsidence/earth movement; ▪ civil works/excavation works; ▪ riots, strikes, industrial action; ▪ Equipment commissioning and testing; ▪ Temporary Equipment and works (other than D&C Subcontractor's and its Subcontractors' Temporary Equipment), scaffolding and formwork; ▪ Equipment excluding Temporary Equipment, but where in transit shall be subject to a sub-limit of not less than \$2,000,000 and where in offsite storage shall be subject to a sub-limit of not less than \$10,000,000; ▪ temporary protection and/or loss mitigation expenses, with a sub limit of at least \$5 million; and ▪ cover for loss of or damage to and the cost to rectify, replace or repair property which is free of defective materials, workmanship, design, plan, or specification but is damaged in consequence of other property which has defective materials, workmanship, design, plan, or specification.
Situation of risk	Anywhere in the Commonwealth of Australia, including whilst in transit (other than ocean marine transit) between any places therein.
Retroactive date	N/A
Deductibles	
Premium	As per the Financial Model
Additional requirements	The policy must be procured and maintained on a project specific basis.
Period of insurance	From Financial Close to the end of the defects liability period (or equivalent related to the Works) under the D&C Subcontract.

(b) Contract Works Insurance (Public Liability)

Insurance element	Minimum Requirement
Party responsible for procuring the insurance	Project Co.
Insured	Each of: <ul style="list-style-type: none"> ▪ Project Co and its Associates; ▪ the State and its Associates; ▪ Justice Health and its Associates; ▪ the Security Trustee; ▪ the D&C Subcontractor; and ▪ Subcontractors engaged in respect of the Delivery Phase Activities, and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Delivery Phase Activities.
Sum insured	\$250 million for any one occurrence or series of occurrences arising out of the same source or original cause in connection with the Delivery Phase Activities, and unlimited in the aggregate during the period of insurance but in the aggregate of all occurrences in any one period of insurance with respect to products and pollution liability and completed operations liability.
Scope of cover	Legal liability (including to counterparties) for personal injury and/or property damage caused by an occurrence during the period of insurance, where such occurrence: <ul style="list-style-type: none"> ▪ arises out of the construction/site works activities related to the Delivery Phase Activities; or ▪ arises out of the occupation by any Insured of any part of the Delivery Phase Sites handed over and put into use at any time prior to the whole of the Works achieving Commercial Acceptance or completion (as applicable); ▪ occurs during the defects liability period or equivalent related to the Works under the D&C Subcontract, and is caused by any Insured whilst remedying any defects in the Works in accordance with its contractual rights or obligations.
Situation of risk	Anywhere in the Commonwealth of Australia.
Retroactive date	N/A
Deductibles	
Premium	As per the Financial Model
Additional requirements	<ul style="list-style-type: none"> ▪ Cross liability clause. ▪ Severability and non imputation clauses. ▪ Worker to worker Liability - to ensure that each Insured is covered for each claim by any worker, not being their respective employees, injured during construction activities relating to the Delivery Phase Activities.

Insurance element	Minimum Requirement
	<ul style="list-style-type: none"> ▪ Expenses incurred by any Insured for first aid to others for bodily injury at the time of an occurrence. ▪ Pollution liability but only if caused by a sudden, accidental, unexpected and unintended occurrence. ▪ On hook liability. ▪ Bodily injury and/or property damage arising from an error or omission in design or specification or breach of professional duty. ▪ Cover for mobile plant and equipment not required to be registered/used as a tool of trade (unless separate insurance procured for this exposure under another Insurance). ▪ Cover for existing or other property (including any existing buildings) in the Insured's care, custody or control, but this may exclude the smallest component of property in the Insured's care custody or control being worked on.
Period of insurance	From Financial Close to the end of the defects liability period or equivalent for the Works under the D&C Subcontract.

(c) **Not used**

(d) **Contract Works Insurance (Advance Loss of Profits)**

Insurance element	Minimum Requirement
Party responsible for procuring the insurance	Project Co.
Insured	Each of: <ul style="list-style-type: none"> ▪ Project Co; ▪ Finance Co; ▪ the Security Trustee; and ▪ the Operator.
Level of cover	36 months of the total Monthly Service Payments (unabated) less 27 months of the Operator component of the Monthly Service Payments (unabated) payable under the Operator Subcontract.
Scope of cover	Advance Loss of Profits Insurance with respect to the risks of loss or damage to the Correctional Complex insured under the Contract Works Insurance (Material Damage) policy.
Situation of risk	Anywhere in the Commonwealth of Australia.
Retroactive date	N/A.
Deductibles	
Premium	As per the Financial Model.

Insurance element	Minimum Requirement
Additional requirements	<p>Contract Works Insurance (Advance Loss of Profits), shall include:</p> <ul style="list-style-type: none"> ▪ Nominated Suppliers' premises extension with a minimum sub limit of \$7,500,000. ▪ Public utilities extension with a minimum sub limit of \$7,500,000. ▪ Prevention of access with a minimum sub limit of \$7,500,000. ▪ Cover for additional costs of working and increased additional costs of working with a minimum sub limit of \$7,500,000. ▪ The policy must be procured and maintained on a project specific basis.
Period of insurance	From Financial Close to Technical Completion.

(e) Marine Transit (Material Damage)

Insurance element	Minimum Requirement
Party responsible for procuring the insurance	Project Co.
Insured	<p>Each of:</p> <ul style="list-style-type: none"> ▪ Project Co and its Associates; ▪ the State and its Associates; ▪ the Security Trustee; and ▪ the D&C Subcontractor; and ▪ Subcontractors engaged in respect of the Relevant Infrastructure, and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Delivery Phase Activities.
Level of cover	<p>Marine Transit</p> <p>Sum insured is a limit of indemnity equivalent to not less than the maximum total value of the property to be transferred in any one shipment, plus a provision for the costs of freight, insurance, taxes and duties as may be applicable.</p>
Scope of cover	Unless covered under the Contract Works (Material Damage) insurance in respect of the Works, a policy of Marine Transit insurance open in respect to the shipment or carriage of the relevant items of imported property intended to be employed about or used in connection with the Delivery Phase Activities.
Situation of risk	Worldwide.
Retroactive date	N/A
Maximum deductibles	
Premium	As per the Financial Model.
Additional requirements	Nil

Insurance element	Minimum Requirement
Period of insurance	From the time of leaving the manufacturer or other place of original order in the country of origin until arrival at the Delivery Phase Sites.

(f) Design and Construct Professional Indemnity Insurance

Insurance element	Minimum Requirement
Party responsible for procuring the insurance	Project Co.
Insured	The D&C Subcontractor, Subcontractors to the D&C Subcontractor, the Operator and Project Co in accordance with the Additional Requirements specified below.
Sum insured	Minimum coverage of \$50 million for any one claim and \$100 million in the aggregate.
Scope of cover	Project-specific policy covering legal liability arising from an act error or omission of the insured in relation to the performance of each Insured's professional activities and duties in connection with the Works or the Correctional Complex.
Situation of risk	Anywhere in the Commonwealth of Australia.
Retroactive date	No later than the earlier of: (a) the commencement of preparation of Project Co's Proposal; and (b) the release of the request for Project Co's Proposal by the State.
Deductibles	
Premium	As per the Financial Model.
Additional Requirements	<ul style="list-style-type: none"> ▪ The policy must have a sum insured of no less than \$50 million in relation to the Works and Delivery Phase Activities, and must include an: <ul style="list-style-type: none"> (a) indemnity to Project Co as principal for its vicarious liability arising out of acts, errors and omissions of the D&C Subcontractor, its subcontractors and consultants; and (b) indemnity to the D&C Subcontractor for its vicarious liability arising out of acts, errors and omissions of its subcontractors and consultants; and (c) indemnity to the Operator for its vicarious liability arising out of acts, errors and omissions of its subcontractors and consultants. ▪ Contractual clauses between Project Co and any Subcontractor must not contain provisions which preclude recovery for breach of professional duty up to the limit of the insurance. ▪ Include cover for construction defects as a result of error in design or specification. ▪ Severability and non-imputation clauses. ▪ Proportionate liability.

Insurance element	Minimum Requirement
	<ul style="list-style-type: none"> ▪ Contractual liability. ▪ Risk mitigation and rectification.
Period of insurance	From Financial Close to 7 years after the Date of Technical Completion.

(g) Workers' Compensation Insurance

Insurance element	Minimum Requirement
Party responsible for procuring the insurance	Project Co.
Insured	Each party is required to comply with its obligations at law in respect of Workers' Compensation and Employer's Liability insurance.
Level of cover	As required by Law.
Risks covered	As required by Law.
Retroactive date	N/A.
Deductibles	
Annual Premium	N/A.
Excess	N/A.
Waiting Period	No waiting period.
Additional requirements	N/A.
Period of cover	From Financial Close to the end of the defects liability period or equivalent related to the Works under the D&C Subcontract.

(h) Motor Vehicle Insurance

Insurance element	Minimum Requirement
Party responsible for procuring the insurance	Project Co.
Insured	Each party is required to procure and maintain its own insurance for vehicles to be used in connection with the Delivery Phase Activities.
Level of cover	Minimum coverage of \$30 million per occurrence and in the aggregate in respect of third party property damage.
Risks covered	Third party property damage in respect of all vehicles used in connection with the Delivery Phase Activities.
Retroactive date	N/A.
Deductibles	

Insurance element	Minimum Requirement
Premium	N/A.
Additional requirements	All motor vehicles must be registered currently for compulsory third party insurance as required by Law, if for use on public roads. Policy must cover unregistered vehicles or vehicles used as a tool of trade unless covered under the Contract Works (Public Liability) policy.
Period of cover	From Financial Close to the end of the defects liability period or equivalent related to the Works under the D&C Subcontract.

(i) D&C Subcontractor Temporary Equipment Insurance

Insurance element	Minimum Requirement
Party responsible for procuring the insurance	D&C Subcontractor
Insured	Each party in respect of its own Temporary Equipment (including Temporary Equipment used in connection with the Works and Delivery Phase Activities).
Level of cover	Indemnity value of the respective Temporary Equipment
Scope of cover	Physical loss, damage or destruction to Temporary Equipment whether owned or hired by the Insured used for the purposes of undertaking the Works (to the extent not insured under Contract Works Insurance - Material Damage policy).
Situation of risk	Anywhere in the Commonwealth of Australia.
Maximum deductibles	
Period of insurance	From Financial Close to the Date of Technical Completion.

Part B — Insurance during the Operating Phase

Project Co must procure, or cause to be procured, and thereafter maintained, each of the insurances with respect to the Operating Phase Site or Project specified in this Part B for the applicable period of insurance upon the minimum terms specified in this Part B. Where any sub-limits are not expressly specified in any such insurance, the policy limit specified for that insurance applies.

All amounts specified below in relation to Industrial Special Risks/Consequential Loss Insurance, Public and Products Liability Insurance and Motor Vehicle Insurance will be subject to annual indexation in accordance with clause 2.13.

Summary of Operating Phase insurances required:

- (a) Industrial Special Risks/Consequential Loss Insurance;
- (b) Public and Products Liability Insurance;
- (c) Professional Indemnity Insurance;
- (d) Workers' Compensation Insurance; and
- (e) Motor Vehicle Insurance.

(a) Industrial Special Risks / Consequential Loss Insurance

Insurance element	Minimum Requirement
Party responsible for procuring the insurance	Project Co.
Insured	Each of: <ul style="list-style-type: none"> ▪ any Project Co Entity; ▪ the State and its Associates (excluding contractors and consultants); ▪ the Security Trustee; and ▪ the Operator, and any other party which has an insurable interest or is required to be insured under any Project Document in relation to the Operating Phase Site.
Sum insured	Reflecting a combined limit of no less than the aggregation of the following: <ul style="list-style-type: none"> ▪ in relation to the Operating Phase Site, its full reinstatement or replacement value; ▪ in relation to consequential loss (business interruption), an amount equivalent to 36 Monthly Service Payments (unabated) other additional amounts as specified by this Schedule; and ▪ an amount sufficient to replace the Project Co contents of the Site.
Scope of Cover	<p>Section 1 Material Loss or Damage</p> <p>Coverage for physical loss, destruction of or damage to the Site or the Correctional Complex for their reinstatement and/or replacement value from any cause not otherwise excluded from an industry standard Mark IV wording. Some indicative sub limits (for the first year of the Operating Phase and Indexed thereafter in accordance with clause 2.13) are set out below. Actual sub limits are to be as determined in accordance with clause 46.6 of this Deed.</p> <p>Property covered:</p> <ul style="list-style-type: none"> ▪ Buildings and roads

Insurance element	Minimum Requirement																		
	<ul style="list-style-type: none"> ▪ Plant, machinery, boilers ▪ Contents ▪ Raw stock and materials ▪ Unregistered plant and Equipment (mobile plant/ forklifts) ▪ Tunnels and links <p>Perils covered to include at a minimum:</p> <ul style="list-style-type: none"> ▪ Earthquake ▪ Flood ▪ Action of the sea/ tidal wave/ tsunami ▪ Storm/ tempest/ cyclone ▪ Hail/ lightning strike ▪ Landslip/ earth movement ▪ Fire/explosion ▪ Impact ▪ Burglary/ theft ▪ Malicious damage ▪ Riots/ strikes/ civil commotion ▪ Accidental damage <p>Sub Limits:</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 70%;">Removal of Debris</td> <td style="text-align: right;">10% of Sum Insured</td> </tr> <tr> <td>Accidental Damage</td> <td style="text-align: right;">\$50 million</td> </tr> <tr> <td>Expediting Expenses</td> <td style="text-align: right;">\$10 million</td> </tr> <tr> <td>Change in Temperature Controlled Environment</td> <td style="text-align: right;">\$5 million</td> </tr> <tr> <td>Property in Transit (within Australia)</td> <td style="text-align: right;">\$5 million</td> </tr> <tr> <td>Machinery breakdown</td> <td style="text-align: right;">\$20 million</td> </tr> <tr> <td>Boiler and pressure vessel explosion <i>(This sub-limit applies to damage to the boiler only and not to resultant damage)</i></td> <td style="text-align: right;">Replacement cost of boiler and pressure vessel</td> </tr> <tr> <td>Electronic data processing equipment breakdown</td> <td style="text-align: right;">\$10 million</td> </tr> <tr> <td>Fraudulent or dishonest acts</td> <td style="text-align: right;">\$1 million</td> </tr> </table> <p>Section 2 Consequential Loss</p> <p>Coverage for consequential loss (business interruption) in respect of loss of anticipated revenue and additional expense, arising out of the insured risks of loss of or damage to the Correctional Complex.</p> <p>Sub Limits:</p>	Removal of Debris	10% of Sum Insured	Accidental Damage	\$50 million	Expediting Expenses	\$10 million	Change in Temperature Controlled Environment	\$5 million	Property in Transit (within Australia)	\$5 million	Machinery breakdown	\$20 million	Boiler and pressure vessel explosion <i>(This sub-limit applies to damage to the boiler only and not to resultant damage)</i>	Replacement cost of boiler and pressure vessel	Electronic data processing equipment breakdown	\$10 million	Fraudulent or dishonest acts	\$1 million
Removal of Debris	10% of Sum Insured																		
Accidental Damage	\$50 million																		
Expediting Expenses	\$10 million																		
Change in Temperature Controlled Environment	\$5 million																		
Property in Transit (within Australia)	\$5 million																		
Machinery breakdown	\$20 million																		
Boiler and pressure vessel explosion <i>(This sub-limit applies to damage to the boiler only and not to resultant damage)</i>	Replacement cost of boiler and pressure vessel																		
Electronic data processing equipment breakdown	\$10 million																		
Fraudulent or dishonest acts	\$1 million																		

Insurance element	Minimum Requirement														
	<table border="0"> <tr> <td>Increased costs of working</td> <td>Not sub-limited</td> </tr> <tr> <td>Additional increased cost of working</td> <td>\$25 million</td> </tr> <tr> <td>Utilities memorandum</td> <td>\$75 million</td> </tr> <tr> <td>Prevention of access</td> <td>\$50 million</td> </tr> <tr> <td>Suppliers</td> <td>\$50 million</td> </tr> <tr> <td>Human infectious disease</td> <td>\$25 million</td> </tr> <tr> <td>Professional fees/ claims preparation costs</td> <td>\$5 million</td> </tr> </table>	Increased costs of working	Not sub-limited	Additional increased cost of working	\$25 million	Utilities memorandum	\$75 million	Prevention of access	\$50 million	Suppliers	\$50 million	Human infectious disease	\$25 million	Professional fees/ claims preparation costs	\$5 million
Increased costs of working	Not sub-limited														
Additional increased cost of working	\$25 million														
Utilities memorandum	\$75 million														
Prevention of access	\$50 million														
Suppliers	\$50 million														
Human infectious disease	\$25 million														
Professional fees/ claims preparation costs	\$5 million														
Situation of risk	Anywhere in the Commonwealth of Australia (and whilst in transit).														
Retroactive date	N/A														
Deductibles															
Additional requirements	<ul style="list-style-type: none"> ▪ Section 1 to cover physical loss, destruction or damage to property: <ul style="list-style-type: none"> ▪ belonging to any Insured; ▪ for which any Insured is responsible or has assumed responsibility to insure prior to damage occurring; and ▪ in which an Insured acquires an insurable interest during the period of insurance (an insurable interest which is related to the Site or Relevant Infrastructure). ▪ Cover for sue and labour expenses. ▪ Cover for construction works where total contract value for that works is less than \$500,000. ▪ Extra costs of reinstatement (sub limit of \$100 million). ▪ Marine Transit cover within Australia (sub limit of \$500,000). ▪ An appropriate amendment to the basis of settlement clause to clarify that the policy will cover the reductions in the Monthly Service Payment in accordance with the Performance Regime as a result of an insured peril. ▪ An appropriate amendment to the policy will be required to clarify that (subject to overall limits, and policy terms and conditions) that the State and any Associate of the State are entitled to be covered under this policy to the extent that the Monthly Service Payment is not reduced in accordance with the Performance Regime as a result of an event, act, omission, fact, matter or occurrence (in whole or part) but the State or any Associate of the State incurs Liabilities that would otherwise be claimable under the policy, such as increased costs of working or additional increased costs of working. ▪ The policy must be procured on a project specific basis. ▪ Co-insurance provisions not to apply to Section 1 & Section 2. 														
Period of cover	<p>For an initial period of 16 months commencing on the Date of Technical Completion.</p> <p>Thereafter for a period of 12 months commencing on the Operational Commencement Date, to be renewed annually until the Expiry Date.</p>														

(b) Public and Products Liability Insurance

Insurance element	Minimum Requirement
Party responsible for procuring the insurance	Project Co.
Insured	<p>Each of:</p> <ul style="list-style-type: none"> ▪ Project Co and its Associates (excluding the D&C Subcontractor and its Associates); ▪ Security Trustee; ▪ the State and its Associates in respect of their vicarious liability for the acts and omissions of Project Co or any of its Associates (excluding the D&C Subcontractor and its Associates) or the Operator; ▪ Justice Health and its Associates in respect of their vicarious liability for the acts and omissions of Project Co or any of its Associates (excluding the D&C Subcontractor and its Associates) or the Operator; and ▪ the Operator.
Sum insured	<ul style="list-style-type: none"> ▪ \$500 million for any one occurrence with regards to Public Liability; and ▪ \$500 million in the annual aggregate for Products Liability.
Sub-limit	A sub-limit for sexual or other molestation/abuse related claims will be agreed with the State prior to the initial placement of this policy and prior to each Insurance Review Date based on the prevailing market at the relevant time.
Scope of cover:	<ul style="list-style-type: none"> ▪ To cover legal liability for claims in respect of: physical loss, destruction or damage to real or personal property, including property in the care, custody and control of the Insured, for which the Insured is responsible and which is not otherwise already insured for the Insured's benefit, and including consequential economic loss; and ▪ personal injury (including libel and slander), disease or death of any person including resultant economic loss, <p>arising out of or in connection with its products, the provision of the Services, and this Deed during the Operating Phase.</p>
Situation of risk	Anywhere in the Commonwealth of Australia (and whilst in transit).
Retroactive date	N/A.
Deductibles	
Premium	As per the Financial Model.
Additional requirements	<ul style="list-style-type: none"> ▪ The policy must be procured and maintained on a project specific basis. ▪ Care custody and control. ▪ Cover for car park vehicles in care, custody or control. ▪ Worker to worker liability.

Insurance element	Minimum Requirement
	<ul style="list-style-type: none"> ▪ Liability arising out of personal injury to contract labour hire persons. ▪ Cover liability arising from construction operations on site. ▪ Sudden and accidental pollution. ▪ Cover for principal's vicarious liability. ▪ Cover for mobile plant and equipment not required to be registered/used as a tool of trade or registered plant whilst used as a tool of trade (unless separate insurance procured for this exposure). ▪ Cover liability arising from Inmate escape. ▪ Policy must not exclude or limit liability in connection with: <ul style="list-style-type: none"> (a) the ownership, purchasing, storage, the use of or creation of any radioactivity, radiation, ionising radiation, radioactive isotopes/material for the purpose of treatment, medical research or any general business use (for the avoidance of doubt, the State will only accept a general war/nuclear activity related exclusion); or (b) biohazards (for the avoidance of doubt, the State will only accept pollution or other similar exclusion that does not exclude liability in connection with biohazardous material).
Period of cover	<p>For an initial period of 16 months commencing on the Date of Technical Completion.</p> <p>Thereafter for a period of 12 months commencing on the Operational Commencement Date, to be renewed annually until the Expiry Date.</p>

(c) Operating Phase - Professional Indemnity Insurance

Insurance element	Minimum Requirement
Party responsible for procuring the insurance	Project Co.
Insured	The Operator.
Sum insured	\$10,000,000 for any claim and in the aggregate, with one automatic reinstatement.
Scope of cover	Covering legal liability arising from an act error or omission of the insured in relation to the performance of each insured's professional activities and duties in connection with the Services.
Situation of risk	Anywhere in the Commonwealth of Australia.
Retroactive date	<p>No later than the earlier of:</p> <ul style="list-style-type: none"> ▪ the commencement of preparation of Project Co's Proposal; and ▪ the release of the Request for Proposal.
Deductibles	
Premium	As per the Financial Model

Insurance element	Minimum Requirement
Additional Requirements	<p>Severability and non-imputation clauses.</p> <p>Contractual clauses between Project Co, the Operator, consultants and Subcontractors must not contain provisions which preclude recovery for breach of professional duty up to the limit of insurance.</p> <p>Policy to respond to legal liability (breach of professional duty) following a medical malpractice related issue.</p> <p>Proportionate Liability.</p>
Period of insurance	From the Date of Technical Completion until the Expiry Date plus an additional 7 years.

(d) Workers' Compensation Insurance

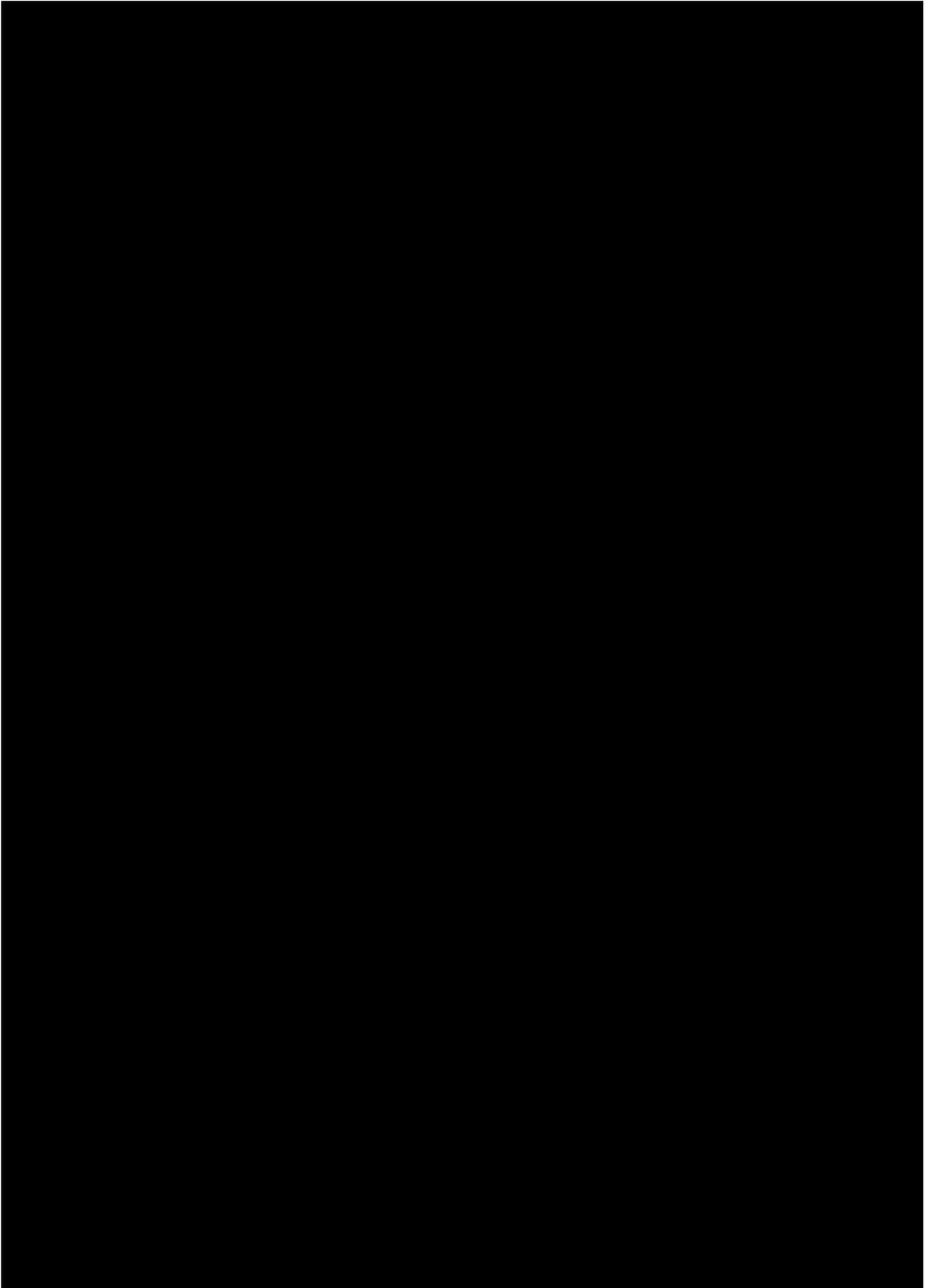
Insurance element	Minimum Requirement
Party responsible for procuring insurance	Project Co.
Insured	Each party is required to procure its own Workers' Compensation and Employer's Liability policy, in respect of its statutory obligations and otherwise as required by Law and commercial prudence.
Level of cover	As required by Law.
Risks covered	As required by Law.
Retroactive date	N/A.
Deductibles	
Excess	N/A.
Waiting period	No waiting period.
Additional requirements	N/A.
Period of cover	From the Date of Technical Completion until the Expiry Date.

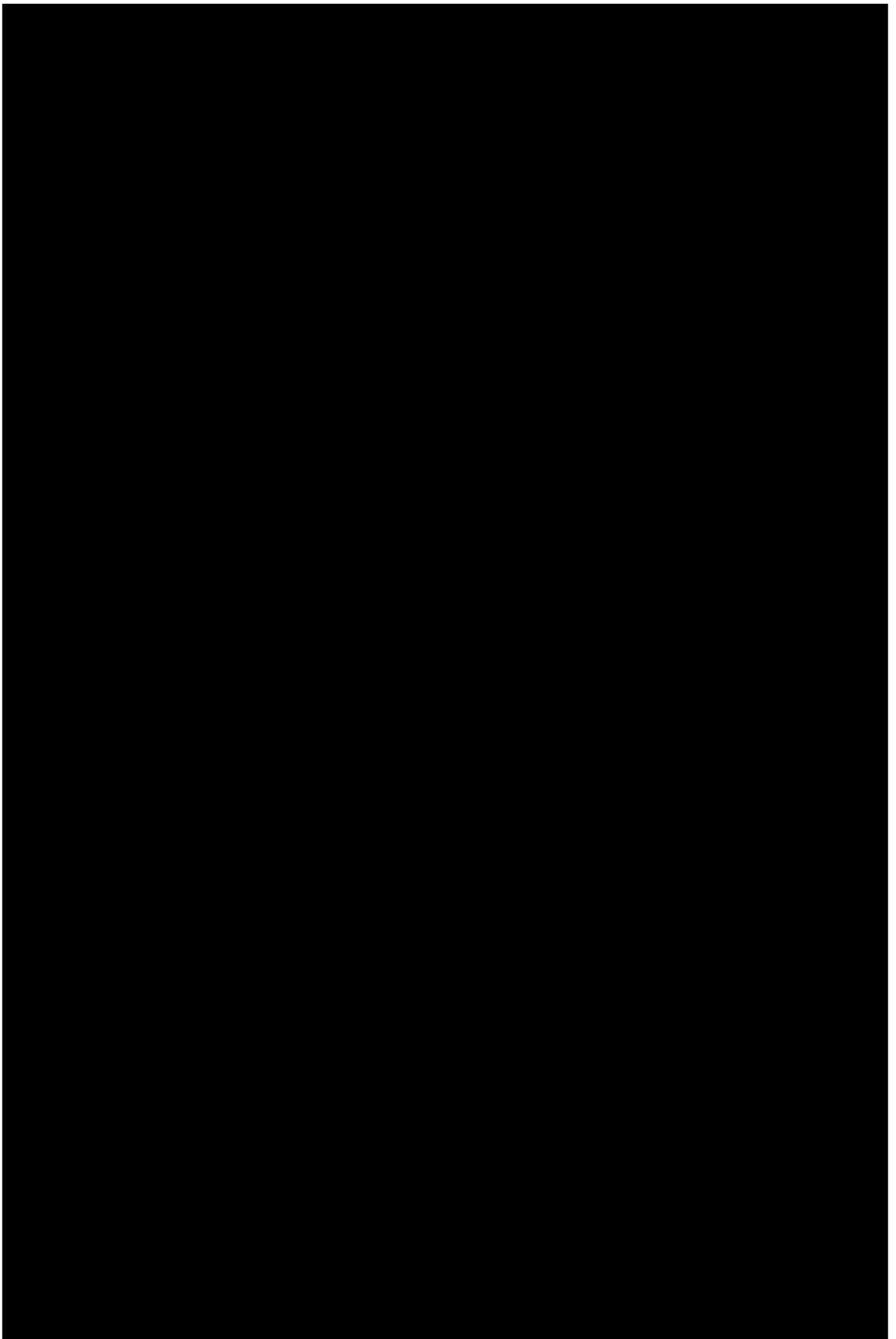
(e) Motor Vehicle Insurance

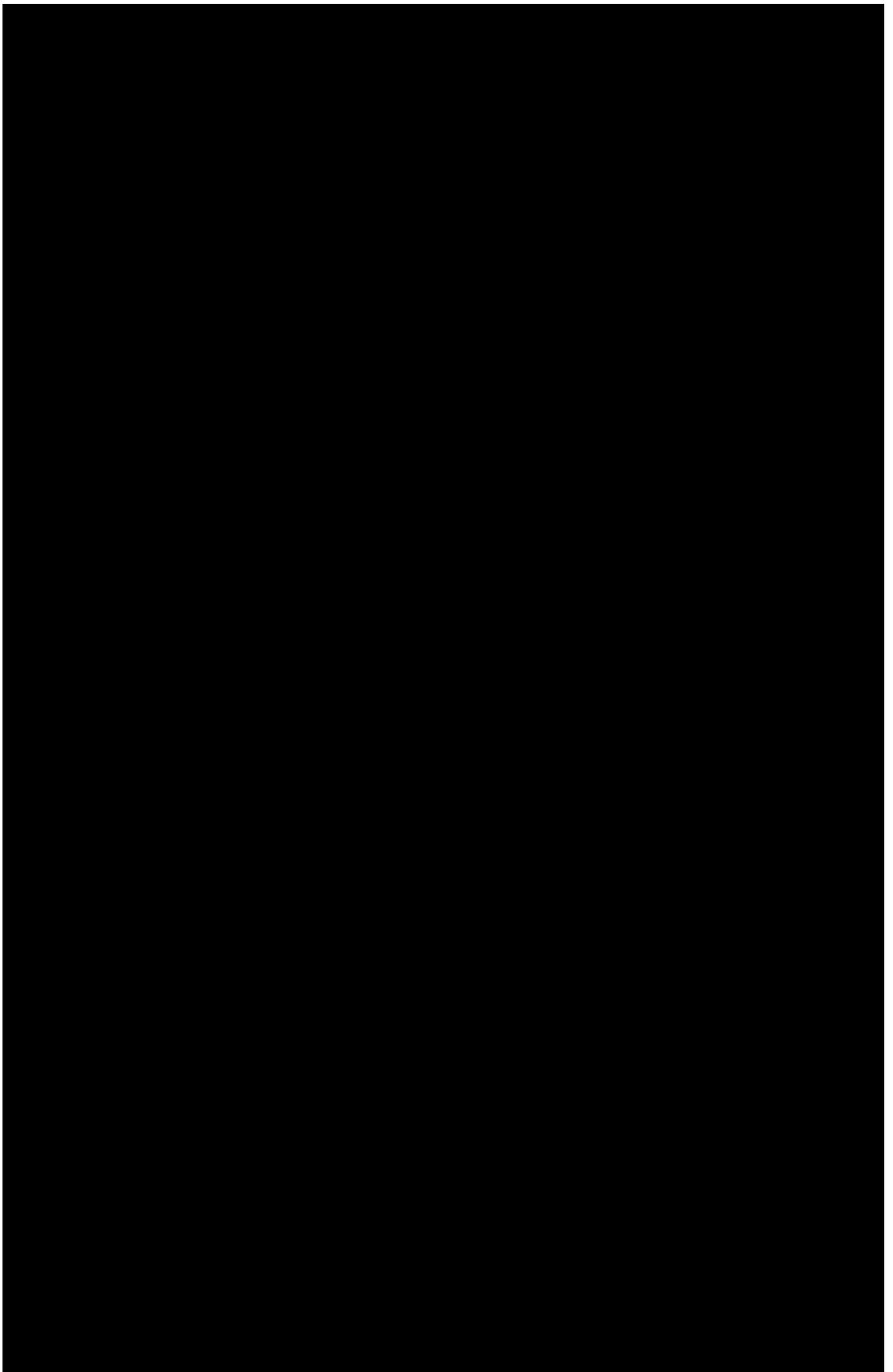
Insurance element	Minimum Requirement
Party responsible for procuring the insurance	Project Co.
Insured	Each party to procure its own insurance for vehicles to be used in connection with the Services.
Level of cover	Minimum coverage of \$30 million per occurrence and in the aggregate in respect of third party property damage.
Risks covered	Third party property damage in respect of all vehicles used in connection with the Services.
Retroactive date	N/A.

Insurance element	Minimum Requirement
Deductibles	
Additional requirements	<p>All motor vehicles must be registered currently for compulsory third party insurance as required by Law, if for use on public roads.</p> <p>Cover for mobile plant and equipment not required to be registered or used as a tool of trade or registered plant whilst used as a tool of trade (unless separate insurance procured for this exposure or covered under the Public and Products Liability Insurance).</p>
Period of cover	From the Date of Technical Completion until the Expiry Date.

Schedule 23 - Commercially Sensitive Information







Schedule 24 — Termination Payments Schedule

1. Definitions

For the purposes of this Schedule, the following definitions shall apply:

Actual Proceeds has the meaning given to it in Section 2.3(b) of this Schedule.

Additional Amount has the meaning given to it in Section 2.3(b) of this Schedule.

Base Case Project Return means the percentage set out as the "Base Case Project Return" in the Model Output Schedule.

Capital Sum means the capital sum offered by each Compliant Tenderer under the Tender Process or the capital sum which the New Project Co is to pay to the State, in each case in consideration for the State entering into the New Contract, as the context permits or requires.

Compensation Date means either:

- (a) if Section 3.2(c) of this Schedule applies, the earlier of:
 - (i) the date that the New Contract is entered into; and
 - (ii) the date on which the Termination Payment payable to Project Co has been agreed or determined in accordance with Section 3.6 (*Termination for Default Termination Event*) of this Schedule; or
- (b) if Section 3.3 (*Expert determination*) of this Schedule applies, the date on which the Estimated Fair Value has been agreed or determined.

Compliant Tender means a tender which meets all of the Qualification Criteria.

Compliant Tenderer means a tenderer who submits a Compliant Tender.

Debt Interest Rate means the total non-default interest rate payable on Debt as provided in the Financial Model.

Deemed New Contract means a contract on the same terms and conditions as this Deed as at the Termination Date, but with the following amendments:

- (a) if this Deed is terminated during the Delivery Phase, then the Date for Completion shall be extended by such period as would have been granted to allow a New Project Co (had one been appointed) to achieve Completion;
- (b) any Major Default Notices shall be cancelled; and
- (c) the term of such contract shall be equal to the period from the Compensation Date to and including the Final Expiry Date.

Disgorgement Claim means, if any Project Co Entity is or becomes subject to an Insolvency Event, and any payment to or transaction with the State is alleged to be void, voidable, or defective by reason of Part 5.7B of the Corporations Act.

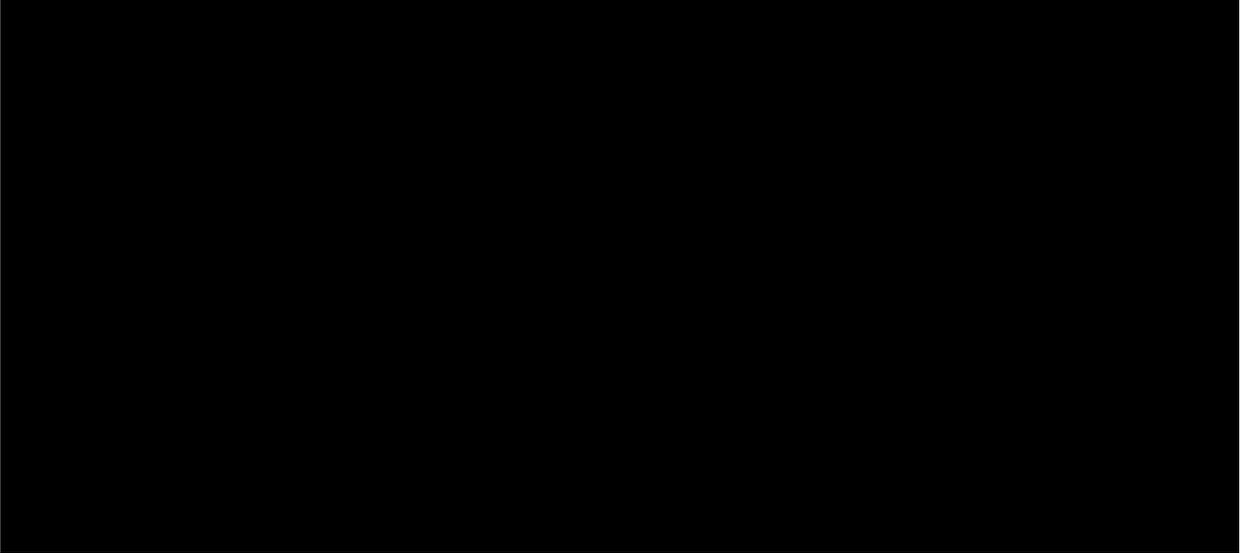
Estimated Fair Value or **EFV** means the amount determined in accordance with Sections 3.3 (*Expert determination*) and:

- (a) if the Termination Date occurs prior to Completion, Section 3.4 (*Estimated Fair Value before Completion*) of this Schedule; or

- (b) if the Termination Date occurs after Completion, Section 3.5 (*Estimated Fair Value after Completion*) of this Schedule,

which a third party would pay to the State as the Fair Value of the Deemed New Contract.

Fair Value means the amount at which an asset, equity or liability could be exchanged in an arm's length transaction between informed and willing parties, other than in a forced or liquidation sale.



Instalment Amount has the meaning given to it in Section 2.1(d) of this Schedule.

Instalment Date means the date on which any Project Co Entity would have been required to pay debt service payments or repayments to the Financiers under the Finance Documents had this Deed not been terminated by the State and there was no default under the Finance Documents.

Liquid Market means that there are at least two parties (in addition to any party controlled by the Financiers, each of whom is capable of being a suitable substitute contractor) in the prevailing market for public private partnership contracts or similar contracts for the provision of services (in each case the same as or similar to this Deed), such that the result of that tender process would provide a reasonably likely indicator of Fair Value.

New Contract means a contract on the same terms and conditions as this Deed as at the Termination Date, but with the following amendments:

- (a) if this Deed is terminated during the Delivery Phase, then the Date for Completion shall be extended by a period to allow a New Project Co to complete the Works;
- (b) any Major Default Notices shall be cancelled;
- (c) the term of such contract shall be equal to the period from the Compensation Date to and including the Final Expiry Date;
- (d) the New Project Co will pay a Capital Sum to the State on entering into the New Contract; and
- (e) any other amendments which do not materially reduce the Capital Sum which a tenderer would be prepared to pay in consideration for the State entering into the New Contract.

New Project Co means the party who has entered or who will enter into a New Contract with the State.

Post Termination Service Payment means for the whole or any part of a Month or Months during the period from the Termination Date to the Compensation Date, an amount equal to the Monthly Service Payment (assuming no Volumetric Adjustment, no Cohort Adjustment, no Pass

Through Costs, no Escort Payments, no Incentive Payments, no Floating Rate Adjustments and no Total Deductions) which would have been payable for the relevant Month or Months under this Deed had this Deed not been terminated, less an amount equal to the aggregate of (without double counting):

- (a) all cost components of the Monthly Service Payment relating to the performance of the Project Activities and the insurance; and
- (b) any costs associated with alternative performance of the Project Activities but only to the extent such costs exceed the cost components of the Monthly Service Payment relating to the performance of the Project Activities and the insurance (whether or not any such Project Activities are undertaken); and
- (c) any Rectification Costs incurred by the State during the Month (or part thereof) to which the Post Termination Service Payment relates.

For the avoidance of doubt, the Post Termination Service Payment can be an amount that is less than zero.

Project Co Additional Amount has the meaning given to it in Section 2.3(c)(i) of this Schedule.

Provisional Proceeds has the meaning given to it in Section 2.3(a) of this Schedule.

Qualification Criteria means the criteria which the State requires tenderers to meet as part of the Tender Process, which shall be:

- (a) criteria having substantially the same effect as the criteria applied by the State when selecting those to be invited to submit detailed proposals and any other final offers under the procurement process used in the selection of Project Co to deliver the Project;
- (b) the financial ability of the tenderers to pay the Capital Sum;
- (c) the technical ability of the tenderers to deliver the Project Activities;
- (d) the independence of the tenderer from Project Co and the State; and
- (e) any other relevant tender criteria selected by the State acting reasonably.

Receivables Refund Payment has the meaning given in the Receivables Purchase Deed.

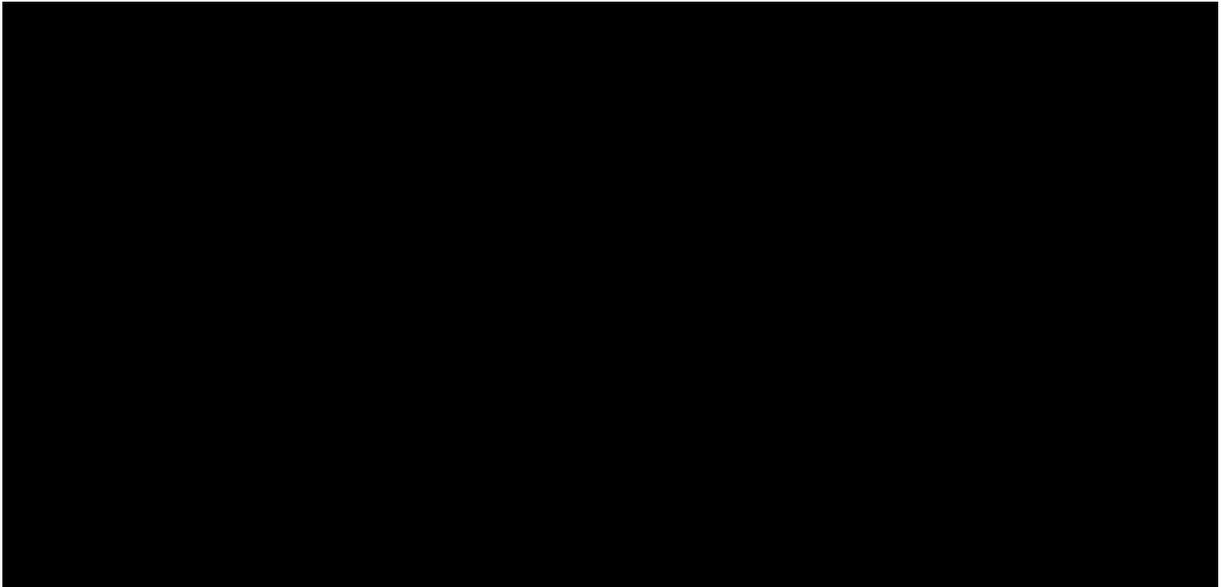
Rectification Costs means an amount equal to the aggregate of the reasonable and proper costs incurred by the State in curing, rectifying or remedying any Project Co Entity's defaults.

Senior Debt means the lower of:

- (a) amounts outstanding under the Finance Documents in respect of Debt; or
- (b) amounts that would have been outstanding under the Finance Documents in respect of Debt had:
 - (i) Project Co received the Monthly Service Payments forecast in the Base Case Financial Model; and
 - (ii) each Project Co Entity complied with all of its obligations in respect of Debt under the Finance Documents.

State's Date for Completion has the meaning given to it in Section 3.4(b) of this Schedule.





Tender Costs means the internal and external costs reasonably incurred or reasonably expected to be incurred by the State in carrying out the Tender Process and/or in connection with any calculation of the Estimated Fair Value (including the cost of the independent expert appointed pursuant to Section 3.3(e) of this Schedule).

Tender Documentation means the documentation issued by the State to request tenders from any parties interested in entering into a New Contract in accordance with Section 3.2(c) of this Schedule.

Tender Process means the process by which the State requests tenders from any parties interested in entering into a New Contract, evaluates the responses from those interested parties and negotiates to enter into a New Contract with a New Project Co, in accordance with Section 3.2(c) of this Schedule.

Termination Date means the date of termination of this Deed in accordance with clause 49 (*Termination*) of this Deed.

Termination Debt means an amount equal to the sum of:

- (a) the Senior Debt as at the Termination Date; and
- (b) where the State elects to pay for the Termination Payment via lump sum, all amounts, including costs of early termination of hedging arrangements and other breakage costs, payable by any Project Co Entity to the Financiers as a result of prepayment under the Finance Documents, subject to each Project Co Entity and the Financiers mitigating all such costs to the extent reasonably possible,

less:

- (a) all credit balances on any bank accounts held by the Financiers or any of them for or on behalf of any Project Co Entity on the Termination Date; and
- (b) where the State elects to pay for the Termination Payment via lump sum, all amounts, including benefits of early termination of hedging arrangements and other breakage benefits, payable by the Financiers to any Project Co Entity as a result of prepayments of amounts outstanding under the Finance Documents.

Termination Equity IRR means:

- (a) for the period on and from Financial Close to (but excluding) the first date on which the Financial Model contemplates an Equity Investor providing Equity, the Equity IRR;

- (b) for the period on and from the first date on which the Financial Model contemplates an Equity Investor providing Equity to (but excluding) the Date of Commercial Acceptance, a rate equal to the Equity IRR less 0.5%; and
- (c) for the period on and from the Date of Commercial Acceptance to (but excluding) the Final Expiry Date, a rate equal to the Equity IRR less 1.8%.

Voluntary Termination Equity Value has the meaning given to it in Section 4 (*Voluntary Termination by the State*) of this Schedule.

2. Payment of Termination Payment

2.1 Timing of payment and instalment option

- (a) If this Deed is terminated under clause 49 (*Termination*) of this Deed, the State must pay to Project Co the Termination Payment on or before the date which is 90 days after the Termination Date (or where termination is pursuant to clause 49.4 (*Default Termination Event*) of this Deed, 30 days after the Compensation Date if this is later) unless it elects, in its absolute discretion, to pay in instalments in accordance with Section 2.1(b) of this Schedule.
- (b) If Project Co is entitled to a Termination Payment in accordance with clause 49.6 (*Payment on termination*) of this Deed and this Schedule:
 - (i) subject to Section 2.1(b)(ii) of this Schedule, the State shall, at its sole discretion, elect to pay by:
 - A. lump sum; or
 - B. where the State has not elected to assume (or have its nominee assume) the Liability of the Project Co Entities for all outstanding Debt pursuant to clause 49.7(a) (*Novation of liabilities to the State*) of this Deed, instalments (in amounts determined in accordance with Section 2.1(c) of this Schedule) on the Instalment Dates; and
 - (ii) where the State determines to retender for the Project and receives a lump sum payment, it will in turn pay Project Co by way of a lump sum (but not until it is in receipt of the lump sum payment from the retender for the Project).
- (c) If the State elects to pay the Termination Payment by instalments, it must pay the Instalment Amount applicable to that Instalment Date on each of the Instalment Dates.
- (d) The instalment amounts (**Instalment Amount**) means the amount calculated in accordance with the following formula:
 - (i) if the sum of the Termination Payment and the Receivables Refund Payment is less than or equal to the Debt at the Termination Date, amounts equivalent to the repayments or payments (as applicable) that are payable under the Finance Documents must be paid at the times when payment is due under the Finance Documents until the sum of the amounts paid is equal to the sum of the Termination Payment and the Receivables Refund Payment and interest accrued on the Receivables Refund Payment under clause 7.2 (Interest on unpaid element of the Receivables Refund Payment) of the Receivables Purchase Deed and interest accrued on the Termination Payment under Section 2.2 (*Payment of Interest*) of this Schedule; or
 - (ii) if the sum of the Termination Payment and the Receivables Refund Payment is greater than the Debt at the Termination Date:
 - A. amounts equivalent to the repayments or payments (as applicable) that are payable under the Finance Documents must be paid at the times when

the payment is due under the Finance Documents until the sum of the Debt and any interest accrued on the Receivables Refund Payment under clause 7.2 (Interest on unpaid element of the Receivables Refund Payment) of the Receivables Purchase Deed and interest accrued on the Termination Payment under Section 2.2 (*Payment of Interest*) of this Schedule has been fully paid; and

- B. the difference between the Debt at the Termination Date and the sum of the Termination Payment and the Receivables Refund Payment will be paid as a lump sum on or before the date which is 90 days after the Termination Date (or where termination is pursuant to clause 49.4 (*Default Termination Event*) of this Deed, 30 days after the Compensation Date if this is later).
- (e) If the State has elected to pay the Termination Payment by instalments:
- (i) it must pay the Instalment Amount applicable to each Instalment Date on that Instalment Date; and
 - (ii) it may (within 30 days of written notice to Project Co) pay any outstanding element of:
 - A. the Termination Payment (plus any additional costs incurred under the Finance Documents as a result of the breaking of any hedging arrangements, provided each Project Co Entity and the Financiers mitigate all such costs to the extent reasonably possible); and
 - B. the Receivables Refund Payment under the Receivables Purchase Deed, on the next Instalment Date.
- (f) If the State fails to make a payment to Project Co in accordance with Section 2.1(e) of this Schedule within the time period specified in Section 2.1(e) of this Schedule, Project Co may issue a notice to the State setting out (including calculations) the amount of the Termination Payment outstanding to be paid by the State and the State must pay that amount within 20 Business Days of receipt of such notice.

2.2 Payment of interest

In respect of Termination Payments calculated under this Schedule only, interest shall accrue on any unpaid element of the Termination Payment:

- (a) in respect of a Termination Payment calculated under Section 3 (*Termination for Default Termination Event*) of this Schedule, from the 31st day after the Compensation Date to (and excluding) the date on which the Termination Payment is paid in full. Interest shall accrue on that Termination Payment at the default rate provided in the relevant Finance Document. Interest is payable on the date on which the Termination Payment is paid; and
- (b) in respect of any Termination Payment calculated under Sections 4 (*Voluntary Termination by the State*) or 5 (*Force Majeure and Uninsurable Risks*) of this Schedule, from and including the Termination Date to (and excluding) the date on which the Termination Payment is paid in full. Interest on the Termination Debt portion of that Termination Payment shall accrue at the Debt Interest Rate from and including the day after the Termination Date to and including the 90th day after the Termination Date and thereafter on the whole of that Termination Payment at the default rate provided in the relevant Finance Document. Interest is payable on the date on which the Termination Payment is paid.

2.3 Treatment of insurance proceeds

- (a) Notwithstanding any term of this Deed, if the calculation of the Termination Payment requires the parties to take into account insurance proceeds that have not yet been

received by any Project Co Entity, then receipt (or non-receipt) of the insurance proceeds, or uncertainty as to the quantity or timing of receipt of the same, shall not delay the calculation or payment of the Termination Payment and instead the parties shall calculate the Termination Payment on the basis of the maximum amount of proceeds that those Project Co Entities are reasonably likely to recover assuming that Project Co has complied with its insurance obligations under clause 46 (*Insurance*) of this Deed (**Provisional Proceeds**) taking into account all information that is then available to the parties.

- (b) If, following the calculation of the Termination Payment, the insurance proceeds that any Project Co Entity actually recovers (**Actual Proceeds**) are less than the Provisional Proceeds, the State shall, immediately upon notification of the Actual Proceeds by Project Co, pay to Project Co an amount equal to that by which the Provisional Proceeds exceed the Actual Proceeds (**Additional Amount**). For the avoidance of doubt, the State will not be required to pay any interest on this Additional Amount.
- (c) If, following the calculation of the Termination Payment, the Actual Proceeds are more than the Provisional Proceeds, the State may, in its sole discretion:
 - (i) direct Project Co to immediately upon receipt of the Actual Proceeds by any Project Co Entity, pay to the State an amount equal to that by which the Actual Proceeds exceed the Provisional Proceeds (**Project Co Additional Amount**); or
 - (ii) if the State has not paid the Termination Payment in full at that time, reduce the outstanding Termination Payment by the Project Co Additional Amount,

and no Project Co Entity will be required to pay any interest on any Project Co Additional Amount.

- (d) The State shall not be required to make any payment under Section 2.1(b)(i) of this Schedule to the extent that the Actual Proceeds are less than the Provisional Proceeds as a result of a breach by Project Co of its obligations under this Deed.
- (e) References to insurance proceeds in Sections 2.3(b) to 2.3(d) (inclusive) of this Schedule are to insurance proceeds that any Project Co Entity is entitled to retain and which it has not applied and it is not obliged to apply in respect of its reinstatement obligations.

2.4 General obligations

- (a) Project Co must (and must procure Finance Co to) use all reasonable endeavours to mitigate any losses or costs forming part of any Termination Payment.
- (b) Any Termination Payment payable to Project Co must be calculated in accordance with this Schedule without any double counting.
- (c) If the Deed is terminated after the State has given Project Co a CDPD Satisfaction Notice and prior to payment of the CDPD Amount by the State, the calculation of any amounts in respect of this Schedule shall be determined on the basis that the CDPD Satisfaction Notice was not given.

3. Termination for Default Termination Event

3.1 Default Termination Event

If the State terminates this Deed following a Default Termination Event in accordance with clause 49.4 (*Default Termination Event*) of this Deed (regardless of whether the State otherwise has the right to terminate for any other reason), the State shall, at its sole discretion, elect to:

- (a) re-tender the provision of the Project Activities in accordance with Section 3.2 (*Re-tendering process*) of this Schedule; or

- (b) require an expert determination in accordance with Section 3.3 (*Expert determination*) of this Schedule.

3.2 Re-tendering process

- (a) The State shall be entitled to elect to retender the provision of the Project Activities in accordance with Section 3.1(a) of this Schedule if:
 - (i) the State notifies Project Co on or before the date falling 20 Business Days after the Termination Date;
 - (ii) there is a Liquid Market, and either:
 - A. the Financiers have not exercised their rights to step-in under clause 5 of the Financiers Tripartite Deed; or
 - B. the Financiers have exercised their rights to step-in under clause 5 of the Financiers Tripartite Deed and the Financiers have not procured the transfer of Project Co's rights and liabilities under this Deed to a suitable substitute contractor or have failed to use all reasonable efforts to do so,

in which case the amount of compensation payable by the State shall be agreed or determined in accordance with Sections 3.2(c) and 3.6 (*Termination for Default Termination Event*) of this Schedule.
- (b) Any Dispute in relation to whether a Liquid Market exists may be referred by either party for dispute resolution in accordance with clause 50 (*Dispute Resolution procedure*) of this Deed.
- (c) If the State elects to re-tender the provision of the Project Activities in accordance with Section 3.2(a) of this Schedule, the following provisions shall apply:
 - (i) the objective of the Tender Process shall be to identify a new project company and the highest Capital Sum offered by a Compliant Tenderer;
 - (ii) the State Representative shall use its reasonable endeavours to complete the Tender Process as soon as practicable having regard to the assistance given by Project Co in connection with the Tender Process;
 - (iii) the State Representative shall notify Project Co of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process, and shall act reasonably in setting such requirements and terms;
 - (iv) for each Month during the period from the Termination Date until the Compensation Date (and any part of a Month prior to the Compensation Date), the State shall pay to Project Co the Post Termination Service Payment. Each Post Termination Service Payment shall be payable monthly in arrears on or before the date falling 20 Business Days after the end of each Month or after the Compensation Date (as the case may be). If any Post Termination Service Payment is less than zero then it shall be carried forward and shall be set off against any future positive Post Termination Service Payments. If any such Post Termination Service Payment has not been set off on or before the Compensation Date then it shall be taken into account in the calculation of the Termination Payment;
 - (v) as soon as practicable after tenders have been received, the State Representative shall determine the Compliant Tenders and shall notify Project Co of:
 - A. the highest Capital Sum offered by a Compliant Tenderer; and
 - B. the Tender Costs;

- (vi) if the State receives less than two tenders (or less than two Compliant Tenders) in response to the Tender Process, the provisions of Section 3.3 (*Expert determination*) of this Schedule shall apply;
- (vii) the State may elect at any time prior to the receipt of two Compliant Tenders to follow the no re tendering procedure under Section 3.1(b) of this Schedule by notifying Project Co that this election has been made and upon the making of such an election, the provisions of Section 3.3 (*Expert determination*) of this Schedule shall apply; and
- (viii) in the event that the Tender Process is not completed within 12 months from the date of issue of the Tender Documentation, the provisions of Section 3.3 (*Expert determination*) of this Schedule shall apply.

3.3 Expert determination

If:

- (a) the State elects to require expert determination pursuant to Sections 3.1 (*Default Termination Event*) or 3.2(c)(vii) of this Schedule;
- (b) the provisions of Sections 3.2(c)(vi), 3.2(c)(vii) or 3.2(c)(viii) of this Schedule apply; or
- (c) the conditions set out in Section 3.2(a) of this Schedule are not satisfied,

the following provisions apply:

- (d) for each Month during the period from the Termination Date until the Compensation Date (and any part of a Month prior to the Compensation Date), the State shall pay to Project Co the Post Termination Service Payment, in accordance with Section 3.2(c)(iv) of this Schedule;
- (e) the parties will procure the services of an independent expert to determine the Estimated Fair Value based on the formula set out in Sections 3.4 (*Estimated Fair Value before Completion*) and 3.5 (*Estimated Fair Value after Completion*) of this Schedule (as applicable) and agree that the Estimated Fair Value as determined by the independent expert will be final and binding; and
- (f) all forecast amounts of revenues and costs must be calculated by the independent expert on a nominal basis as at the Termination Date, whereby future amounts are indexed at the indexation rates in the Financial Model.

3.4 Estimated Fair Value before Completion

- (a) The Estimated Fair Value before Completion shall be determined by the independent expert, based on the following formula:

EFV = the lower of:

- (i) the actual costs (including capitalised interest and fees) properly incurred by Project Co (being no more than the costs forecast to be incurred as shown in the Financial Model), referable to the Delivery Phase Activities up to and including the Termination Date; and
- (ii) the following amount:
 - A. the sum of the total costs forecast to be incurred in respect of all of the Delivery Phase Activities in the period from Financial Close to the Date for Completion (as set out in the Financial Model) on the basis that:

- 1) costs will include capitalised interest and fees (being no more than the capitalised interest and fees forecast to be incurred as shown in the Financial Model) up to and including the Termination Date;
 - 2) costs forecast to be incurred in respect of the Delivery Phase Activities after the Termination Date until the State's Date for Completion are discounted back from the dates the independent expert has determined back to the Termination Date at the Base Case Project Return; and
 - 3) capitalised interest and fees forecast to be incurred (as set out in the Financial Model) after the Termination Date will be excluded,
- less
- B. the independent expert's determination of the costs to be incurred by the State (including a reasonable assessment of the risk of costs overruns) from the Termination Date to achieve Completion by the State's Date for Completion discounted from the dates the independent expert has determined back to the Termination Date at the Base Case Project Return.
- (b) In this Section 3.4 (*Estimated Fair Value before Completion*), the State's Date for Completion means:
- (i) if the independent expert determines that, with a reasonable provision for acceleration, Completion can be achieved by the Date for Completion, the Date for Completion; or
 - (ii) if the independent expert determines that, even with a reasonable provision for acceleration, Completion cannot be achieved by the Date for Completion then the independent expert's determination of the earliest possible date by which Completion can be achieved (including a reasonable provision for acceleration and a reasonable assessment of the risk of time overruns).

3.5 Estimated Fair Value after Completion

The Estimated Fair Value after Completion shall be determined by the independent expert, based on the following formula:

$$\text{EFV} = A - B$$

where:

EFV = Estimated Fair Value;

A = the total of all payments of the Monthly Service Payments and CDPD Amount forecast to be made to the relevant Project Co Entity had this Deed not been terminated over the term of the Deemed New Contract calculated and discounted as at the Termination Date by the Base Case Project Return; and

B = the total of all costs reasonably forecast to be incurred by the State as a direct result of termination of this Deed, calculated and discounted to the Termination Date by the Base Case Project Return, such costs to include:

- (a) the costs reasonably forecast to be incurred by the State over the term of the Deemed New Contract in connection with providing the Project Activities to the standard required by the Deemed New Contract;
- (b) a reasonable risk assessment of any cost overruns that will arise whether or not forecast in the Financial Model; and

- (c) any Rectification costs required to deliver services under the Deemed New Contract to the standard required in the Deemed New Contract and any additional operating costs required to restore operating service standards.

3.6 Termination for Default Termination Event

If this Deed is terminated pursuant to clause 49.4 (*Default Termination Event*) of this Deed, the Termination Payment shall be calculated as follows:

Termination Payment or **TP** means:

$$\mathbf{TP = A - B - C - D - E - F + G - H - I - K - R}$$

where:

- A** = the highest Capital Sum offered by a Compliant Tenderer if Section 3.2 (*Re-tendering process*) of this Schedule applies, or the Estimated Fair Value as determined by Section 3.4 (Estimated Fair Value before Completion) or Section 3.5 (Estimated Fair Value after Completion) (as applicable) if Section 3.3 (*Expert determination*) of this Schedule applies;
- B** = the Tender Costs;
- C** = amounts that the State is entitled to set off or deduct under this Deed including, for the avoidance of doubt, any Post Termination Service Payment which is less than zero and which has not been set off on or before the Compensation Date in accordance with Section 3.2(c)(iv) of this Schedule, the costs of carrying out any works to ensure that the Relevant Infrastructure is in accordance with the requirements of this Deed and all other reasonable costs incurred by the State in connection with the relevant Default Termination Event and as a direct result of terminating this Deed;
- D** = any amounts owing by any Project Co Entity to the State under the Project Documents as at the Termination Date;
- E** = any gains which have or will accrue to any Project Co Entity as a result of the termination of this Deed and any other Project Documents;
- F** = the net amount (which, for the avoidance of doubt, shall be net of any amount deductible under the relevant insurance policy) any Project Co Entity is entitled to retain, or would be entitled to retain had each Project Co Entity complied with the requirements of clause 46 (*Insurance*) of this Deed and the relevant insurance policy (as applicable), under any insurance policy;
- G** = any amounts due and payable by the State to any Project Co Entity in accordance with the terms of the State Project Documents as at the Termination Date, and only to the extent that such amounts should have been paid prior to the Termination Date but remained unpaid at the Termination Date;
- H** = the total of all cash on deposit or otherwise held to the benefit of any Project Co Entity and any other amounts owing to any Project Co Entity as at the Termination Date;
- I** = any amounts paid to Project Co by the State (including as a component of the Monthly Service Payment) for maintenance, refurbishment or capital replacement where that maintenance, refurbishment or capital replacement has not been carried out by Project Co;
- K** = any amount which the State is required to pay to discharge or settle any Disgorgement Claim, plus legal costs on an indemnity basis, plus any amount which the State, acting reasonably, provisions for the payment of any Disgorgement Claim plus legal costs until such time as the Disgorgement Claim is withdrawn, released, or statute-barred; and

R = the Receivables Refund Payment.

If the Termination Payment as calculated above is zero or a negative number, the State shall have no obligation to make any payment to Project Co and the State shall be released from all liability to Project Co for breaches and/or termination of this Deed and any other Project Documents other than any Claim notified to the State prior to the date of termination in accordance with this Deed which was not otherwise due and payable under this Deed on the Termination Date and which does not arise by reason of termination of this Deed.

4. Voluntary Termination by the State

If this Deed is terminated pursuant to clause 49.2 (*Voluntary Termination*) of this Deed, the Termination Payment shall be calculated as follows, unless the sum of such Termination Payment and the Receivables Refund Payment is calculated to be less than the Termination Debt, in which case the Termination Payment will be taken to be the amount necessary in order to ensure that the sum of such Termination Payment and the Receivables Refund Payment is equal to the Termination Debt:

Termination Payment or TP means:

$$\mathbf{TP = A + B + C - D - E - F + G - H + I - J - K - R}$$

where:

A = an amount equal to the Termination Debt;

B = the amount which when taken together with dividends (or other distributions) paid, interest paid and principal repaid and any other monies paid by Project Co to Equity Investors, taking account of the actual timing of such payments, gives an internal rate of return to Equity Investors equal to the relevant Termination Equity IRR (the Voluntary Termination Equity Value);

C = an amount equal to the [REDACTED]

D = any amounts owing by any Project Co Entity to the State, under the State Project Documents as at the Termination Date;

E = any gains which have or will accrue to any Project Co Entity as a result of the termination of this Deed and any other Project Documents, not included in the definition of Termination Debt;

F = the net amount (which, for the avoidance of doubt, shall be net of any amount deductible under the relevant insurance policy) any Project Co Entity is entitled to retain, or would be entitled to retain had each Project Co Entity complied with the requirements of clause 46 (*Insurance*) of this Deed and the relevant insurance policy (as applicable), under any insurance policy;

G = any amounts due and payable by the State to any Project Co Entity in accordance with the terms of the State Project Documents as at the Termination Date, and only to the extent that such amounts should have been paid prior to the Termination Date but remained unpaid at the Termination Date;

H = the total of all cash on deposit or otherwise held to the benefit of any Project Co Entity as at the Termination Date and any other amounts owing to any Project Co Entity as at the Termination Date;

I = the total of all redundancy payments for employees of Project Co which have been or will be reasonably and properly incurred and arise as a direct result of the termination of this Deed;

J = the costs (if any) which are required to be incurred to ensure that the Relevant Infrastructure and the Site meets the Handover Condition as at the Expiry Date;

- K** = any amount which the State is required to pay to discharge or settle any Disgorgement Claim, plus legal costs on an indemnity basis, plus any amount which the State, acting reasonably, provisions for the payment of any Disgorgement Claim plus legal costs until such time as the Disgorgement Claim is withdrawn, released, or statute-barred; and
- R** = the Receivables Refund Payment.

5. Force Majeure and Uninsurable Risks

If this Deed is terminated pursuant to clauses 44.6 (*Consequences of State election not to repair or rebuild*), 47.3 (*Agreed Uninsurable Risks resulting in loss or damage*) or 49.3 (*Termination for Force Majeure*) of this Deed, the Termination Payment shall be calculated as follows:

$$TP = A - B - C - D + E + F - G + H - I - K - R$$

where:

- A** = an amount equal to the Termination Debt;
- B** = any gains which have or will accrue to any Project Co Entity as a result of the termination of this Deed and any other Project Documents, not included in the definition of Termination Debt;
- C** = any amounts owing by any Project Co Entity to the State under the State Project Documents as at the Termination Date;
- D** = the net amount (which, for the avoidance of doubt, shall be net of any amount deductible under the relevant insurance policy) any Project Co Entity is entitled to retain, or would be entitled to retain had each Project Co Entity complied with the requirements of clause 46 (*Insurance*) of this Deed and the relevant insurance policy (as applicable), under any insurance policy;
- E** = 50% of the Voluntary Termination Equity Value;
- F** = any amounts due and payable by the State to Project Co in accordance with the terms of the State Project Documents as at the Termination Date, and only to the extent that such amounts should have been paid prior to the Termination Date but remained unpaid at the Termination Date;
- G** = the total of all cash on deposit or otherwise held to the benefit of any Project Co Entity as at the Termination Date and any other amounts owing to any Project Co Entity as at the Termination Date;
- H** = an amount equal to the [REDACTED];
- I** = the costs (if any) which are required to be incurred to ensure that the Relevant Infrastructure and the Site meets the Handover Condition as at the Expiry Date;
- K** = any amount which the State is required to pay to discharge or settle any Disgorgement Claim, plus legal costs on an indemnity basis, plus any amount which the State, acting reasonably, provisions for the payment of any Disgorgement Claim plus legal costs until such time as the Disgorgement Claim is withdrawn, released, or statute-barred; and
- R** = the Receivables Refund Payment.

6. Negative Termination Payment

- (a) Subject to section 6(b), if the Termination Payment calculated under this Schedule is a negative amount, the State will be entitled to deduct the absolute value of that negative

amount from the Receivables Refund Payment payable by the State to Finance Co under the Receivables Purchase Deed.

- (b) The State will not be entitled to deduct the absolute value of a negative Termination Payment calculated under section 4 from the Receivables Refund Payment payable by the State to Finance Co under the Receivables Purchase Deed to the extent that as a result of that deduction the amount of the Receivables Refund Payment will be less than the Termination Debt.
- (c) The parties acknowledge and agree that if after deducting the amounts identified under section 6(a), the Receivables Refund Payment is a negative amount, such Receivables Refund Payment will be deemed to be zero.
- (d) If the Termination Payment calculated under this Schedule is a negative amount, for all purposes other than that set out in section 6(a), such Termination Payment will be deemed to be zero and Project Co shall have no obligation to make any payment of that amount to the State.

Schedule 25

New Grafton Correctional Centre Independent Certifier Deed of Appointment

[Insert] [insert ABN]

[Insert] [insert ABN/ACN] (**Project Co**)

[Insert] [insert ABN/ACN] (**Independent Certifier**)

Schedule 25 — Independent Certifier Deed of Appointment

Contents

1.	Definitions and interpretation	5
1.1	Project Deed definitions incorporated	5
1.2	Definitions	5
1.3	Interpretation	7
1.4	Business Day	8
1.5	Joint and several Liability of Independent Certifier	9
1.6	Several Liability of the Project Parties	9
1.7	Relationship of the parties	9
1.8	Approvals, directions and notices in writing	9
1.9	State's rights and obligations	9
2.	Conditions precedent	9
2.1	Conditions precedent	9
2.2	Failure to achieve Financial Close	10
3.	General obligations of the Independent Certifier	10
3.1	Appointment	10
3.2	Services	10
3.3	Effect of Services Schedule	10
3.4	Warranties	10
3.5	Initial Delivery Phase Program	11
4.	Various functions of the Independent Certifier	11
5.	Performance by Independent Certifier	14
5.1	Standard of care	14
5.2	Duty to act honestly, professionally and independently	14
5.3	Time requirements	14
5.4	Conflict of interest	14
5.5	Communications with Project Parties	14
5.6	No authority to give directions or waive requirements	14
5.7	Acknowledgement of reliance	15
5.8	Knowledge of Project Parties' requirements	15
5.9	Co-ordination and co-operation	15
5.10	Personnel	15
5.11	Key People	15
5.12	Independent Certifier's Representative	16
5.13	Subcontracting	16
6.	Role of the Project Parties	16
6.1	No interference or influence	16
6.2	Provision of information	16
6.3	Access to records and systems	17
6.4	Access to premises	17
6.5	Right to enter, inspect and test	17
6.6	Meetings	17
6.7	Co-operation	18
6.8	Project Parties not liable	18
7.	Reporting and meetings	18
7.1	Progress reports	18
7.2	Project Control Group	19
7.3	Meetings with Project Parties	19

7.4	Reports requested by one Project Party	19
7.5	Questions relating to a report	19
8.	Quality	19
8.1	Quality assurance system	19
8.2	Audit	19
8.3	Quality assurance not to relieve Independent Certifier	20
8.4	Non-complying services	20
9.	Liability, insurance and indemnity	20
9.1	Limitation of Liability	20
9.2	Exclusions	21
9.3	Insurances	21
9.4	Notice of matter affecting insurance	22
9.5	Provision of information	22
9.6	Periods for insurance	22
9.7	Obligations unaffected by insurance	22
9.8	Indemnity	22
9.9	Proportionate Liability	23
10.	Payment	23
11.	Change to or suspension of Services and appointment of Substitute Certifier	23
11.1	Change to Services	23
11.2	Appointment of Substitute Certifier	23
11.3	Independent Certifier must continue to perform	24
11.4	Suspension of Services	24
11.5	Meeting of all Project Parties	24
12.	Termination	24
12.1	Notice of default	24
12.2	Termination for breach	24
12.3	Termination for insolvency	25
12.4	Termination for convenience	25
12.5	No automatic termination upon termination of any State Project Document	25
12.6	Prior agreement on replacement	25
12.7	Independent Certifier's rights upon termination for convenience	25
12.8	Termination without prejudice	25
13.	Transition out	25
13.1	Transition Out Period	25
13.2	Delivery of documents	26
13.3	Reasonable assistance	26
14.	GST	26
15.	NSW Code and Guidelines	28
15.1	Reference	28
15.2	Primary Obligation	28
15.3	Access and information	28
15.4	Sanctions	28
15.5	Compliance	29
16.	Dispute Resolution	29
16.1	Disputes to be resolved in accordance with the Project Deed	29
16.2	Notice of dispute	29
16.3	Executive negotiation	30
16.4	Reference to Mediation	30
16.5	Mediation	30
16.6	Place of mediation	30

16.7	Evidence not admissible	30
16.8	Costs	30
16.9	Reference to litigation	30
16.10	Condition precedent to litigation	30
16.11	Services to continue	31
17.	Confidential Design Information	31
18.	Notices	31
19.	Miscellaneous	32
19.1	Governing Law and jurisdiction	32
19.2	Entire agreement	32
19.3	Further acts and documents	32
19.4	Survival of certain provisions	32
19.5	Waiver	33
19.6	Consents and approvals	33
19.7	Amendments	33
19.8	Expenses	33
19.9	Severance	33
19.10	Counterparts	33
19.11	Moratorium legislation	33
19.12	Proportionate liability	34
19.13	Indemnity held on trust	34
19.14	Assignment	34
19.15	Set off	34
19.16	No representation or reliance	34
19.17	Indemnities	34
	Schedule 1 — Contract Particulars	36
	Schedule 2 — Services	38
	Schedule 3 — Payment Schedule	40
	Schedule 4 — Resource Allocation pro forma	45

Fee means the sum of the Initial Fee and the Monthly Fees as adjusted from time to time in accordance with clause 10 and the Payment Schedule.

Independent Certifier's Representative means the person named in the Contract Particulars or any other person appointed from time to time by the Independent Certifier, with the approval of the Project Parties to replace that person.

Initial Fee means the lump sum amount payable to the Independent Certifier for the performance of the Services during the Initial Period as set out in the Payment Schedule.

Initial Period is the first [insert] months of the Term commencing on the Commencement Date.

Key People means the people identified as such in the Contract Particulars.

Lump Sum means each amount specified as such in section 9 of the Payment Schedule, as adjusted from time to time in accordance with the Payment Schedule.

Monthly Fee means the amount payable to the Independent Certifier for the performance of the Services in respect of a month after the Initial Period in accordance with the Payment Schedule.

Monthly Fee Estimate means the estimated Fees payable to the Independent Certifier for the performance of the Services for the relevant month as adjusted from time to time in accordance with clause 11.1(b) and the Payment Schedule.

Payment Schedule means Schedule 3.

Project Deed means the document entitled '*New Grafton Correctional Centre — Project Deed*' between the State and Project Co dated on or about the date of this Deed.

Project Parties means the State and Project Co.

Project Parties' Representatives means, in respect of each of the State and Project Co, the person named in the Contract Particulars or any other person appointed from time to time by notice in writing from the relevant Project Party to the Independent Certifier and the other Project Party to replace that person.

Quarter means:

- (a) the period from the end of the Initial Period until the day before the next Quarterly Date;
- (b) each 3 month period commencing on a Quarterly Date; and
- (c) the period from the last Quarterly Date during the Term until the Expiry Date

Quarterly Date means every 1 January, 1 April, 1 July and 1 October during the Term.

Resource Adjustment is an adjustment in the level of resources which are required from the Independent Certifier to perform the Services.

Resource Adjustment Order is the document issued by the Project Parties in accordance with section 11.5 or 11.8(a)(i) of the Payment Schedule.

Schedule of Rates means the schedule of rates and prices set out in section 9 of the Payment Schedule as adjusted from time to time in accordance with the Payment Schedule.

Services means:

- (a) all of the functions conferred on the Independent Certifier under this Deed (including in the Services Schedule), the State Project Documents or the Downstream Independent Certifier Contracts, as varied in accordance with clause 11 or in accordance with terms of the Downstream Independent Certifier Contracts;
- (b) all other things or tasks which the Independent Certifier must do to comply with its obligations under this Deed, the State Project Documents or the Downstream Independent Certifier Contracts; and
- (c) without limiting paragraph (b), all other things and tasks not described in this Deed, the State Project Documents or the Downstream Independent Certifier Contracts if those things and tasks should have been reasonably anticipated by an experienced and expert professional provider of similar services as being necessary for the performance of those things or tasks or which are otherwise capable of inference from this Deed, the State Project Documents or the Downstream Independent Certifier Contracts.

Services Schedule means Schedule 2.

State means:

- (a) The Minister for Corrections on behalf of the Crown in right of the State of New South Wales;
- (b) Infrastructure New South Wales (ABN 85 031 302 516); and
- (c) for the purposes of the Project Deed and the Operator Side Deed only, the Commissioner of Corrective Services.

Substitute Certifier has the meaning given in clause 11.2(a).

Term means the period from the Commencement Date to the date one month after the expiry of the Delivery Phase, or such later date as agreed by the parties.

Transition Out Period means the period 24 months prior to the end of the Term.

Transition Out Plan means a plan prepared by the Independent Certifier to meet its obligations in accordance with clause 13, which is in a form agreed by the Project Parties, in accordance with clause 13.

Upstream Independent Certifier Contracts means:

- (a) this Deed;
- (b) the Project Deed; and
- (c) the other contracts (if any) set out in the Contract Particulars.

Upstream Independent Certifier Functions means the functions, powers and obligations of the Independent Certifier under the Upstream Independent Certifier Contracts.

1.3 Interpretation

In this Deed:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) **(Deed and Schedule references)**: a reference to:
 - (i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Deed; and
 - (ii) a section is a reference to a section of a Schedule;
- (d) **(document as amended)**: a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
- (h) **(Policies)**: a reference to a Policy includes that Policy as amended or updated from time to time;

- (i) (**definitions**): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) (**'includes'**): 'includes' and 'including' will be read as if followed by the phrase '(without limitation)';
- (k) (**'or'**): the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;
- (l) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (m) (**'\$'**): a reference to '\$', AUD or dollar is to Australian currency;
- (n) (**Business Day**): if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;
- (o) (**day**): except as otherwise provided in this Deed or where a reference is made to 'Business Days', day means a calendar day;
- (p) (**time**): a reference to time is a reference to time in Sydney, Australia;
- (q) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (r) (**function**): a function includes a power, authority or duty;
- (s) (**obligations and liabilities**): a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (t) (**'may'**): except to the extent that the State is expressly required under this Deed to act reasonably in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion (and without regard to Project Co or the Independent Certifier) and the State has no obligation to do so;
- (u) (**construction**): where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (v) (**asset**): references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset;
- (w) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision; and
- (x) (**Delivery Phase Program**): a reference to the Delivery Phase Program is a reference to the most recent Delivery Phase Program that has been reviewed and not rejected in accordance with the Review Procedures.

1.4 Business Day

If the day on or by which anything is to be done in accordance with this Deed is not a Business Day, that thing must be done:

- (a) (**payments**): if it involves a payment other than a payment which is due on demand, on the preceding Business Day; or
- (b) (**otherwise**): in all other cases, no later than the next Business Day.

1.5 Joint and several Liability of Independent Certifier

If the Independent Certifier comprises more than one person:

- (a) the obligations of those persons are joint and several; and
- (b) each Project Party may proceed against any or all of them for any failure of the Independent Certifier to comply with any obligation in accordance with this Deed or otherwise.

1.6 Several Liability of the Project Parties

If a provision of this Deed binds the Project Parties, that provision binds each of the Project Parties severally and not jointly and severally.

1.7 Relationship of the parties

- (a) **(No partnership or joint venture)**: The relationship between and among the Project Parties to this Deed will not be that of partners or joint venturers and nothing in this Deed will be deemed to constitute a partnership or joint venture among them and no party will have authority or power to act unilaterally as agent for the other.
- (b) **(The Independent Certifier)**: The Independent Certifier is acting as an independent contractor for the Project Parties and therefore the Independent Certifier is not authorised to enter into any binding obligations on behalf of the Project Parties.
- (c) **(No relationship)**: Unless otherwise expressly provided, this Deed does not:
 - (i) create a partnership, joint venture or fiduciary relationship between the parties to this Deed; or
 - (ii) impose any duty of good faith on the State.

1.8 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Deed or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands must be given in writing.

1.9 State's rights and obligations

- (a) **(Acknowledgements)**: The parties acknowledge the substance, operation and potential effect and consequences of clause 2.10 (*State's executive rights duties and functions*) of the Project Deed in relation to this Deed.
- (b) **(No Claim)**: Subject to clause 1.9(c), Project Co and the Independent Certifier will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach)**: Clauses 1.9(a) and 1.9(b) do not limit any Liability which the State would have had to Project Co or the Independent Certifier under any State Project Document as a result of a breach by the State of a term of any State Project Document but for these clauses.

2. Conditions precedent

2.1 Conditions precedent

The rights and obligations of the parties under this Deed will not commence until the later of:

- (a) the date of execution of this Deed by all parties to this Deed; and
- (b) the date of execution of the Project Deed by all parties to the Project Deed,
(Commencement Date).

2.2 Failure to achieve Financial Close

- (a) **(Failure to achieve Financial Close):** If the Project Parties do not achieve Financial Close by the Condition Precedent Deadline, then the Project Parties may, at their option, terminate this Deed by notice to the Independent Certifier.
- (b) **(Independent Certifier's rights on termination):** Where this Deed is terminated in accordance with this clause 2.2, then, notwithstanding clause 12.7:
 - (i) the Independent Certifier will only be entitled to be paid the proportion of the Fee for the Services performed up to the date of termination in accordance with the Payment Schedule; and
 - (ii) the Independent Certifier will not otherwise be entitled to bring any Claim against the Project Parties arising out of or in connection with:
 - (A) the termination of this Deed; or
 - (B) the Project, the State Project Documents or the Downstream Independent Certifier Contracts.

3. General obligations of the Independent Certifier

3.1 Appointment

- (a) **(Appointment):** Each of the Project Parties appoint the Independent Certifier under this Deed to perform the Services for the benefit of each of the Project Parties.
- (b) **(Acceptance of appointment):** The Independent Certifier confirms its acceptance of the appointment.

3.2 Services

The Independent Certifier must carry out the Services in accordance with this Deed for the Term.

3.3 Effect of Services Schedule

The Project Parties and the Independent Certifier acknowledge that the Services Schedule:

- (a) is indicative only;
- (b) is not intended to be a complete description of the Services;
- (c) does not limit or otherwise affect the Services or the performance of the Services; and
- (d) cannot be used as an aid to interpretation of the Services.

3.4 Warranties

The Independent Certifier represents and warrants to the Project Parties that:

- (a) **(status):** it is a corporation as that expression is defined in the Corporations Act having limited liability, incorporated (or taken to be incorporated) or registered and validly existing under the Corporations Act;
- (b) **(power):** it has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (c) **(authority):** it has full power and authority to enter into and perform its obligations under this Deed;
- (d) **(corporate authorisations):** it has taken all necessary action to authorise the execution, delivery and performance of this Deed;
- (e) **(document binding):** this Deed constitutes its legal, valid and binding obligations and, subject to any necessary stamping and registration, is enforceable in accordance with its terms;
- (f) **(no contravention):** the execution, delivery and performance by it of this Deed does not and will not violate, breach, or result in a contravention of:
 - (i) any Law;

- (ii) its constitution or other constituent documents; or
- (iii) any encumbrance or document which is binding on it or any of its assets;
- (g) (**licences**): it and its relevant personnel possess all relevant and necessary licences to perform the Services and they will hold such licences, to the extent required by Law, until completion of the Services or earlier termination of this Deed;
- (h) (**no misrepresentations**): the information provided by it in connection with this Deed is true, accurate and complete in all material respects and not misleading in any material respect (including by omission);
- (i) (**no immunity**): it does not (in any capacity) have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution or otherwise); and
- (j) (**litigation**): no litigation, arbitration, tax claim, dispute or administrative or other proceeding has been commenced or threatened against it which is likely to have a material adverse effect upon its ability to perform the Services.

Except as otherwise provided, each representation and warranty contained in this Deed is made on the date of this Deed and will be deemed to be repeated immediately before each notice or certificate is issued by the Independent Certifier under the Project Documents with reference to the facts and circumstances then subsisting.

3.5 Initial Delivery Phase Program

The Independent Certifier acknowledges and agrees that:

- (a) it has received and reviewed the Initial Delivery Phase Program;
- (b) the sequencing and logic of the activities between Technical Completion and Commercial Acceptance shown in the Initial Delivery Phase Program constitute part of the critical path contained and shown in the Initial Delivery Phase Program, such that a delay in achieving Technical Completion will cause an equivalent day for day delay to the achievement of Commercial Acceptance;
- (c) any determination by it will be made consistent with clause 3.5(b) except to the extent any updated Delivery Phase Program amends the logic or sequencing of the activities to be performed between Technical Completion and Commercial Acceptance; and
- (d) in considering any updated Delivery Phase Program, it will (exercising the standard of skill care and diligence expected of it under this Deed) advise Project Co in writing:
 - (i) whether there has been a change to the sequencing or logic of the activities between Technical Completion and Commercial Acceptance; and
 - (ii) if so, whether or not the sequencing and logic of the activities between Technical Completion and Commercial Acceptance shown in the updated Delivery Phase Program constitute part of the critical path contained and shown in the updated Delivery Phase Program (and, if not, it will provide reasons for its opinion).

4. Various functions of the Independent Certifier

- (a) (**Independent Certifier**): This clause 4 only applies if the Independent Certifier undertaking the Upstream Independent Certifier Functions is the same entity undertaking the Downstream Independent Certifier Functions.
- (b) (**Upstream Independent Certifier Functions paramount**): The Project Parties and the Independent Certifier acknowledge and agree that the Upstream Independent Certifier Functions represent the paramount role of the Independent Certifier, with the intent that:
 - (i) if there is any ambiguity, conflict, discrepancy or inconsistency between any Upstream Independent Certifier Functions and any Downstream Independent Certifier Functions, the Upstream Independent Certifier Functions will prevail as between the parties to this Deed;

- (ii) neither the existence nor the terms of a Downstream Independent Certifier Function nor the exercise, failure to exercise or manner of exercise of a Downstream Independent Certifier Function will be a precedent for, limit or otherwise affect the exercise of, or be construed in any way as an aid to interpretation of, an Upstream Independent Certifier Function; and
- (iii) neither:
 - (A) the receipt by the Independent Certifier of any notice, claim, plan, program, report, manual, model or any other document or information nor the giving of any notice, the making of any comment or any other act or omission by the Independent Certifier arising in connection with a Downstream Independent Certifier Function; nor
 - (B) the existence or performance of any function by, any consultation with, or provision of any notice, report, certificate, comment or any other document or information to, the Independent Certifier by any other reviewer, certifier, engineer, adviser or other consultant engaged by any party other than the State,will:
 - (C) give rise to any obligation on the part of the Independent Certifier to exercise (or exercise in a particular manner) any Upstream Independent Certifier Function;
 - (D) relieve Project Co from the giving of any notice, claim, plan, program, report, manual, model or any other document or information or the doing of any other thing in respect of an Upstream Independent Certifier Function in order to give rise to any obligation on the part of the Independent Certifier to exercise that Upstream Independent Certifier Function; or
 - (E) be a precedent for, limit or otherwise affect the exercise of, or be construed in any way as an aid to interpretation of, an Upstream Independent Certifier Function.
- (c) **(State approval and consent):** The Project Parties and the Independent Certifier acknowledge and agree that:
 - (i) the Independent Certifier may not exercise any function or enter into any arrangement arising in connection with the Project other than in accordance with this Deed (including in accordance with clause 7.4), unless approved by the State in writing and on such terms approved by the State; and
 - (ii) no Downstream Independent Certifier Function may be varied, altered or amended without the State's consent.
- (d) **(No Liability):** Subject to clause 4(e), to the extent permitted by Law, none of the State, its Associates or the Independent Certifier will have any Liability, nor will Project Co or its Associates be entitled to make, continue or enforce any Claim against, or seek, pursue or obtain an indemnity against or contribution to Liability from the State, any of its Associates or the Independent Certifier, and Project Co indemnifies the State, its Associates and the Independent Certifier in respect of any such Claim a Project Co Associate makes, arising connection with:
 - (i) any ambiguity, conflict, discrepancy or inconsistency between any Upstream Independent Certifier Functions and any Downstream Independent Certifier Functions; or
 - (ii) subject to clause 9.8:
 - (A) the exercise, failure to exercise or manner of exercise of any Downstream Independent Certifier Function;
 - (B) any act or omission of the Independent Certifier arising in connection with the performance of any Downstream Independent Certifier Function; or

- (C) the giving of any notice, claim, plan, program, report, manual, model or any other document or information, or any other act or omission in respect of any Downstream Independent Certifier Function or any Downstream Independent Certifier Contract.
- (e) **(No exclusion of Liability):** For the avoidance of doubt, clause 4(d) will not operate to exclude the Independent Certifier's Liability with respect to:
- (i) a failure by the Independent Certifier to comply with clause 4(g); or
 - (ii) any matter for which the Independent Certifier has provided an indemnity in accordance with clause 9.8.
- (f) **(Duty of care to Project Parties):** The Independent Certifier acknowledges that it owes a duty of care to the Project Parties when performing the Downstream Independent Certifier Functions.
- (g) **(Obligations when performing downstream functions):** The Independent Certifier warrants to the Project Parties that, in performing the Downstream Independent Certifier Functions, it will:
- (i) comply with all Laws, act honestly, diligently, reasonably and with the degree of professional care, knowledge, experience and skill which would be expected of an expert professional providing services similar to the Services for projects similar to the Project;
 - (ii) at all times, act within the time requirements for the performance of its obligations, both as:
 - (A) Independent Certifier in accordance with this Deed and the State Project Documents; and
 - (B) Independent Certifier when performing any Downstream Independent Certifier Function which has an equivalent Upstream Independent Certifier Function;
 - (iii) at all times act independently of the relevant Downstream Parties and all other parties to the Downstream Independent Certifier Contracts;
 - (iv) ensure that the performance of any Downstream Independent Certifier Function does not give rise to any (or the possibility of any) conflict of interest;
 - (v) ensure that it does not otherwise compromise its ability to perform the Upstream Independent Certifier Functions in accordance with this Deed;
 - (vi) when performing the Downstream Independent Certifier Functions, provide to the State copies of all written communications and details of all non-written communications with the Downstream Parties and consult with and provide all further information required by the State in connection with those communications;
 - (vii) otherwise comply with any reasonable requirements of the State for the purposes of the warranties set out in this clause 4(g); and
 - (viii) use and apply the same methodology that it uses and applies in performing the Upstream Independent Certifier Functions.
- (h) **(Fee payable solely for Services):** The Project Parties and the Independent Certifier acknowledge and agree that the Fee payable in accordance with this Deed will be payable solely for, and will relate solely to, the performance of the Services and will not be payable for or relate to any Downstream Independent Certifier Functions, which will be separately payable.
- (i) **(Delegation of risks, liabilities, obligations and responsibilities):** Any express or implied delegation of risks, liabilities, obligations or responsibilities by Project Co and its respective Associates, whether in a Downstream Independent Certifier Contract or otherwise, does not constitute approval of such delegation by the State or in any way limit or derogate from the scope of Project Co's obligations in accordance with the State Project Documents or this Deed or affect in any way the obligations of the Independent Certifier in accordance with the State Project Documents or this Deed. References to

risks, liabilities, obligations or responsibilities assumed or accepted or acknowledgements given by any such entity or Associate in relation to any such delegation will be construed as assumed or accepted or given (as applicable) by Project Co in accordance with the State Project Documents.

- (j) **(No effect on Upstream Independent Certifier Functions):** Reference in a Downstream Independent Certifier Contract to the performance of a function by the Independent Certifier under any Downstream Independent Certifier Contract, or the provision to or receipt by the Independent Certifier of a document, certificate or notice from any Downstream Party (in its capacity as Independent Certifier), does not in any way affect the functions of the Independent Certifier under the State Project Documents or this Deed.

5. Performance by Independent Certifier

5.1 Standard of care

The Independent Certifier must exercise the standard of skill, care and diligence in the performance of the Services that would be expected of an expert professional provider of the Services experienced in providing services similar to the Services for projects similar to the Project.

5.2 Duty to act honestly, professionally and independently

The Independent Certifier must, in performing the Services act honestly, professionally and independently of the Project Parties and the Downstream Parties and their respective contractors, suppliers and consultants.

5.3 Time requirements

The Independent Certifier must perform the Services:

- (a) within the time limits specified in this Deed and the State Project Documents; and
- (b) where no time limit is specified, within a reasonable time.

5.4 Conflict of interest

(a) **(Warranty):** The Independent Certifier warrants that:

- (i) as at the date of this Deed, no conflict of interest arises out of its engagement by the Project Parties under this Deed; and
- (ii) if, during the term of this Deed, it becomes aware of the existence or possibility of a conflict of interest, it will:
 - (A) immediately notify the Project Parties of that conflict of interest or possible conflict of interest; and
 - (B) take such steps to avoid or mitigate the conflict of interest or possible conflict of interest as the Project Parties may reasonably require.

(b) **(Prior approval):** The Independent Certifier must not exercise any function nor enter into any arrangement arising out of, in respect of or in connection with the Project other than in accordance with this Deed unless approved, in writing, by the Project Parties and on such terms as are approved by the State.

5.5 Communications with Project Parties

The Independent Certifier must ensure that a copy of each written communication between the Independent Certifier and a Project Party which relates to the Project or this Deed is promptly given to the other Project Party.

5.6 No authority to give directions or waive requirements

The Independent Certifier has no authority to:

- (a) give directions to the Project Parties or the Downstream Parties, other than as may (if at all) be expressly set out in this Deed or the State Project Documents;

- (b) waive or vary any requirements of the State Project Documents or a Downstream Independent Certifier Contract; or
- (c) discharge or release a party from any of its obligations under the State Project Documents.

5.7 Acknowledgement of reliance

The Independent Certifier acknowledges that each Project Party and each Downstream Party:

- (a) is entitled to, and will, rely on:
 - (i) the skill and expertise of the Independent Certifier in the performance of the Services; and
 - (ii) any certificate signed or given by the Independent Certifier under the State Project Documents; and
- (b) may suffer Liability if the Independent Certifier does not perform the Services in accordance with the requirements of this Deed.

5.8 Knowledge of Project Parties' requirements

The Independent Certifier warrants that:

- (a) it has informed itself of the requirements of the State Project Documents and the Downstream Independent Certifier Contracts insofar as they relate to the Services;
- (b) without limiting clause 5.8(a), it has informed itself of all time limits and other requirements for any function which the Independent Certifier must perform in accordance with the State Project Documents and the Downstream Independent Certifier Contracts;
- (c) it has informed itself of the nature of the work necessary for the performance of the Services and (to the maximum extent possible) the means of access to and facilities within the Site, including any restrictions on any such access; and
- (d) it has satisfied itself as to the sufficiency of the Fee having regard to the costs which it will incur in complying with its obligations in accordance with this Deed.

5.9 Co-ordination and co-operation

The Independent Certifier must, in performing the Services:

- (a) co-operate with the Project Parties and the Downstream Parties and their respective contractors, suppliers and consultants;
- (b) co-ordinate the Services with the work to be performed by the Project Parties and the Downstream Parties, and their respective contractors, suppliers and consultants; and
- (c) avoid any unnecessary interference, disruption or delay to the work to be performed by the Project Parties and the Downstream Parties, and their respective contractors, suppliers and consultants.

5.10 Personnel

The Independent Certifier must provide sufficient numbers of experienced and competent personnel to perform its obligations in accordance with this Deed within the timeframes specified in this Deed, in the State Project Documents and in the Downstream Independent Certifier Contracts.

5.11 Key People

Without limiting its obligations in accordance with clause 5.10, the Independent Certifier must:

- (a) ensure that the Key People perform the functions specified in the Contract Particulars and, unless reasonably directed otherwise by the Project Parties, ensure that they are committed and available to the Project as required to fulfil the requirements of this Deed and the State Project Documents;
- (b) subject to clause 5.11(c), not remove the Key People without the prior consent of the Project Parties (which must not be unreasonably withheld or delayed);

- (c) use its best endeavours to ensure that none of the Key People resign or otherwise become unavailable to perform their functions as required by clause 5.11(a);
- (d) without limiting clause 5.11(e) and in relation to any Key People who resign or otherwise become or may become unavailable to perform their functions as required by clause 5.11(a) (whether temporarily or permanently), notify the Project Parties accordingly including advising the Project Parties of the way in which the Independent Certifier proposes to address the unavailability of any such Key People;
- (e) if any of the Key People are removed, die, become seriously ill or resign, subject to the approval of the Project Parties, replace them as soon as practicable with persons of at least equivalent skill and experience; and
- (f) ensure that the Key People are from time to time available for consultation with a Project Party as often as that Project Party may reasonably require.

5.12 Independent Certifier's Representative

The Independent Certifier:

- (a) has nominated the Independent Certifier's Representative as the person to act as its representative for the Services;
- (b) may, from time to time, nominate another person to act as the Independent Certifier's Representative, subject to the Project Parties' approval (in their sole and absolute discretion and with no obligation to do so), in which case that person will be the relevant representative in lieu of the person named in the Contract Particulars; and
- (c) confirms that the Independent Certifier's Representative has the power and authority to bind the Independent Certifier.

5.13 Subcontracting

The Independent Certifier:

- (a) may not subcontract the performance of any of its Services without the prior written consent (which consent may be granted subject to conditions) of each Project Party; and
- (b) remains responsible for the performance of the Services in accordance with this Deed, notwithstanding any such subcontracting.

6. Role of the Project Parties

6.1 No interference or influence

- (a) **(No interference or influence):** A Project Party must not interfere with, or attempt to influence, the Independent Certifier in the performance of any of the Services. A communication allowed by this Deed or the Project Deed will not, however, of itself constitute a breach of this clause 6.1(a).
- (b) **(Project Parties may provide comments):** Clause 6.1(a) will not prevent a Project Party from providing written comments to the Independent Certifier in respect of any aspect of the Project Activities.

6.2 Provision of information

Project Co must, as soon as practicable, ensure that the Independent Certifier is provided with all information, assistance, documentation, models and particulars as the Independent Certifier reasonably requests:

- (a) relating to the Services;
- (b) required under the State Project Documents and the Downstream Independent Certifier Contracts to be provided to the Independent Certifier; and
- (c) to enable it to perform the Services effectively and otherwise in accordance with the State Project Documents, the Downstream Independent Certifier Contracts and this Deed.

6.3 Access to records and systems

Without limiting the obligations of Project Co under the State Project Documents or clause 6.2, Project Co must provide the Independent Certifier with such information and documentation (including all Design Deliverables) and access to Project Co's books, records and systems as the Independent Certifier may reasonably require to enable it to perform the Services effectively and otherwise in accordance with this Deed and the State Project Documents. Nothing in this clause 6.3 will be construed as a waiver of legal professional privilege.

6.4 Access to premises

Project Co must ensure that the Independent Certifier is given such access to any place where any part of the Project Activities are being carried out (including access to the premises of its contractors, suppliers and consultants) and all necessary assistance as is required to enable the Independent Certifier to perform the Services effectively and in accordance with the requirements of this Deed, the State Project Documents and the Downstream Independent Certifier Contracts.

6.5 Right to enter, inspect and test

- (a) **(Right of entry):** Subject to clause 6.5(b), the Independent Certifier (or any person authorised by the Independent Certifier) may during Business Hours or upon giving reasonable notice to Project Co (except in the case of an emergency when no notice is required) enter the Site or the offices of Project Co to:
- (i) inspect, observe or test any part of the Relevant Infrastructure or the Project Activities (whether or not such inspections, observations or tests are otherwise required in accordance with this Deed);
 - (ii) exercise any right or carry out any obligation which the Independent Certifier has in accordance with any State Project Document; or
 - (iii) take such other action as the Independent Certifier considers necessary to exercise its rights in accordance with this Deed and to discharge its duties, powers and obligations.
- (b) **(Conditions of access):** When entering the Site in accordance with clause 6.5(a), the Independent Certifier must and must ensure any authorised person:
- (i) complies with the Site Access and Interface Protocols;
 - (ii) does not unnecessarily interfere with the carrying out of the Project Activities; and
 - (iii) does not damage the Relevant Infrastructure or the Site.
- (c) **(Project Co to assist):** If requested by the Independent Certifier, Project Co must assist the Independent Certifier in connection with any inspection or testing in accordance with this clause 6.5, including:
- (i) providing access to such part of the Relevant Infrastructure and all Project Co Materials as may be required by the Independent Certifier;
 - (ii) preparing samples of materials used in connection with the Relevant Infrastructure as required by the Independent Certifier; and
 - (iii) forwarding the samples prepared in accordance with clause 6.5(c)(ii) to the Independent Certifier or such other place or person notified by the Independent Certifier.

6.6 Meetings

The Project Parties must:

- (a) allow the Independent Certifier to attend design meetings; and
- (b) attend such meetings with the Independent Certifier as the Independent Certifier may reasonably request to enable it to perform the Services effectively and otherwise in accordance with this Deed.

6.7 Co-operation

Project Co must and must ensure that each Downstream Party and Project Co's contractors, suppliers and consultants co-operate with the Independent Certifier during the carrying out of the Services.

6.8 Project Parties not liable

At no time will a Project Party be liable to the other Project Party or its Associates for any act or omission by the Independent Certifier whether or not in accordance with or purportedly in accordance with a provision of this Deed, the State Project Documents or otherwise.

7. Reporting and meetings

7.1 Progress reports

The Independent Certifier must submit a written report to each Project Party:

- (a) 2 Business Days before each meeting of the Project Control Group in accordance with clause 10.8 of the Project Deed;
- (b) in such form as the Project Parties may reasonably require; and
- (c) containing details of:
 - (i) Project Co's compliance (and details of any non-compliances) with the State Project Documents;
 - (ii) the results of the review of the Design Deliverables in accordance with clause 16.1 (*Delivery Phase Plans and Reports*) of the Project Deed;
 - (iii) the results of the review of the Delivery Phase Program in accordance with clause 16.2 (*Delivery Phase Program*) of the Project Deed;
 - (iv) the results of review of construction of the Works in accordance with clause 19.4 (*Corrective Action Plan*) of the Project Deed;
 - (v) any Delivery Phase Plans, Delivery Phase Reports, Operating Phase Plans, Operating Phase Reports, notices and other information and documentation and the results of any review of those documents or that information received from Project Co in accordance with the State Project Documents;
 - (vi) the results of any review of the operation of the quality system developed and implemented by Project Co or a Key Subcontractor and any review and assessment of the quality of the Project Activities in accordance with the State Project Documents;
 - (vii) any determination in accordance with clause 38.5 (*Extension of time and relief determined by Independent Certifier*) of the Project Deed;
 - (viii) any notices given by a Project Party to the Independent Certifier and any notices issued by the Independent Certifier;
 - (ix) progress of Project Co to Completion including the status of any Defects and the rectification of any Defects;
 - (x) the forecast cost of the Services (including for the current and following Quarter), taking into account current expenditure, resourcing and future forecasts;
 - (xi) notification of reports requested by one Project Party in accordance with clause 7.4;
 - (xii) relevant details in relation to the performance of any Downstream Independent Certifier Functions; and
 - (xiii) such other matters in respect of the Services as the Project Parties (acting jointly) may reasonably request from time to time.

7.2 Project Control Group

- (a) **(Establishment):** The Project Control Group will be established in accordance with clause 10.8 (*Project Control Group*) of the Project Deed.
- (b) **(The Independent Certifier's obligations):** The Independent Certifier must:
 - (i) attend each meeting of the Project Control Group, if requested by the State; and
 - (ii) present and explain each progress report prepared in accordance with clause 7.1 at the relevant meeting.

7.3 Meetings with Project Parties

The Independent Certifier must attend, and ensure that all relevant Key People attend, meetings with the Project Parties monthly during the Term or as otherwise agreed by the parties, to discuss the progress of the Services.

7.4 Reports requested by one Project Party

- (a) **(Request by one Project Party):** A Project Party may request the Independent Certifier to prepare an additional report which is not otherwise required by the State Project Documents.
- (b) **(Independent Certifier to prepare report):** The Independent Certifier must prepare the additional report as requested in accordance with clause 7.4(a), except where the Independent Certifier is:
 - (i) of the reasonable opinion that it would be inappropriate to prepare such a report in light of the performance and nature of the Services; or
 - (ii) not reasonably capable of preparing such a report.
- (c) **(Cost of reports):** The cost of additional reports prepared in accordance with this clause 7.4 will be paid to the Independent Certifier in accordance with the Payment Schedule.

7.5 Questions relating to a report

- (a) **(Project Parties may submit questions):** Without limiting clauses 6.1(b) or 7.2(b)(ii), a Project Party may submit questions or queries to the Independent Certifier in relation to a report issued in accordance with clause 7.1.
- (b) **(Independent Certifier to respond):** Subject to clause 5.5, the Independent Certifier must, within a reasonable period having regard to the nature of the question or query, respond in writing to questions and queries submitted by a Project Party in accordance with this clause 7.5.

8. Quality

8.1 Quality assurance system

The Independent Certifier must:

- (a) **(plan and develop):** plan, develop and implement a quality assurance system which meets the requirements of the relevant AS/NZS ISO Standards as and when they are published;
- (b) **(operate and maintain):** develop, operate and maintain a quality assurance plan that sets out all activities the Independent Certifier will carry out in order to implement its quality assurance system referred to in clause 8.1(a); and
- (c) **(provide Project Party Representative):** within 14 days of the date of this Deed, provide the Project Parties' Representatives with details of the quality assurance system which complies with clause 8.1(a) and which the Independent Certifier proposes to adopt.

8.2 Audit

- (a) **(Independent Certifier must allow audits):** The Independent Certifier must:

- (i) allow any audit of its quality assurance system in accordance with this Deed by a Project Party or a third party appointed by the Project Parties, at the request of a Project Party and at the cost of that Project Party; and
 - (ii) fully co-operate with that third party in respect of the carrying out of the quality assurance audit.
- (b) **(Access to premises and information):** Without limiting clause 6.3, 6.4, 6.5 or 8.2(a), the Independent Certifier must, at all times:
- (i) give to the Project Parties or the third party appointed by the Project Parties (as the case may be) access to premises occupied by the Independent Certifier where the Services are being undertaken; and
 - (ii) permit the Project Parties or the third party appointed by the Project Parties to inspect applicable information relevant to the quality assurance audit.

8.3 Quality assurance not to relieve Independent Certifier

The Independent Certifier will not be relieved of any responsibilities or obligations in accordance with this Deed as a result of:

- (a) compliance with the requirements of this clause 8; or
- (b) any acts or omissions of the Project Parties with respect to the requirements of this clause 8, including:
 - (i) any review of, comments upon, or notice in respect of, the quality assurance system; and
 - (ii) any audit in accordance with clause 8.2.

8.4 Non-complying services

The Independent Certifier must at its cost:

- (a) unless directed otherwise by the Project Parties, re-perform all Services which have not been performed in accordance with this Deed; and
- (b) take all such steps as may be reasonably necessary to:
 - (i) mitigate the effect on the Project Parties of the failure to perform the Services in accordance with this Deed; and
 - (ii) put the Project Parties (as closely as possible) in the positions in which they would have been had the Independent Certifier performed the Services in accordance with this Deed, including all such steps as may be reasonably directed by the Project Parties.

9. Liability, insurance and indemnity

9.1 Limitation of Liability

Subject to clause 9.2, the Independent Certifier's total Liability under all Claims which the Project Parties might have (whether jointly or severally) against the Independent Certifier:

- (a) arising in connection with this Deed;
- (b) arising in connection with the Upstream Independent Certifier Functions; or
- (c) otherwise at Law or in equity including:
 - (i) any statute (insofar as it is possible to exclude such Liability); or
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation,

in respect of any fact, matter or thing under, arising in connection with the Upstream Independent Certifier Functions or Upstream Independent Certifier Contracts will be limited in aggregate to the greater of:

- (d) the amount specified in the Contract Particulars; or

- (e) to the extent that the Liability is the subject of an indemnity under any policy of insurance, the amount of any such indemnity limit.

9.2 Exclusions

The limitation of Liability in clause 9.1 does not apply to any Claims arising in connection with any of the following on the part of the Independent Certifier or anyone for whom it is responsible:

- (a) criminal acts or fraud;
- (b) any conduct, act or omission done or to be done by the Independent Certifier or any officer, agent, adviser, consultant, contractor, subcontractor or employee of the Independent Certifier which results in death, personal injury or damage to property;
- (c) wilful misconduct, being any conduct, act or omission done or to be done by the Independent Certifier or any officer, agent, adviser, consultant, contractor, subcontractor or employee of the Independent Certifier which results from conscious, intentional or reckless disregard of any provision of this Deed or the rights or welfare of those who are or may be affected by that conduct, act or omission;
- (d) gross negligence, being any negligent act or omission which the Independent Certifier knew, or ought reasonably to have been aware, would result in substantial losses being incurred by a Project Party; or
- (e) abandonment of all or any material part of the Upstream Independent Certifier Functions.

9.3 Insurances

- (a) **(Insurances):** The Independent Certifier must hold and maintain from the Commencement Date:
 - (i) **(public liability insurance):** public liability insurance:
 - (A) endorsed to include the Project Parties as named insureds in respect of any Liability the Project Parties may incur arising in connection with the acts or omissions of the Independent Certifier;
 - (B) covering, without limitation, the Independent Certifier's Liability in accordance with clause 9.8;
 - (C) with a limit of indemnity of not less than the amount specified in the Contract Particulars; and
 - (D) with a deductible of not more than the amount specified in the Contract Particulars; and
 - (ii) **(professional indemnity insurance):** project specific professional indemnity insurance which:
 - (A) has a limit of indemnity of not less than the amount specified in the Contract Particulars for any single claim in respect of legal Liability (including, without limitation, in connection with property damage, personal injury or death) arising in connection with a breach of clause 4 or any other breach of professional duty, whether owed in contract or otherwise, by reason of any negligent act, error or omission by the Independent Certifier or its employees, agents or consultants;
 - (B) has a deductible of not more than the amount specified in the Contract Particulars; and
 - (C) has a retroactive date which is the Commencement Date, which complies with the requirements for insurances set out in clause 9.3(b) (as applicable); and
 - (iii) **(workers' compensation insurance):** workers' compensation insurance against any Liability, whether in accordance with statute or at common law, for the death of, or injury to, persons employed by the Independent Certifier, or if the Independent Certifier is comprised of more than one party the persons employed by each such party in carrying out the Services.

(b) **(Requirements for insurance):**

- (i) The insurances referred to in clauses 9.3(a)(i) and 9.3(a)(ii) must be effected with Reputable Insurers and be on such terms as are approved by the State (such approval not to be unreasonably withheld).
- (ii) If the Independent Certifier comprises more than one person, the insurances referred to in clauses 9.3(a)(i) and 9.3(a)(ii) must (subject always to the overall limit of indemnity not being increased as a result):
 - (A) insure each of those parties both jointly and severally; and
 - (B) include a cross Liability clause whereby the insurer agrees:
 - (I) to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured; and
 - (II) that the term 'insured' applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them.

9.4 Notice of matter affecting insurance

The Independent Certifier must notify the Project Parties 30 days in advance of any event which could affect its insurance cover or if any policy is cancelled, avoided or allowed to lapse.

9.5 Provision of information

The Independent Certifier must provide to the Project Parties:

- (a) certified copies of the insurance policies (where the Project Parties are included as named insureds); and
- (b) certificates of currency, with respect to the insurances effected and maintained by the Independent Certifier for the purposes of this clause 9, at any time on request by any Project Party and upon the renewal of each policy.

9.6 Periods for insurance

The Independent Certifier must keep:

- (a) the professional indemnity insurance current for a period of 7 years after the cessation of the Services or the date of termination of this Deed, whichever is earlier;
- (b) the employers liability and workers compensation insurance current until it ceases to perform the Services;
- (c) the public liability insurance current until it ceases to perform the Services; and
- (d) any other insurances current for such time as may reasonably be required by the Project Parties.

9.7 Obligations unaffected by insurance

The requirement to effect and maintain insurance in this clause 9 does not limit the Liability or other obligations of the Independent Certifier in accordance with this Deed.

9.8 Indemnity

- (a) **(Breach and negligent act or omission):** Subject to clause 9.1, the Independent Certifier is liable for and must indemnify each Project Party against any Claim or loss brought against, suffered or incurred by a Project Party:
 - (i) in connection with:
 - (A) any loss of, or damage or destruction to, property; or
 - (B) any injury to, illness or death of, any person,to the extent caused by the Independent Certifier or its officers, directors, employees or contractors; or

- (ii) arising out of, or in connection with, and to the extent caused by:
 - (A) any breach of this Deed by the Independent Certifier; or
 - (B) any fraudulent, negligent, reckless, unlawful or malicious act or omission of the Independent Certifier or its officers, directors, employees or contractors,

(including any Claim brought against a Project Party by another Project Party and any Claim or loss suffered or incurred by a Project Party to another Project Party).
- (b) (**Reduction in Liability**): The Independent Certifier's Liability under this clause 9.8 is reduced proportionally to the extent to which any action, proceeding, claim or demand arises out of any fraudulent, negligent, reckless, unlawful or malicious act or omission of the Project Parties or their employees or agents.
- (c) (**Survival**): All obligations to indemnify under this Deed survive termination of this Deed.

9.9 Proportionate Liability

- (a) (**No reduction in insurance covers**): The Independent Certifier must ensure that all policies of insurance against liabilities, which it is required by this Deed to effect or maintain, do not reduce or exclude the insurance cover in respect of liabilities governed by the *Civil Liability Act 2002* (NSW) or any corresponding legislation of another Australian jurisdiction, by reason of the manner in which that legislation operates or does not operate, as the case may be, in light of any of the provisions of this Deed and the obligations undertaken by the Independent Certifier in connection with it.
- (b) (**Reasonable endeavours**): To the extent that the Insurance is not specific to the Project, the Independent Certifier is only required to use its reasonable endeavours to procure insurance on the terms referred to in clause 9.9(a).

10. Payment

In consideration of the Independent Certifier performing the Services in accordance with this Deed, the State will, subject to clause 7.4, pay to the Independent Certifier the Fee subject to and in accordance with the Payment Schedule.

11. Change to or suspension of Services and appointment of Substitute Certifier

11.1 Change to Services

- (a) (**Notice of change to Services**): The Project Parties may, by joint notice to the Independent Certifier, instruct the Independent Certifier to carry out a change to Services (including an addition or omission) which is within the general scope of this Deed. The Independent Certifier must comply with any such instruction. For the avoidance of doubt, a Resource Adjustment is not of itself a change to the Services.
- (b) (**Adjustments to Monthly Fee Estimates**): The relevant Monthly Fee Estimate will be adjusted to reflect the change to the Services referred to in clause 11.1(a) in accordance with the Schedule of Rates. If the adjustment to the relevant Monthly Fee Estimate for the change to the Services cannot be determined by reference to the Schedule of Rates, the adjustment will be a reasonable amount determined by the State and Project Co.

11.2 Appointment of Substitute Certifier

- (a) (**Appointment of Substitute Certifier**): The Independent Certifier acknowledges that the Project Parties may appoint another certifier to carry out those Services which are omitted as referred to in clause 11.1(a) (**Substitute Certifier**).
- (b) (**Rights and powers**): The Substitute Certifier will have all of the rights and powers of the Independent Certifier under the Project Documents in connection with those Services.

- (c) (**Decisions**): Any decision of a Substitute Certifier so appointed will be treated (between the Project Parties but not as between the Project Parties and the Independent Certifier) as if it is a decision of the Independent Certifier.
- (d) (**No responsibility for performance**): Without prejudice to any Claim which any Project Party may have in respect of the performance of the Independent Certifier, the Independent Certifier is not responsible for the performance of the Substitute Certifier.

11.3 Independent Certifier must continue to perform

Notwithstanding a change to the Services or the appointment of a Substitute Certifier, the Independent Certifier must continue to perform its Services, as changed in accordance with clause 11.1 of this Deed.

11.4 Suspension of Services

- (a) (**Notice**): The Project Parties may, by joint notice to the Independent Certifier, instruct the Independent Certifier to suspend and, after a suspension has been instructed, to recommence, the performance of any or all of the Services.
- (b) (**Payment during suspension**): During the period which the Independent Certifier's performance of the Services are suspended in accordance with clause 11.4(a), the State and Project Co will pay the Independent Certifier subject to the provisions of this Deed for the Services that are not suspended (if at all).

11.5 Meeting of all Project Parties

- (a) (**Project Party may call meeting**): If a Project Party is of the opinion that the Independent Certifier is not performing its duties in accordance with this Deed, that Project Party may call a meeting of the Project Parties' Representatives who must attend within 2 Business Days (or such other period as requested by that Project Party) to decide an appropriate action to resolve the issue.
- (b) (**Resolutions to be considered**): Without limiting the scope of the Project Parties' decision, the Project Parties will consider at such a meeting whether to resolve the issue referred to in clause 11.5(a) by:
 - (i) requesting that the Independent Certifier comply with this Deed;
 - (ii) changing the Services of the Independent Certifier in accordance with clause 11.1 and appointing a Substitute Certifier in accordance with clause 11.2 in connection with the Services which the Independent Certifier is not performing in accordance with this Deed;
 - (iii) suspending the Services of the Independent Certifier in accordance with clause 11.4; or
 - (iv) terminating the appointment of the Independent Certifier in accordance with clause 12.

12. Termination

12.1 Notice of default

If the Independent Certifier is in breach of this Deed and the breach is, in the reasonable opinion of the Project Parties, able to be remedied then the Project Parties may jointly give notice to the Independent Certifier:

- (a) specifying the breach; and
- (b) requiring that the breach be remedied within 7 days, or such later date as agreed by the State and Project Co.

12.2 Termination for breach

If:

- (a) the Independent Certifier is in breach of this Deed and the breach is not, in the reasonable opinion of the Project Parties, able to be remedied; or
- (b) the Project Parties give a notice in accordance with clause 12.1 and the breach is not remedied within the period of time notified to the Independent Certifier in accordance with clause 12.1(b),

then, subject to clause 12.6, the Project Parties may immediately terminate the appointment of the Independent Certifier by joint notice to the Independent Certifier.

12.3 Termination for insolvency

If an Insolvency Event occurs in respect of the Independent Certifier then, subject to clause 12.6, the Project Parties may immediately terminate the appointment of the Independent Certifier by joint notice to the Independent Certifier, whether or not the Independent Certifier is then in breach of this Deed.

12.4 Termination for convenience

Subject to clause 12.6, the Project Parties may at any time for their convenience terminate the appointment of the Independent Certifier upon 21 days joint notice to the Independent Certifier, and appoint another person to act as the Independent Certifier.

12.5 No automatic termination upon termination of any State Project Document

The appointment of the Independent Certifier does not automatically terminate upon the termination of any of the State Project Documents.

12.6 Prior agreement on replacement

Prior to serving a notice in accordance with clause 12.2, 12.3 or 12.4, except where the Project Deed has been terminated, the Project Parties must have agreed upon (or failing agreement, the State having determined), acting reasonably, another person to act as the Independent Certifier.

12.7 Independent Certifier's rights upon termination for convenience

Where the appointment of the Independent Certifier is terminated in accordance with clause 12.4:

- (a) the Independent Certifier is only entitled to be paid by the State and Project Co in accordance with the Payment Schedule the proportion of the Fee for Services performed up to the date of the termination; and
- (b) the Independent Certifier will not otherwise be entitled to bring any Claim against the State or Project Co arising in connection with:
 - (i) the termination of this Deed; or
 - (ii) the Project or the State Project Documents.

12.8 Termination without prejudice

Termination of the appointment of the Independent Certifier will be without prejudice to any other rights which the Project Parties may have in respect of any breach of the terms of this Deed which occurred prior to the date of termination.

13. Transition out

13.1 Transition Out Period

- (a) **(Obligations):** During the Transition Out Period, the Independent Certifier must:
 - (i) provide the Services required in accordance with, and otherwise comply with, the Transition Out Plan; and
 - (ii) without being limited by clause 13.1(a)(i), cooperate and consult with the Project Parties and do all such tasks and things as may be reasonably necessary to ensure:

- (A) the smooth transition to the Project Parties of the Independent Certifier's responsibilities for the monitoring of Project Co's carrying out of the Project Activities; and
 - (B) the final completion of all the Services and the full discharge of all of the Independent Certifier's responsibilities in accordance with this Deed.
- (b) **(Transition Out Plan):** For the purposes of clause 13.1(a), the Independent Certifier must:
- (i) prepare a draft of the Transition Out Plan and provide it to the Project Parties by no later than 60 Business Days before the commencement of the Transition Out Period which:
 - (A) is based on the draft Transition Out Plan submitted by the Independent Certifier with its tender for the Services; and
 - (B) takes into account all relevant considerations which have arisen during the Term;
 - (ii) provide all drafts of the Transition Out Plan to the Project Parties for review and consult with the Project Parties as required in relation to such drafts;
 - (iii) review and, if necessary, update the Transition Out Plan and make such amendments as may be reasonably required by the Project Parties to any draft of the Transition Out Plan; and
 - (iv) finalise, to the reasonable satisfaction of the Project Parties, the Transition Out Plan by no later than 20 Business Days before the commencement of the Transition Out Period.
- (c) **(Review Transition Out Plan every 6 months):** The Independent Certifier must review the Transition Out Plan at least once every 6 months during the Transition Out Period. The Independent Certifier must consult with the Project Parties as required in relation to any necessary amendments to the Transition Out Plan. The Project Parties may require the Independent Certifier, by notice, to make reasonable amendments to the Transition Out Plan during the Transition Out Period, if reasonably necessary to achieve the objectives specified in clause 13.1(a)(ii).

13.2 Delivery of documents

Upon completion of the Services, or upon the termination of the appointment of the Independent Certifier, the Independent Certifier:

- (a) must deliver up to the Project Parties or to such other person as the Project Parties may direct, all books, records, drawings, specifications and other documentation in the possession, custody or control of the Independent Certifier relating to the Services; and
- (b) acknowledges that the Project Parties have the right to use all such books, records, drawings, specifications and other documents for the purposes of the Project.

13.3 Reasonable assistance

Prior to completion of the Services, or upon the termination of the appointment of the Independent Certifier, the Independent Certifier must provide full assistance to the Project Parties, the Downstream Parties and any successor to the Independent Certifier appointed in order to enable such successor to be in a position to perform the Services with effect from the appointment of such successor.

14. GST

- (a) **(Interpretation):**
 - (i) Except where the context suggests otherwise, terms used in this clause 14 have the meanings given to those terms by the GST Act (as amended from time to time).

- (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 14.
 - (iii) Unless otherwise expressly stated, all consideration to be provided under this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 14.
 - (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) **(Reimbursements):** Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(Additional amount of GST payable):** Subject to clause 14(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:
- (i) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 14), for that supply is exclusive of GST;
 - (ii) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
 - (iii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 14(c)(ii).
- (d) **(Variation of GST):**
- (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 14(c) and clause 14(e)), varies from the additional amount paid by the Recipient under clause 14(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 14(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 14(c).
 - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) **(Exchange of non-monetary consideration):**
- (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 14(c) applies is a Taxable Supply made by the Recipient (the **Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 14(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
 - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 14(c) (or the time at which such GST Amount would have been payable in accordance with clause 14(c) but for the operation of clause 14(e)(i)).
- (f) **(No merger):** This clause 14 will not merge on completion or termination of this Deed.
- (g) **(Application of Project Deed):** If clause 36 (*Payments Adjustments & Taxes*) of the Project Deed would apply in connection with a Taxable Supply to which this clause 14 also applies then clause 36 (*Payments Adjustments & Taxes*) of the Project Deed will apply in connection with that supply and the provisions of this clause 14 (but for this paragraph) will not apply.

15. NSW Code and Guidelines

15.1 Reference

In addition to terms defined in this Deed, terms used in this clause 15 have the same meaning as is attributed to them in the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (**NSW Guidelines**) (as published by the NSW Treasury July 2013 and as amended or updated from time to time). The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

15.2 Primary Obligation

- (a) (**Compliance**): In carrying out the Services, the Independent Certifier must at all times comply with, and meet any obligations imposed by, the NSW Government's Code of Practice for the Building and Construction Industry (**NSW Code**) and the NSW Guidelines.
- (b) (**Notification**): The Independent Certifier must notify the Construction Compliance Unit (**CCU**) and the State of any possible non-compliance with the NSW Code and the NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) (**Subcontractors**): Where the Independent Certifier engages a subcontractor or consultant, the Independent Certifier must ensure that subcontract or consultancy contract imposes on the subcontractor or consultant equivalent obligations to those in this clause 15 (under the heading 'NSW Code and Guidelines'), including that the subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (d) (**Sanctions**): The Independent Certifier must not appoint or engage another party in relation to the Project or the Services where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or the NSW Guidelines.

15.3 Access and information

- (a) (**Maintenance of records**): The Independent Certifier must maintain adequate records of compliance with the NSW Code and the NSW Guidelines by it, its subcontractors, consultants and related entities.
- (b) (**Access**): The Independent Certifier must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - (i) enter and have access to sites and premises (or part thereof) controlled by the Independent Certifier;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents;
 - (iv) inspect and copy any record relevant to the Services or the Project;
 - (v) have access to personnel; and
 - (vi) interview any person,as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and the NSW Guidelines, by the Independent Certifier, its subcontractors, consultants, and related entities.
- (c) (**Production of documents**): The Independent Certifier, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

15.4 Sanctions

- (a) (**Warranties**): The Independent Certifier warrants that at the time of entering into this Deed, neither it, nor any of its related entities, are subject to a sanction in connection with

the NSW Code or the NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and the NSW Guidelines apply.

- (b) (**Compliance**): If the Independent Certifier does not comply with, or fails to meet any obligation imposed by, the NSW Code or the NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or the NSW Guidelines.
- (c) (**Sanctions**): Where a sanction is imposed:
 - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the NSW Government (through its agencies, Ministers and the CCU) is entitled to:
 - (A) record and disclose details of non-compliance with the NSW Code or the NSW Guidelines and the sanction; and
 - (B) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Independent Certifier, or its related entities, in respect of work to which the NSW Code and the NSW Guidelines apply.

15.5 Compliance

- (a) (**Cost**): The Independent Certifier bears the cost of ensuring its compliance with the NSW Code and the NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Code and the NSW Guidelines. The Independent Certifier is not entitled to make any Claim from the State or the NSW Government for such costs.
- (b) (**Performance of Services**): Compliance with the NSW Code and the NSW Guidelines does not relieve the Independent Certifier from responsibility to perform the Services and any other obligation under this Deed, or from any legal liability, whether or not arising from its compliance with the NSW Code and the NSW Guidelines.
- (c) (**Proposed change to Services**): Where a change to the Services is proposed in accordance with clause 11, and that change to the Services may, or may be likely to, affect compliance with the NSW Code or the NSW Guidelines, the Independent Certifier must immediately notify the State of the change to the Services:
 - (i) the extent to which compliance with the NSW Code or the NSW Guidelines will be, or is likely to be, affected by the change to the Services; and
 - (ii) what steps the Independent Certifier proposes to take to mitigate any adverse impact of the change to the Services,

and the State will direct the Independent Certifier as to the course it must adopt within 10 Business Days of receiving notice.

16. Dispute Resolution

16.1 Disputes to be resolved in accordance with the Project Deed

Any dispute between the Project Parties arising in connection with this Deed must be resolved in accordance with the procedures set out in clause 50 (*Dispute Resolution procedure*) of the Project Deed.

16.2 Notice of dispute

If any dispute (other than a dispute which is to be referred for resolution in accordance with clause 16.1) arises between one or both of the Project Parties (on the one hand) and the Independent Certifier (on the other hand) (**Disputing Parties**) in respect of any fact, matter or thing arising out of or in connection with the Services or this Deed (**Dispute**), any of the Disputing Parties may give notice to each of the other parties specifying:

- (a) the dispute or difference;
- (b) particulars of the reasons for being dissatisfied; and
- (c) the position which is believed to be correct.

16.3 Executive negotiation

The Dispute identified in the notice given under clause 16.2 is to be referred to the Executive Negotiators described in the Contract Particulars who must:

- (a) meet and undertake genuine and good faith negotiations with a view to resolving the Dispute; and
- (b) if they cannot resolve the Dispute, endeavour to agree upon a procedure to resolve the Dispute.

16.4 Reference to Mediation

If the persons described in the Contract Particulars cannot resolve, or agree upon a procedure to resolve, the Dispute within 10 Business Days after the date the notice is given under clause 16.2, or within such longer period of time as these persons may agree, the Dispute is to be submitted to mediation in accordance with clauses 16.5 to 16.8.

16.5 Mediation

Within 5 Business Days of the expiration of the period referred to in clause 16.4, the Dispute will be referred for mediation to:

- (a) the person set out in the Contract Particulars; or
 - (b) if:
 - (i) no such person is specified; or
 - (ii) the mediator specified in the Contract Particulars or the person appointed in accordance with this clause 16.5(b):
 - (A) is unavailable;
 - (B) declines to act; or
 - (C) does not respond within 5 Business Days of a request for advice as to whether they are able to conduct the mediation,
- a person appointed by the President (or acting President, as the case may be) of the Resolution Institute.

16.6 Place of mediation

The place of mediation will be Sydney.

16.7 Evidence not admissible

Evidence of anything said, documents presented to, admissions made or matters raised in the course of any mediation will be confidential to the Disputing Parties and the mediator and will not be admissible in any subsequent proceedings.

16.8 Costs

Failing any agreement to the contrary between the Disputing Parties, the costs of the mediation (including any fees charged by the mediator) will be shared equally between the Disputing Parties.

16.9 Reference to litigation

If after 15 Business Days of the Mediator nominated in accordance with clause 16.5 having accepted his or her appointment, the Dispute has not been resolved, then the Dispute may be referred to litigation.

16.10 Condition precedent to litigation

The Project Parties and the Independent Certifier must comply with the provisions of clauses 16.2 to 16.8 as a condition precedent to commencing court proceedings in respect of any Dispute to which clause 16.2 applies (other than proceedings for urgent or injunctive or interlocutory relief).

16.11 Services to continue

The Independent Certifier must continue to perform the Services in accordance with this Deed notwithstanding the existence of a Dispute referred to in this clause 16.2.

17. Confidential Design Information

The Independent Certifier must:

- (a) (**Access**): only provide access to Confidential Design Information to Relevant Persons who:
 - (i) are not Uncleared Personnel, are permitted to receive Confidential Design Information in accordance with clause 62.2 of the Project Deed and, where required by the State, have satisfied any Probity Investigation under clause 63.2 of the Project Deed; and
 - (ii) require access to that Confidential Design Information to perform the Services;
- (b) (**Limited portion**): where it is necessary to grant access to Confidential Design Information in accordance with clause 17(a), grant access to the most limited portion of the Confidential Design Information possible; and
- (c) (**Records**): keep, and make available to the State on request, records detailing the recipient of any Confidential Design Information, the date of disclosure and the Confidential Design Information that has been disclosed.

18. Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) (**in writing**): must be in writing;
- (b) (**addressed**): must be addressed as set out below (or as otherwise notified by that party to each other party from time to time):

State:

Attention: [Insert]
 Address: [Insert]
 Email: [Insert]

Project Co:

Attention: [Insert]
 Address: [Insert]
 Email: [Insert]

Independent Certifier:

Attention: [Insert]
 Address: [Insert]
 Email: [Insert]

- (c) (**signed**): must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) (**form of delivery**): must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 18(b);
- (e) (**taken to be received**): are taken to be received by the addressee at the address set out in clause 18(b):
 - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;

- (ii) subject to clause 18(f), in the case of prepaid post, on the fourth Business Day after the date of posting to an address within Australia and on the seventh Business Day after the date of posting by airmail to an address outside Australia; or
- (iii) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee, unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day; and
- (f) (**notices sent by post**): if sent by post from within Australia, must be sent using the 'priority' postal service offered by Australia Post (or any other postal service provider that assumes any or all of the functions of Australia Post) or other such similar service.

19. Miscellaneous

19.1 Governing Law and jurisdiction

- (a) (**Governing Law**): This Deed is governed by, and must be construed according to, the Laws of New South Wales, Australia.
- (b) (**Jurisdiction**): Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed.

19.2 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

- (a) (**entire understanding**): embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) (**prior agreements**): supersedes any prior agreement of the parties.

19.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to the parties) required by Law or reasonably requested by another party to give effect to this Deed.

19.4 Survival of certain provisions

- (a) (**Surviving clauses**): All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:
 - (i) the State's rights to set-off and recover money;
 - (ii) confidentiality or privacy;
 - (iii) Intellectual Property Rights;
 - (iv) any obligation to make any records available to the State;
 - (v) any indemnity or financial security given in accordance with this Deed;
 - (vi) any limitation or exclusion of liability; and

- (vii) any right or obligation arising on termination of this Deed.
- (b) (**Interpretation**): No provision of this Deed which is expressed to survive the termination of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination of this Deed.
- (c) (**Survival of rights and obligations**): No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.

19.5 Waiver

- (a) (**Writing**): A waiver given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) (**No waiver**): A failure to, a delay in, or the partial exercise or enforcement of, a right provided by Law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Deed.
- (c) (**No waiver of another breach**): No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

19.6 Consents and approvals

A consent or approval required under this Deed from the State may be given or withheld, or may be given subject to any conditions, as the State (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

19.7 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

19.8 Expenses

Except as otherwise expressly provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

19.9 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Deed; or
- (b) that provision under the Law of any other jurisdiction.

19.10 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

19.11 Moratorium legislation

The provisions of all Laws which come into effect after the date of this Deed and operate to:

- (a) increase or improve any of Project Co's or the Independent Certifier's rights, powers or remedies under this Deed or otherwise; or
- (b) prejudicially affect the exercise by the State of any right, power or remedy under this Deed or otherwise,

are expressly waived.

19.12 Proportionate liability

To the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this Deed, howsoever those rights, obligations or liabilities are sought to be enforced.

19.13 Indemnity held on trust

- (a) (**Benefit of indemnities**): The State holds on trust for its Associates the benefit of:
- (i) each indemnity, promise and release given by Project Co or the Independent Certifier under this Deed in favour of the State's Associates; and
 - (ii) each right in this Deed to the extent that such right is expressly provided to be for the benefit of the State or its Associates.
- (b) (**Project Co and Independent Certifier Acknowledgement**): Project Co and the Independent Certifier acknowledge the existence of such trusts and consents to:
- (i) the State exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of its Associates; and
 - (ii) the State's Associates exercising rights in relation to, or otherwise enforcing the indemnities, releases and those rights as if they were a party to this Deed.

19.14 Assignment

Except as expressly contemplated by this Deed, none of Project Co nor the Independent Certifier may assign or transfer any of its rights or obligations under this Deed.

19.15 Set off

- (a) Without limiting the State's rights under the Project Deed, all moneys which the State may pay or incur and for which Project Co is liable under the terms of the Project Deed or in respect of which it is under this Deed liable to make reimbursement to or indemnify the State, may be deducted by the State from all moneys due, becoming due or to become due from it to Project Co under the Project Deed or may be recovered from Project Co by action at Law or otherwise.
- (b) Notwithstanding any other provision of this Deed, the State may set off or deduct from any moneys payable by the State to the Independent Certifier, under this Deed or otherwise, any amounts:
- (i) for which the Independent Certifier must reimburse the Project Parties;
 - (ii) which the Project Parties pay on the Independent Certifier's behalf; or
 - (iii) which are then due and payable by the Independent Certifier to the Project Parties (whether or not such amounts are expressed to be a debt due from the Independent Certifier to the Project Parties), under or in connection with this Deed or arising out of or in respect of or in connection with the Independent Certifier Services.

19.16 No representation or reliance

- (a) (**No representation**): Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.
- (b) (**No reliance**): Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed

19.17 Indemnities

- (a) (**Continuing Liability**): Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties.
- (b) (**Expense not necessary**): It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Deed.

Executed as a deed.

State

[Execution block to be inserted prior to execution]

Project Co

[Execution block to be inserted prior to execution]

Independent Certifier

[Execution block to be inserted prior to execution]

Schedule 1 — Contract Particulars

1. Other Downstream Independent Certifier Contracts

[Insert]

2. Other Downstream Parties

[Insert]

3. Other Upstream Independent Certifier Contracts

4. Independent Certifier's Representative

Name: [Insert]

Address: [Insert]

Email: [Insert]

5. Project Parties' Representatives

State: [Insert]

Project Co: [Insert]

6. Key People

Name	Role
[To be inserted]	[To be inserted]
[To be inserted]	[To be inserted]
[To be inserted]	[To be inserted]
[To be inserted]	[To be inserted]
[To be inserted]	[To be inserted]
[To be inserted]	[To be inserted]
[To be inserted]	[To be inserted]
[To be inserted]	[To be inserted]
[To be inserted]	[To be inserted]

7. Limitation on Independent Certifier's Liability

Limit: [Redacted]

8. Professional indemnity insurance

Minimum limit of indemnity: [Redacted] for any one claim and in the aggregate

Maximum deductible: [Redacted]

9. Public Liability insurance

Minimum limit of indemnity: [REDACTED] for any single occurrence and unlimited in the aggregate as to the number of occurrences for any one period of insurance

Maximum deductible: [REDACTED]

10. Dispute resolution

State's Executive Negotiator: [Insert]

Project Co's Executive Negotiator: [Insert]

Independent Certifier's Executive Negotiator: [Insert]

Mediator: [Insert]

Schedule 2 — Services

1. General

The Independent Certifier must:

- (a) become familiar with the role (express or implied) under the State Project Documents and the Downstream Independent Certifier Contracts of the "Independent Certifier" and review information made available to the Independent Certifier by the parties in order to become fully acquainted with the Project;
- (b) discharge the functions which the State Project Documents and the Downstream Independent Certifier Contracts contemplate will be discharged by the Independent Certifier;
- (c) attend meetings and report as required from time to time by the parties;
- (d) issues certificates in accordance with and in the form set out in this Deed and the Project Documents; and
- (e) otherwise discharge the functions of the Independent Certifier under, and in accordance with, the Project Documents, including the Output Specification, and the Downstream Independent Certifier Contracts.

2. References to functions of the Independent Certifier

References to functions of the Independent Certifier under the Project Deed	
Clause 1	Definitions
Clause 2	General rules of interpretation
Clause 3	Conditions Precedent
Clause 5	Overarching obligations
Clause 8	The Site
Clause 10	Parties, personnel and community
Clause 14	Independent Certifier
Clause 16	Delivery Phase Plans and Reports and Delivery Phase Program
Clause 17	Design
Clause 18	Equipment during Delivery Phase
Clause 19	Construction
Clause 20	State access during the Delivery Phase
Clause 21	Testing and comments
Clause 23	Technical Completion
Clause 24	Commissioning Period
Clause 25	Commercial Acceptance

Clause 28	Operating Phase Site Access
Clause 37	Expiry obligations
Clause 38	Delivery Phase – delay
Clause 38A	Compensable Events – Delivery Phase
Clause 50	Dispute Resolution procedure

Schedule 3 — Payment Schedule

1. Payment of the Fee for Services

- (a) **(State responsible):** Subject to section 1(b), and without limiting any provision of the Project Deed, the State will be liable for making any payments due to the Independent Certifier under this Deed.
- (b) **(Payment for special reports):** Without limiting any provision of the Project Deed, the relevant Project Party requesting the preparation of an additional report under clause 7.4 will be solely responsible for payment to the Independent Certifier for the costs associated with the preparation of such additional report.

2. Payment claim

- (a) **(Independent Certifier to prepare and submit):** Subject to section 5, the Independent Certifier must submit to the State and Project Co:
 - (i) at the conclusion of the Initial Period, a claim for payment of the Initial Fee:
 - (A) as a lump sum for Services performed during the Initial Period; and
 - (B) calculated in and otherwise in accordance with this Payment Schedule; and
 - (ii) a claim for payment on account of the Monthly Fee (not including any additional report required under clause 7.4):
 - (A) for the Services performed in accordance with this Deed during a month, at the end of the month; and
 - (B) calculated in and otherwise in accordance with this Payment Schedule.
- (b) **(Content):** Each payment claim prepared in accordance with section 2(a) must set out:
 - (i) a breakdown of the Services, including details of personnel days worked for each resource (in a form and including such information and supporting documentation as the Project Parties may require from time to time) actually carried out during the relevant month;
 - (ii) details of approved disbursements actually incurred during the relevant month (including such information and supporting documentation as the Project Parties may require from time to time); and
 - (iii) the part of the Fee then payable calculated in accordance with section 11, and otherwise be in a form and substance agreed with the Project Parties.
- (c) **(Payment Claims for special reports):** Where an additional report has been requested by a Project Party under clause 7.4, the Independent Certifier must submit a separate payment claim to the Project Party who made the request in respect of the preparation of the report.

3. Payment

- (a) **(Payment of Fee):** Subject to sections 3(b), 4(b) and 5, within 20 Business Days of receipt of a payment claim in accordance with section 2(a), the State must pay the Independent Certifier the Fee which the State believes represents the contract value of the Services performed by the Independent Certifier during the period for which the payment claim is submitted.
- (b) **(Payment for special reports):** Within 20 Business Days of receipt of a payment claim under section 2(c), the relevant Project Party must pay the Independent Certifier the amount which it believes represents the value of the Services performed by the

Independent Certifier relating to the preparation of the additional report during the period for which the payment claim is submitted.

4. Payment of wages by Independent Certifier

- (a) **(Signed statement required):** Before a payment is made to the Independent Certifier under section 3, the relevant Project Party may require the Independent Certifier to give the Project Parties a statement signed by the Independent Certifier stating that no wages or payments to any sub-contractors of the Independent Certifier are due and owing by the Independent Certifier in respect of the Services at the time of payment.
- (b) **(Possible to withhold money):** If, within 2 Business Days after the request, the Independent Certifier fails to provide the statement, then the party responsible for the payment of the relevant payment claim may withhold payment of moneys due to the Independent Certifier until the statement is received.

5. Insurance

Before a payment claim can be made by the Independent Certifier under section 2(a), the Independent Certifier must have effected the insurances required by clause 9.3 and provided evidence of this to the Project Parties. If a payment claim is purported to be submitted by the Independent Certifier prior to effecting such insurance and providing such evidence, neither of the Project Parties will be liable to make any payment in respect of such claim.

6. Books of account

The Independent Certifier must, for the purposes of this Deed:

- (a) **(Maintenance):** institute and maintain all proper books of account and operating records necessary to afford a correct and complete record and explanation of all payment claims (including relevant supporting documentation) made by the Independent Certifier under this Deed; and
- (b) **(Access):** permit the Project Parties' representatives (and any persons authorised in writing by either of them) access at all reasonable times to all relevant books of account and operating records necessary to establish that all payment claims made by the Independent Certifier and all moneys paid to the Independent Certifier under the terms of this Deed are or have been properly accounted for.

7. Notification of disputed amounts

If the State or Project Co disputes any amount which the Independent Certifier has claimed then the State or Project Co (as applicable) must notify the Independent Certifier of its reasons for disputing that amount within 20 Business Days after receipt of the relevant payment claim.

8. The Initial Fee

[Insert]

9. Fees after Initial Period

9.1 Fees payable for Services

Applicable Services	Fee Status	Lump Sum Amount
Design development	Lump Sum	<i>[Insert]</i>

(refer to clauses 16 and 17 of the Project Deed)		
Construction (refer to clauses 18, 19, 20 and 21 of the Project Deed)	Lump Sum	<i>[Insert]</i>
Technical Completion (refer to clause 23 of the Project Deed)	Lump Sum	<i>[Insert]</i>
Commissioning and Commercial Acceptance (refer to clauses 24 and 25 of the Project Deed)	Lump Sum	<i>[Insert]</i>
Services that may be required after Commercial Acceptance	Schedule of Rates	N/A

9.2 Schedule of Rates

[Insert]

10. Disbursements

The Independent Certifier will:

- (a) **(Entitlement)**: only be entitled to reimbursement of disbursements for which the Independent Certifier is to be paid on a schedule of rates basis under this Deed if those disbursements:
- (i) have been reasonably and properly incurred for the sole purpose of performing Services;
 - (ii) have the prior approval of the State and Project Co;
 - (iii) to the extent applicable, are in accordance with the Schedule of Rates; and
 - (iv) are supported by documentation provided to the State and Project Co which is satisfactory to the State and Project Co; and
- (b) **(Disbursements)**: not be entitled to make any Claim against the State and Project Co arising in connection with disbursements or other costs incurred in connection with the performance of the Services other than in accordance with section 10(a).

11. Payments

11.1 Initial Period

Subject to section 12:

- (a) the amount of the Fee payable in accordance with clause 3 following conclusion of the Initial Period will be equal to the amount of the Initial Fee as set out in section 8;
- (b) that amount will be payable following conclusion of the Initial Period in accordance with clause 3 and not in monthly or other instalments during the Initial Period; and
- (c) the Initial Fee is a fixed amount and is not subject to adjustment.

11.2 After Initial Period

Subject to sections 11.4 and 12, where the Independent Certifier makes a payment claim under section 2(a) after the Initial Period, the Monthly Fee then payable will be equal to:

- (a) that portion of the Lump Sum or Lump Sums that is payable for the applicable Services (as set out in section 9.1) actually performed in the relevant month, based on the personnel days incurred during the relevant month;
- (b) for Services that may be required after Commercial Acceptance, the costs of the Independent Certifier in providing those Services based on the Schedule of Rates; and
- (c) approved disbursements incurred during the relevant month.

11.3 Adjustment of Monthly Fee Estimates and Schedule of Rates

- (a) The amounts with respect to the Schedule of Rates are to be indexed in accordance with the Consumer Price Index.
- (b) The Lump Sums are fixed and are not subject to adjustment except in accordance with section 11.8(b).

11.4 Monthly Fee Estimate

The total Monthly Fees payable to the Independent Certifier in respect of any month under section 11.2 must not be greater than the Monthly Fee Estimate in respect of that month unless otherwise agreed by the Project Parties.

11.5 Resource Adjustment Order

The Project Parties may at any time direct the Independent Certifier to carry out a Resource Adjustment by issuing a document entitled 'Resource Adjustment Order' in accordance with this section.

11.6 Notice of resource evaluation

No fewer than 20 Business Days before the start of every Quarter, the Independent Certifier must provide the Project Parties with a notice setting out:

- (a) its evaluation of the resource levels (in a form set out in Schedule 4 or as otherwise agreed by the Project Parties) required for the Quarter having regard to the actual nature and extent of the Services to be carried out by the Independent Certifier during the relevant Quarter; and
- (b) having regard to its evaluation of the resource levels and the Fees payable for the relevant Services as set out in section 9, the amount by which it proposes that the Monthly Fee Estimates for that Quarter should be adjusted as a result of the Resource Adjustment (if any) which the Independent Certifier should effect in the relevant Quarter.

11.7 Quarterly meeting

No fewer than 10 Business Days before the start of every Quarter, the Independent Certifier must meet with the Project Parties to:

- (a) evaluate the resource levels required for the Quarter having regard to the actual nature and extent of the Services to be carried out by the Independent Certifier in that Quarter; and
- (b) discuss:
 - (i) the possibility of effecting a Resource Adjustment in that Quarter; and
 - (ii) the Independent Certifier's estimate of the amount by which the Monthly Fee Estimates for that Quarter should be adjusted as a result of any such Resource Adjustment.

11.8 Resource Adjustment and its approval

- (a) If the Project Parties and the Independent Certifier agree on a Resource Adjustment and the adjustments in the Monthly Fee Estimates for a Quarter before the start of the relevant

Quarter (and such adjustments would result in equal or lower Monthly Fee Estimates in respect of the relevant Quarter), then:

- (i) the Project Parties will issue a Resource Adjustment Order;
 - (ii) the Monthly Fee Estimates for that Quarter will be adjusted by the agreed adjustments in the Monthly Fee Estimates; and
 - (iii) the Independent Certifier must promptly effect the Resource Adjustment.
- (b) Without limitation to section 11.8(a), in connection with an agreed Resource Adjustment:
- (i) the Project Parties and the Independent Certifier may agree that the Lump Sum or Lump Sums for the applicable Services should be adjusted; and
 - (ii) if the parties so agree, the Resource Adjustment Order issued by the Project Parties will specify the amount by which the relevant Lump Sum or Lump Sums will be adjusted.

12. GST

All lump sums, rates and amounts in this Payment Schedule do not include GST.

Schedule 4 — Resource Allocation pro forma

[Insert]

Schedule 26

New Grafton Correctional Centre Design Subcontract Side Deed

[Insert name of Design Subcontractor]

[insert ABN/ACN]

[Insert name of D&C Subcontractor]

[insert ABN/ACN]

[Insert name of Project Co]

[insert ABN/ACN]

[Insert name of State party]

[insert ABN]

Contents

1.	Definitions and interpretation	4
1.1	Project Deed definitions incorporated	4
1.2	Definitions	4
1.3	Interpretation	5
1.4	Inconsistencies	7
1.5	Project Deed, the State Security and Financiers Tripartite Deed	7
1.6	Exclusion of Civil Liability Act	7
1.7	State's executive rights, duties and functions	7
2.	Securities	7
2.1	Design Subcontractor acknowledgements and consents	7
2.2	Not used	8
3.	Design Subcontractor's warranty and State's rights and liability	8
3.1	Not used	8
3.2	Not used	8
3.3	Subcontracting and Probity Investigations	8
3.4	No liability for information	8
3.5	Subcontract not to affect State's rights	9
4.	Not used	9
5.	Not used	9
6.	Novation of Subcontract	9
6.1	Option	9
6.2	Novation of Subcontract	9
6.3	Rights and obligations of the State and the Design Subcontractor under the Subcontract	10
6.4	Release by Design Subcontractor	10
6.5	Release by the D&C Subcontractor	10
6.6	Not used	10
6.7	Obligations and liability prior to the Effective Date	10
6.8	Not used	11
6.9	Approved Nominee	11
6.10	Bonds	11
6.11	Not used	11
6.12	Not used	11
7.	Not used	11
8.	Representations and warranties	11
8.1	Representations and warranties by Design Subcontractor	11
8.2	Repetition of representations and warranties	13
8.3	Reliance on representations and warranties	13
9.	Undertakings by Design Subcontractor	13
10.	Acknowledgement by Project Co and the D&C Subcontractor	14
11.	Dispute Resolution	14
12.	GST	14
13.	PPSA	15

14.	Notices	16
15.	Confidential Information and disclosure	17
15.1	Confidential Information and disclosure by the State	17
15.2	Confidential Information and disclosure by the Design Subcontractor	18
15.3	Public announcements by Design Subcontractor	19
15.4	Information public or known	19
15.5	Disclosure by the State under GIPA Act	19
15.6	Personal Information	20
15.7	Confidential Design Information	20
15.8	Privacy	20
16.	Termination of this Deed	21
17.	Governing law and jurisdiction	21
17.1	Governing law	21
17.2	Jurisdiction	21
18.	Miscellaneous	21
18.1	Entire agreement	21
18.2	Further acts and documents	22
18.3	Waiver	22
18.4	Consents and approvals	22
18.5	Amendments	22
18.6	Expenses	22
18.7	Severance	22
18.8	No representation or reliance	22
18.9	Counterparts	22
18.10	Moratorium legislation	23
18.11	Limitation of liability	23

This Design Subcontract Side Deed is made on

Between:

[Insert name of party] ABN [Insert ABN] of [Insert address] (**Design Subcontractor**)

[Insert name of party] ABN [Insert ABN] of [Insert address] (**D&C Subcontractor**)

[Insert name of party] ABN [Insert ABN] of [Insert address] (**Project Co**)

[Insert name of party] ABN [Insert ABN] of [Insert address]

Recitals:

- A The State and Project Co have entered, or will enter, into the Project Deed for the provision of the Project.
- B Project Co has subcontracted its obligations to carry out Delivery Phase Activities to the D&C Subcontractor pursuant to the D&C Subcontract.
- C The D&C Subcontractor has subcontracted its obligations to carry out the Services in connection with the Delivery Phase Activities to the Design Subcontractor pursuant to the Subcontract.
- D The Design Subcontractor has agreed to grant to the State certain rights in relation to the Subcontract.

The parties agree as follows:

1. Definitions and interpretation

1.1 Project Deed definitions incorporated

Unless otherwise expressly defined in this Deed, expressions used in this Deed have the meanings given to them in the Project Deed.

1.2 Definitions

In this Deed:

Approved Nominee means a person nominated by the State and approved by the Design Subcontractor in accordance with clause 6.9 as:

- (a) having the legal capacity, power and authority to become a party to and perform the obligations of the D&C Subcontractor under the Subcontract; and
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and subcontracts) which are sufficient to enable it to perform the obligations of the D&C Subcontractor under the Subcontract.

Deed means this deed and includes all schedules, exhibits, attachments and annexures to it.

Default Event means:

- (a) any default (howsoever described) by the D&C Subcontractor under the Subcontract; or
- (b) any other event or circumstance,

which alone or with the giving of notice or passage of time or both, would entitle the Design Subcontractor to terminate, rescind, accept the repudiation of, or suspend any or all of the Design Subcontractor's obligations under the Subcontract.

Effective Date means the date specified in the Novation Notice.

Material Adverse Effect means a material adverse effect on:

- (a) the ability of any of a Project Co Entity, the D&C Subcontractor or the Design Subcontractor to perform and observe their respective obligations under any Project Document to which it is a party; or
- (b) the rights of the State under any State Project Document, or the ability or capacity of the State to exercise its rights or perform its obligations under a State Project Document.

Novation Notice has the meaning given in clause 6.1.

PPS Law means:

- (a) the *Personal Property Securities Act 2009* (Cth) and any regulation made at any time under the PPSA, including the *Personal Property Securities Regulations 2010* (Cth) (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (a).

Project Deed means the document entitled '*New Grafton Correctional Centre - Project Deed*' between the State and Project Co dated on or about the date of this Deed.

Security Interest has the meaning given to the term in the PPS Law.

Services means *[insert]*.

State means:

- (a) The Minister for Corrections on behalf of the Crown in right of the State of New South Wales;
- (b) Infrastructure New South Wales (ABN 85 031 302 516); and
- (c) for the purposes of the Project Deed and the Operator Side Deed only, the Commissioner of Corrective Services.

Subcontract means the contract titled '*[insert]*' between the D&C Subcontractor and the Design Subcontractor dated on or about the date of this Deed.

1.3 Interpretation

In this Deed:

- (a) (**headings**): headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) (**count and gender**): a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) (**Deed and Schedule references**): a reference to:
 - (i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Deed; and

- (ii) a section is a reference to a section of a Schedule;
- (d) **(document as amended)**: a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
- (h) **(Policies)**: a reference to a Policy includes that Policy as amended or updated from time to time;
- (i) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) **('includes')**: 'includes' and 'including' will be read as if followed by the phrase '(without limitation)';
- (k) **('or')**: the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;
- (l) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (m) **('\$')**: a reference to '\$', AUD or dollar is to Australian currency;
- (n) **(Business Day)**: if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;
- (o) **(day)**: except as otherwise provided in this Deed or where a reference is made to 'Business Days', day means a calendar day;
- (p) **(time)**: a reference to time is a reference to time in Sydney, Australia;
- (q) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (r) **(function)**: a function includes a power, authority or duty;
- (s) **(obligations and liabilities)**: a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (t) **('may')**: except to the extent that the State is expressly required under this Deed to act reasonably in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion (and without regard to Project Co, the D&C Subcontractor or the Design Subcontractor) and the State has no obligation to do so;
- (u) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Deed which:

- (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
- (ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (v) (**asset**): references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset;
- (w) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision; and
- (x) (**PPS Law defined terms**): each of the terms 'financing statement', 'financing change statement' and 'verification statement' have the meanings given to them in the PPS Law.

1.4 Inconsistencies

To the extent of any inconsistency between the terms of this Deed and the Subcontract, this Deed will prevail over the Subcontract.

1.5 Project Deed, the State Security and Financiers Tripartite Deed

The Design Subcontractor acknowledges that they have received a copy of the Project Deed, the State Security and the Financiers Tripartite Deed.

1.6 Exclusion of Civil Liability Act

To the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this Deed, howsoever those rights, obligations or liabilities are sought to be enforced.

1.7 State's executive rights, duties and functions

- (a) (**Acknowledgements**): The parties acknowledge the substance, operation and potential effect and consequences of clause 2.10 (*State's executive rights, duties and functions*) of the Project Deed in relation to this Deed.
- (b) (**No Claim**): Subject to clause 1.7(c), Project Co and the Design Subcontractor will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (c) (**Liability for breach**): Clauses 1.7(a) and 1.7(b) do not limit any Liability which the State would have had to Project Co or the Design Subcontractor under any State Project Document as a result of a breach by the State of a term of any State Project Document but for these clauses.

2. Securities

2.1 Design Subcontractor acknowledgements and consents

The Design Subcontractor:

- (a) acknowledges and consents to the grant of, subject to the Financiers Tripartite Deed, security over all of each Project Co Entity's right, title and interest in and to the Subcontract pursuant to the State Security;
- (b) acknowledges the rights created under the State Security in favour of the State, including the appointment by Project Co of the State as the lawful attorney of Project Co to do, perform and exercise all things, acts and rights under the D&C Subcontract on behalf and for the account of Project Co, pursuant to the State Security, subject to the rights of the Security Trustee under the Financiers Tripartite Deed;

- (c) acknowledges and agrees that, without limiting the State's obligations under this Deed, the State is not subject to any duty or obligation under the Subcontract as a result of the State Security; and
- (d) acknowledges that the grant of the State Security is not, and the exercise by the State of its rights under the State Security will not, of itself, constitute a Default Event.

2.2 Not used

3. Design Subcontractor's warranty and State's rights and liability

3.1 Not used

3.2 Not used

3.3 Subcontracting and Probity Investigations

- (a) The Design Subcontractor acknowledges the State's rights and Project Co's obligations under the following clauses of the Project Deed:
 - (i) clause 12 (Subcontracting and third party arrangements);
 - (ii) the clauses listed in clause 12.3(a)(iii) (*Requirements for subcontracting*); and
 - (iii) clause 63 (Probity Events and Probity Investigations).
- (b) The Design Subcontractor must not subcontract any of its obligations under the Subcontract without ensuring that Project Co has obtained the prior consent of the State to that subcontract, where the State's consent is required in accordance with clause 12 (*Subcontracting and third party arrangements*) of the Project Deed.
- (c) Without limiting the previous paragraphs, the Design Subcontractor acknowledges and agrees that:
 - (i) in accordance with clauses 12 (*Subcontracting and third party arrangements*) and 63 (*Probity Events and Probity Investigations*) of the Project Deed, the State may, from time to time, or may require Project Co to, conduct Probity Investigations of the Design Subcontractor and/or Relevant Persons in respect of the Design Subcontractor, or other persons to whom the Design Subcontractor is proposing to subcontract any of its obligations under the Subcontract;
 - (ii) it will procure all relevant consents from any persons in respect of whom a Probity Investigation is to be conducted; and
 - (iii) it will not appoint, or retain the appointment of, and will ensure that no other person appoints, or retains the appointment of, a person to the position of a Relevant Person in relation to the performance of any Project Activities unless the State has given approval (including following a Probity Investigation and any other investigations that the State reasonably requires in accordance with the Project Deed).

3.4 No liability for information

The Design Subcontractor acknowledges and agrees that:

- (a) any information, data and documents provided by the State:
 - (i) are provided for information purposes only and all of the State's and its Associates' Intellectual Property Rights therein remain the property of the State or its Associates (as the case may be); and
 - (ii) do not form part of this Deed or constitute an invitation, offer or recommendation by or on behalf of the State or its Associates; and

- (b) to the extent permitted by Law, neither the State nor any of its Associates will have any Liability to the Design Subcontractor or any of its Associates, nor will the Design Subcontractor or any of its Associates be entitled to make any Claim against the State, or seek, pursue or obtain an indemnity against or contribution to Liability from the State or any of its Associates arising out of or in connection with:
- (i) the provision of, or purported reliance upon, or use of any information, data and documents referred to in clause 3.4(a) by the Design Subcontractor or any other person to whom such information is disclosed by the Design Subcontractor, any of its respective Associates or any person on any of their behalf;
 - (ii) any reference to the State in the Subcontract; or
 - (iii) any review of, comments upon, acceptance, approval or certification of the form or substance of the Subcontract by the State.

3.5 Subcontract not to affect State's rights

Each of Project Co and the Design Subcontractor acknowledges and agrees that:

- (a) where the Design Subcontractor is expressed in the Subcontract to have a right (or possible right) to compensation or relief which is dependent on or determined by reference to the Project Deed or an equivalent or similar right of Project Co:
 - (i) this does not of itself expand Project Co's rights, or the State's Liability, under the Project Deed to include the compensation or relief to which the Design Subcontractor is or may become entitled under the Subcontract; and
 - (ii) Project Co's rights, and the State's Liability, under the Project Deed will be determined solely in accordance with the terms of the Project Deed;
- (b) as between the State (on the one hand) and Project Co, the D&C Subcontractor and the Design Subcontractor (on the other hand), Project Co, the D&C Subcontractor and the Design Subcontractor accept and will bear the risk of any inconsistency, ambiguity or discrepancy between the terms of the Subcontract and this Deed; and
- (c) notwithstanding anything to the contrary in the Subcontract, the Design Subcontractor has no right to deal directly with the State or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:
 - (i) expressly provided to the contrary in the Project Deed or this Deed; or
 - (ii) the State consents in writing.

4. Not used

5. Not used

6. Novation of Subcontract

6.1 Option

The State may require a novation of the Subcontract in accordance with this clause 6 upon the termination of the Project Deed by giving a notice to the D&C Subcontractor and Design Subcontractor (**Novation Notice**).

6.2 Novation of Subcontract

With effect from the Effective Date:

- (a) the parties novate the Subcontract so that the State (or, if applicable, the Approved Nominee) and the Design Subcontractor are parties to a new contract on the same terms as the Subcontract as amended by this Deed; and

- (b) any reference in the Subcontract to the D&C Subcontractor shall be read as a reference to the State (or, if applicable, the Approved Nominee).

6.3 Rights and obligations of the State and the Design Subcontractor under the Subcontract

If the State gives a Novation Notice then, subject to clause 6.7, with effect from the Effective Date:

- (a) the State (or, if applicable, the Approved Nominee):
 - (i) is entitled to all rights and benefits under the Subcontract to which, but for this Deed, the D&C Subcontractor would have been entitled at and after the Effective Date;
 - (ii) must perform all obligations and discharge all liabilities under the Subcontract which, but for this Deed, the D&C Subcontractor would have been required to perform or discharge at and after the Effective Date; and
 - (iii) is bound by and must comply with all other provisions of the Subcontract by which, but for this Deed, the D&C Subcontractor would have been bound at and after the Effective Date; and
- (b) the Design Subcontractor:
 - (i) is entitled to all rights and benefits under the Subcontract to which, but for this Deed, it would have been entitled at and after the Effective Date;
 - (ii) must perform all obligations and discharge all liabilities under the Subcontract which, but for this Deed, it would have been required to perform or discharge at and after the Effective Date; and
 - (iii) is bound by and must comply with all other provisions of the Subcontract by which, but for this Deed, it would have been bound at and after the Effective Date,

as if the State (or, if applicable, the Approved Nominee) had originally been a party to the Subcontract in place of the D&C Subcontractor.

6.4 Release by Design Subcontractor

With effect from the Effective Date, the Design Subcontractor releases the D&C Subcontractor from all obligations and liability under or in respect of the Subcontract to be performed or discharged at or after the Effective Date.

6.5 Release by the D&C Subcontractor

With effect from the Effective Date, the D&C Subcontractor releases the Design Subcontractor from all obligations and liability under or in respect of the Subcontract to be performed or discharged at or after the Effective Date.

6.6 Not used

6.7 Obligations and liability prior to the Effective Date

Nothing in this Deed releases the D&C Subcontractor or the Design Subcontractor from any obligation or liability under the Subcontract arising or accruing before the Effective Date and the State (or, if applicable, the Approved Nominee) does not assume any such obligation or liabilities under this Deed.

6.8 Not used

6.9 Approved Nominee

- (a) The State's nominee may be named as a party to the Subcontract in substitution for the D&C Subcontractor if the State's nominee is an Approved Nominee.
- (b) The Design Subcontractor must:
 - (i) notify the State as to whether the State's nominee is an Approved Nominee, on or before the date falling 30 days after the date of receipt of all information reasonably required by the Design Subcontractor to decide whether the nominated person is an Approved Nominee;
 - (ii) not unreasonably withhold or delay its decision on whether the State's nominee is an Approved Nominee; and
 - (iii) enter into a side deed with the State and the Approved Nominee on substantially the same terms as this Deed.
- (c) If the Novation Notice specifies that the Approved Nominee is a person other than the State, the State must, at the time it gives a Novation Notice, provide to the Design Subcontractor the following particulars of the Approved Nominee:
 - (i) name, place of incorporation and identity of shareholder(s);
 - (ii) if available, its most recent published audited accounts; and
 - (iii) sufficient particulars of the finance available to the Approved Nominee to enable the Design Subcontractor to decide whether to grant its consent to the Approved Nominee.

6.10 Bonds

If the State gives a Novation Notice then, as from the Effective Date, the D&C Subcontractor must (with the support of the Design Subcontractor to effect this provision) either:

- (a) procure the novation or assignment to the State (or, subject to clause 6.9, the Approved Nominee) of any performance security (including any performance guarantees or bonds) held by the D&C Subcontractor under the Subcontract prior to the Effective Date (**Bonds**); or
- (b) procure the issue to the State (or, if applicable, the Approved Nominee) of replacement bonds for the same undrawn value and on the same terms as the Bonds held by the D&C Subcontractor under the Subcontract prior to the Effective Date.

6.11 Not used

6.12 Not used

7. Not used

8. Representations and warranties

8.1 Representations and warranties by Design Subcontractor

- (a) The Design Subcontractor represents and warrants for the benefit of the State that:
 - (i) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Deed and each other Project Document to which it is a party and all necessary action has been taken to authorise that execution, delivery and performance;

- (ii) **(legality)**: the execution, delivery and performance of this Deed and each other Project Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
- (iii) **(validity)**: this Deed and each other Project Document to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;
- (iv) **(registration)**: it is duly registered, properly constituted and remains in existence;
- (v) **(no trust relationship)**: except as stated in this Deed, it is not the trustee, manager or Responsible Entity of any trust nor does it hold any property subject to or impressed by any trust;
- (vi) **(information true and correct)**: all information provided by it to the State is as at the date on which it is provided true and correct and the Design Subcontractor is not aware of any material facts or circumstances that have not been disclosed to the State and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed or consent to the entry into the Subcontract;
- (vii) **(litigation)**: no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a Material Adverse Effect upon it or its ability to perform its financial and other obligations under this Deed or any other Project Document to which it is a party;
- (viii) **(Insolvency Event)**: no Insolvency Event has occurred in respect of it;
- (ix) **(accounts)**:
 - (A) its most recent consolidated audited (if the requirement for auditing is applicable) accounts give a true and fair view of its and its subsidiaries' state of affairs as at the date to which they relate and the results of its and its subsidiaries' operations for the accounting period ended on such date;
 - (B) there has been no material adverse change in its or its subsidiaries' state of affairs since such date; and
 - (C) such accounts have been prepared in accordance with the Corporations Act and accounting principles and practices generally accepted in Australia consistently applied, except to the extent of departures from such principles and practices disclosed in such accounts;
- (x) **(no default)**:
 - (A) it is not in default under any document or agreement binding on it or its assets which relates to financial indebtedness; and
 - (B) nothing has occurred which would, with the giving of notice and/or lapse of time, constitute an event of default, cancellation, prepayment event (pursuant to a bona fide right to exercise prepayment) or similar event (whatever called) under any such document or agreement,

which would have a Material Adverse Effect;
- (xi) **(no immunity)**: neither it nor any of its assets enjoys any immunity from set off, suit or execution in any jurisdiction; and
- (xii) **(own investigations)**: in entering into this Deed, the Subcontract and any other Project Document to which it is a party it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by the State, Project Co, the D&C Subcontractor or any other person unless in respect of Project Co, the D&C Subcontractor or any other person, other than the State or an Associate of the State, it is expressly permitted to do so in accordance with a Project Document to which it is a party.

8.2 Repetition of representations and warranties

The representations and warranties in this clause 8 are taken to be repeated immediately before Financial Close, on the basis of the facts and circumstances as at that date.

8.3 Reliance on representations and warranties

The Design Subcontractor acknowledges that the State executed this Deed and agreed to take part in the transactions that this Deed contemplates in reliance on the representations and warranties that are made or repeated in this clause 8.

9. Undertakings by Design Subcontractor

The Design Subcontractor undertakes to the State as follows:

- (a) (**notification of Default Event**): it will notify the State of any Default Event promptly after it gives notice of that Default Event in accordance with the Subcontract;
- (b) (**documents in relation to Default Event**): it will promptly give the State a copy of all documents issued by the Design Subcontractor to the D&C Subcontractor in relation to a Default Event;
- (c) (**no amendment without consent**): it will not, without first obtaining the consent of the State:
 - (i) make or permit any amendment or replacement of or addition to;
 - (ii) terminate, surrender, rescind or accept repudiation of;
 - (iii) permit the novation, assignment or substitution of any party's rights, obligations or interest in, except when in accordance with this Deed or clause 8.4 of the Financiers Tripartite Deed; or
 - (iv) allow any express waiver of its material rights and obligations under, the Subcontract, provided that the State will not withhold its consent to an amendment or other action contemplated in clauses 9(c)(i) to 9(c)(iv) to which it has consented in accordance with the Project Deed;
- (d) (**disposals**): it will not, after Financial Close, transfer, assign, mortgage, charge, encumber or otherwise deal with its rights, obligations or interests in the Subcontract without first procuring that the proposed transferee, assignee, mortgagee or chargee executes a deed in favour of the State (in form and substance approved by the State) pursuant to which the transferee, assignee, mortgagee or chargee agrees to accept and be bound by this Deed as if it were the Design Subcontractor;
- (e) (**attend meetings and inspections**): it will (when reasonably requested by the State):
 - (i) attend, where reasonable and appropriate, meetings with the State or any of the State's Associates;
 - (ii) provide the State or any of the State's Associates and authorised personnel with:
 - (A) in the case of the Design Subcontractor, full access to:
 - (I) not used;
 - (II) any place where any Services are being carried out or materials are being prepared or stored,to the extent provided in the Project Deed; and
 - (B) any other information, records or documents that the State or any of its Associates (acting reasonably) requires in relation to the carrying out of

the Services or compliance with the Subcontract or any information required by the State to comply with requests from the New South Wales Auditor-General; and

- (iii) permit the State or any of the State's Associates to attend all tests and inspections to be carried out in connection with the Project in accordance with the terms of the Subcontract, to the extent provided in, and in accordance with, the Project Deed; and
- (f) **(access to records)**: at the request of the State to the extent provided in, and in accordance with, the Project Deed, it will:
 - (i) permit the State or any of its Associates to inspect all records, reports, plans, programs, specifications and design documents prepared or kept by the Design Subcontractor in relation to the Services and the Project; and
 - (ii) supply the State or any of its Associates with a copy of any such report or document which they may require from time to time.

10. Acknowledgement by Project Co and the D&C Subcontractor

Project Co and the D&C Subcontractor consent to the terms of this Deed and will co-operate in the implementation of this Deed.

11. Dispute Resolution

If any dispute or difference of opinion arises between the parties under this Deed, each party may refer any such matter for resolution in accordance with this clause 11 and the dispute or difference of opinion must be resolved in the same manner that disputes or differences of opinion under the Project Deed are resolved. Accordingly, the provisions of clauses 50 (Dispute Resolution procedure) to 53 (Arbitration) of the Project Deed are incorporated into this Deed but as if:

- (a) the only persons party to the Project Deed, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
- (b) the only matters for expert determination under those provisions are the matters referred for expert determination under this Deed.

12. GST

- (a) **(Interpretation)**:
 - (i) Except where the context suggests otherwise, terms used in this clause 12 have the meanings given to those terms by the GST Act (as amended from time to time).
 - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 12.
 - (iii) Unless otherwise expressly stated, all consideration to be provided under this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 12.
 - (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) **(Reimbursements)**: Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be

limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

- (c) **(Additional amount of GST payable):** Subject to clause 12(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:
- (i) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 12), for that supply is exclusive of GST;
 - (ii) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
 - (iii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 12(c)(ii).
- (d) **(Variation of GST):**
- (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 12(c) and clause 12(e)), varies from the additional amount paid by the Recipient under clause 12(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 12(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 12(c).
 - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) **(Exchange of non-monetary consideration):**
- (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 12(c) applies is a Taxable Supply made by the Recipient (the **Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 12(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
 - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 12(c) (or the time at which such GST Amount would have been payable in accordance with clause 12(c) but for the operation of clause 12(e)(i)).
- (f) **(No merger):** This clause 12 will not merge on completion or termination of this Deed.
- (g) **(Application of Project Deed):** If clause 36 (*Payments Adjustments & Taxes*) of the Project Deed would apply in connection with a Taxable Supply to which this clause 12 also applies then clause 36 (*Payments Adjustments & Taxes*) of the Project Deed will apply in connection with that supply and the provisions of this clause 12 (but for this paragraph) will not apply.

13. PPSA

- (a) If the State determines that this Deed is or contains a Security Interest, the parties (other than the State) agree to promptly do anything (including amending any document or executing any new document) which the State reasonably requires for the purposes of:
- (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective;

- (ii) enabling the State to apply for registration, or give any notification, in connection with the Security Interest; or
 - (iii) enabling the State to exercise rights in connection with the Security Interest.
- (b) The parties (other than State) agree not to exercise its rights to make any request of the State under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- (c) The parties (other than the State) irrevocably and unconditionally waives its right to receive any notice of any verification statement in respect of any financing statement or financing change statement relating to this Deed.

14. Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

State

Name: [Insert]

Address: [Insert]

Email: [Insert]

For the attention of: [Insert]

Project Co

Name: [Insert]

Address: [Insert]

Email: [Insert]

For the attention of: [Insert]

D&C Subcontractor

Name: [Insert]

Address: [Insert]

Email: [Insert]

For the attention of: [Insert]

Design Subcontractor

Name: [Insert]

Address: [Insert]

Email: [Insert]

For the attention of: [Insert]

- (c) (**signed**): must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) (**form of delivery**): must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 14(b); and
- (e) (**taken to be received**): are taken to be received by the addressee at the address set out in clause 14(b):
 - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) subject to clause 14(f), in the case of prepaid post, on the fourth Business Day after the date of posting to an address within Australia and on the tenth Business Day after the date of posting by airmail to an address outside Australia;
 - (iii) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee,
 unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day; and
- (f) (**notices sent by post**): if sent by post from within Australia, must be sent using the 'priority' postal service offered by Australia Post (or any other postal service provider that assumes any or all of the functions of Australia Post) or other such similar service.

15. Confidential Information and disclosure

15.1 Confidential Information and disclosure by the State

- (a) Subject to clause 15.1(b), the State and any Authority may disclose any information in connection with the Project, including Project Information.
- (b) The State may only disclose the Commercially Sensitive Information:
 - (i) in accordance with:
 - (A) Laws or for the enforcement of any criminal law;
 - (B) where disclosure is in the course of the official duties of a minister, the Treasurer, the Premier or the Attorney General;
 - (C) to satisfy the disclosure requirements of the NSW Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW);
 - (D) to satisfy the requirements of Parliamentary accountability;
 - (E) to any Associate of the State to the extent necessary for the purpose of the Project provided they agree to maintain the confidentiality of any Commercially Sensitive Information;

- (F) in annual reports of the State; or
 - (G) in accordance with policies of the State or the NSW Government or any Authority;
- (c) for any tender process required to be conducted under the Termination Payments Schedule; or
 - (d) where the Commercially Sensitive Information is any part of the Design Deliverables, the Design Requirements or the Services Requirements, for the purpose of conducting any tender process required by the terms of the Project Deed.

15.2 Confidential Information and disclosure by the Design Subcontractor

- (a) (**Confidentiality obligation**): Subject to clauses 15.2(b) and clause 15.4(b), the Design Subcontractor must treat as secret and confidential all Confidential Information and must not, and must procure that its Associates do not, without the prior written consent of the State, make public or disclose to any person any Confidential Information.
- (b) (**Disclosure of Confidential Information**): Without limiting the Design Subcontractor's obligations under clause 15.2(a) and subject to clause 15.2(c), the Design Subcontractor may disclose Confidential Information:
 - (i) to its Associates to the extent necessary for the purpose of undertaking the Project; and
 - (ii) in accordance with clause 15.4.
- (c) (**Confidentiality deed**): Before disclosing any Confidential Information, the Design Subcontractor must ensure that the person to whom the information is disclosed enters into a confidentiality deed with it to keep the Confidential Information confidential in accordance with this clause 15.
- (d) (**Permitted disclosure**): The Design Subcontractor may disclose Confidential Information and will not be required to seek the State's consent to a disclosure, announcement or statement under clause 15.2(a) or 15.3(a) or to enter into a confidentiality deed under clause 15.2(c) where the disclosure announcement or statement is:
 - (i) required by Law, provided that it:
 - (A) notifies the State of the requirement to make that disclosure; and
 - (B) takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
 - (ii) required to obtain legal or other advice from its advisers, provided that the relevant adviser is under a duty of confidentiality;
 - (iii) required to be made to a court in the course of proceedings to which the Design Subcontractor is a party; or
 - (iv) required by a relevant recognised stock exchange, subject to:
 - (A) the disclosure, announcement or statement does not refer to the State's or any of its Associates' involvement in the Project; and
 - (B) the Design Subcontractor having used all reasonable endeavours to obtain the State's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant recognised stock exchange.

15.3 Public announcements by Design Subcontractor

Subject to clause 15.2(d), the Design Subcontractor must:

- (a) not make any public disclosures, announcements or statements in relation to the Project or the State's or any of the State's Associates' involvement in the Project, without the State's prior consent;
- (b) comply with any terms and conditions the State imposes and must use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Project or the State's or any of the State's Associates' involvement in the Project before the relevant disclosure, announcement or statement is made; and
- (c) as soon as practicable, give to the State a copy of any public disclosure, announcement or statement agreed to or approved by the State in accordance with this clause 15.3 or for which the State's consent or approval was not required in accordance with clause 15.4.

15.4 Information public or known

Notwithstanding anything in this clause 15, any party may disclose information in connection with the Project (including any Confidential Information) if:

- (a) the party can demonstrate that the relevant information is already generally available and in the public domain otherwise than as a result of breach of this clause 15; or
- (b) the relevant information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party.

15.5 Disclosure by the State under GIPA Act

- (a) Notwithstanding the other provisions of this clause 15, the parties acknowledge that:
 - (i) the Project Documents and information concerning the Project Documents will be published on the State's contracts register in accordance with Division 5 of Part 3 of the GIPA Act; and
 - (ii) the State may make the Project Documents (other than the Key Subcontracts) or any of them available to any person.
- (b) The parties acknowledge that:
 - (i) the State will notify the Design Subcontractor of any proposed disclosure of Commercially Sensitive Information by the State under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;
 - (ii) following notification by the State in accordance with clause 15.5(b)(i), the State will take reasonable steps to consult with the Design Subcontractor before disclosing Commercially Sensitive Information under the GIPA Act;
 - (iii) if, following:
 - (A) notification by the State in accordance with clause 15.5(b)(i); or
 - (B) consultation between the State and the Design Subcontractor in accordance with clause 15.5(b)(ii),

the Design Subcontractor objects to disclosure of some or all of the Commercially Sensitive Information, the Design Subcontractor must provide details of any such objection within five Business Days after the date the Design Subcontractor received notification from the State or the date on which the consultation process concluded (as relevant);

- (iv) the State may take into account any objection received from the Design Subcontractor pursuant to clause 15.5(b)(iii) in determining whether the Commercially Sensitive Information identified by the Design Subcontractor should be disclosed; and
- (v) nothing in this clause 15.5 will limit or otherwise affect the discharge of the State's obligations under the GIPA Act.

15.6 Personal Information

The Design Subcontractor must:

- (a) not collect any Personal Information except in accordance with the Design Requirements and Services Requirements, all Laws and Policies;
- (b) not disclose any Personal Information to any person other than as is necessary to provide the Services or to comply with Laws, and then only in accordance with the Design Requirements and Services Requirements, all Laws and Policies; and
- (c) keep, and make available to the State on request, records detailing the recipient of any Personal Information that the Design Subcontractor has disclosed, the date of disclosure and the Personal Information that has been disclosed.

15.7 Confidential Design Information

The Design Subcontractor must:

- (a) (**Access**): only provide access to Confidential Design Information to Relevant Persons who:
 - (i) are not Uncleared Personnel, are permitted to receive Confidential Design Information in accordance with clause 62.2 of the Project Deed and, where required by the State, have satisfied any Probity Investigation under clause 63.2 of the Project Deed; and
 - (ii) require access to that Confidential Design Information to perform the Services;
- (b) (**Limited portion**): where it is necessary to grant access to Confidential Design Information in accordance with clause 15.7(a), grant access to the most limited portion of the Confidential Design Information possible; and
- (c) (**Records**): keep, and make available to the State on request, records detailing the recipient of any Confidential Design Information, the date of disclosure and the Confidential Design Information that has been disclosed.

15.8 Privacy

- (a) (**Compliance**): Without limiting any obligations in respect of privacy set out in the Design Requirements or the Services Requirements, the Design Subcontractor agrees to, and will ensure that the Subcontract and any other subcontract entered into by the Design Subcontractor in relation to the Project contains terms which require the Design Subcontractor to, be bound by the Privacy Legislation with respect to any act done, or practice engaged in, by it in connection with this Deed or with the Subcontract or other relevant subcontract (as the case may be), in the same way as the State would be bound by the Privacy Legislation, in connection with that act or practice had it been directly done or engaged in by the State.
- (b) (**Release and Indemnity**): The Design Subcontractor must release, indemnify and must keep indemnified on demand the State and its Associates from and against any Claim or Liability (including any Claim made by, or Liability to, a third party) which the State or any of its Associates suffer or incur resulting from any act done or practice engaged in by the Design Subcontractor or any of its respective Associates in connection with the Project, which would, had that act or practice been done or engaged in by the State, have contravened any of the Privacy Legislation.

16. Termination of this Deed

- (a) **(Satisfaction of obligations under the Subcontract):** This Deed will terminate upon the performance and satisfaction of all of the obligations under the Subcontract.
- (b) **(Does not affect rights of parties):** The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.
- (c) **(Surviving clauses):** All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:
 - (i) the State's rights to set-off and recover money;
 - (ii) confidentiality or privacy;
 - (iii) Intellectual Property Rights;
 - (iv) any obligation to make any records available to the State;
 - (v) any indemnity or financial security given in accordance with this Deed;
 - (vi) any limitation or exclusion of liability; and
 - (vii) any right or obligation arising on termination or expiry of this Deed.
- (d) **(Interpretation):** No provision of this Deed which is expressed to survive the termination, rescission or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination, rescission or expiration of this Deed.
- (e) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.

17. Governing law and jurisdiction

17.1 Governing law

This Deed is governed by, and must be construed according to, the laws of New South Wales, Australia.

17.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought within an inconvenient forum, if that venue falls within clause 17.2(a).

18. Miscellaneous

18.1 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

- (a) **(entire understanding)**: embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersedes any prior agreement of the parties.

18.2 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to the parties) required by Law or reasonably requested by another party to give effect to this Deed.

18.3 Waiver

- (a) **(Writing)**: A waiver given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver)**: A failure to, a delay in, or the partial exercise or enforcement of, a right provided by Law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Deed.
- (c) **(No waiver of another breach)**: No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

18.4 Consents and approvals

A consent or approval required under this Deed from the State may be given or withheld, or may be given subject to any conditions, as the State (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

18.5 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

18.6 Expenses

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

18.7 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Deed; or
- (b) that provision under the Law of any other jurisdiction.

18.8 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.
- (b) Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.

18.9 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and

delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

18.10 Moratorium legislation

The provisions of all Laws which come into effect after the date of this Deed and operate to:

- (a) increase or improve any of Project Co's, the D&C Subcontractor's or the Design Subcontractor's rights, powers or remedies under this Deed or otherwise; or
- (b) prejudicially affect the exercise by the State of any right, power or remedy under this Deed or otherwise,

are expressly waived.

18.11 Limitation of liability

[Note: This clause is to be reviewed in respect of the relevant subcontract.]

- (a) Despite any other provision of any Project Document, the maximum aggregate liability of the Design Subcontractor to the State, Associates of the State, Project Co, Associates of Project Co, the D&C Subcontractor and Associates of the D&C Subcontractor arising out of or in connection with the Project Documents whether in contract, in tort (including negligence) or otherwise is no greater than the maximum liability of the Design Subcontractor under clause *[insert]* of the Subcontract, subject to the same exceptions, exclusions and limitations as are specified in the Subcontract, less the liability incurred (from time to time) by the Design Subcontractor under the Subcontract.
- (b) The payment by the Design Subcontractor of any moneys owing to the D&C Subcontractor under the Subcontract:
 - (i) to the State in accordance with this Deed; or
 - (ii) in accordance with a direction of the State given under or in connection with this Deed,will be deemed full discharge of the Design Subcontractor's obligations in respect of that amount under the Subcontract.
- (c) The Design Subcontractor must, within 10 Business Days of a request by the State, notify the value of any claim against the Design Subcontractor by Project Co, the D&C Subcontractor or their respective Associates, together with any further detail regarding the calculation of such amount as reasonably requested by the State.

Executed as a deed.

[Execution blocks to be inserted prior to execution.]

Schedule 27

New Grafton Correctional Centre D&C Side Deed

[Insert name of D&C Subcontractor]

[insert ABN/ACN]

[Insert name of Parent Guarantor]

[insert ABN/ACN]

[Insert name of Project Co]

[insert ABN/ACN/ARBN]

[Insert name of State party]

[insert ABN]

Contents

1.	Definitions and interpretation	4
1.1	Project Deed definitions incorporated	4
1.2	Definitions	4
1.3	Interpretation	6
1.4	Inconsistencies	7
1.5	Project Deed, the State Security and Financiers Tripartite Deed	7
1.6	Exclusion of Civil Liability Act	8
1.7	State's executive rights, duties and functions	8
2.	Securities	8
2.1	D&C Subcontractor acknowledgements and consents	8
2.2	Parent Guarantor acknowledgements and consents	8
3.	D&C Subcontractor's warranty and State's rights and liability	9
3.1	D&C Subcontractor's warranty	9
3.2	State's rights under Project Deed and State Security	9
3.3	Subcontracting and Probity Investigations	10
3.4	No liability for information	10
3.5	Subcontract not to affect State's rights	11
4.	State's right to cure Default Event	11
4.1	State's cure rights	11
4.2	Restriction on right to terminate or suspend	12
4.3	Statements concerning Default Event	13
4.4	Warranty of accuracy	14
4.5	Disputes as to statements	14
4.6	Verification	14
4.7	No Liability	14
4.8	Project Co to compensate the State	14
4.9	No limitation on other rights	14
5.	Step-in by the State	15
5.1	Step-In Right	15
5.2	Step-In by the State	15
5.3	Step-In using Additional Obligor	16
5.4	Indemnity	17
6.	Novation of Subcontract Documents	17
6.1	Option	17
6.2	Novation of Subcontract	17
6.3	Rights and obligations of the State and the D&C Subcontractor under the Subcontract	17
6.4	Release by D&C Subcontractor	18
6.5	Release by Project Co	18
6.6	Novation of Parent Guarantee	18
6.7	Obligations and liability prior to the Effective Date	18
6.8	Amendments to Subcontract	18
6.9	Approved Nominee	19

6.10	Bonds	19
6.11	Insurances	19
6.12	Other documents under the Subcontract	20
7.	Appointment of D&C Subcontractor as Principal Contractor	20
8.	Representations and warranties	21
8.1	Representations and warranties by D&C Subcontractor and Parent Guarantor	21
8.2	Repetition of representations and warranties	22
8.3	Reliance on representations and warranties	22
9.	Undertakings by D&C Subcontractor and Parent Guarantor	22
10.	Acknowledgement by Project Co	23
11.	Dispute Resolution	23
12.	GST	23
13.	PPSA	25
14.	Notices	25
15.	Confidential Information and disclosure	26
15.1	Confidential Information and disclosure by the State	26
15.2	Confidential Information and disclosure by D&C Subcontractor and Parent Guarantor	27
15.3	Public announcements by D&C Subcontractor and Parent Guarantor	28
15.4	Information public or known	28
15.5	Disclosure by the State under GIPA Act	28
15.6	Personal Information	29
15.7	Confidential Design Information	29
15.8	Privacy	30
16.	Termination of this Deed	30
17.	Governing law and jurisdiction	31
17.1	Governing law	31
17.2	Jurisdiction	31
18.	Miscellaneous	31
18.1	Entire agreement	31
18.2	Further acts and documents	31
18.3	Waiver	31
18.4	Consents and approvals	31
18.5	Amendments	31
18.6	Expenses	32
18.7	Severance	32
18.8	No representation or reliance	32
18.9	Counterparts	32
18.10	Moratorium legislation	32
18.11	Limitation of liability	32

This Subcontract Side Deed is made on

Between:

[Insert name of party] ABN [Insert ABN] of [Insert address] (**D&C Subcontractor**)

[Insert name of party] ABN [Insert ABN] of [Insert address] (**Parent Guarantor**)

[Insert name of party] ABN [Insert ABN] of [Insert address] (**Project Co**)

[Insert name of party] ABN [Insert ABN] of [Insert address]

Recitals:

- A The State and Project Co have entered, or will enter, into the Project Deed for the provision of the Project.
- B Project Co has subcontracted its obligations to carry out the Works to the D&C Subcontractor pursuant to the Subcontract.
- C The Parent Guarantor has, pursuant to the Parent Guarantee, guaranteed to Project Co the performance of the D&C Subcontractor's obligations under the Subcontract.
- D The D&C Subcontractor and the Parent Guarantor have agreed to grant to the State certain rights in relation to the Subcontract Documents.

The parties agree as follows:

1. Definitions and interpretation

1.1 Project Deed definitions incorporated

Unless otherwise expressly defined in this Deed, expressions used in this Deed have the meanings given to them in the Project Deed.

1.2 Definitions

In this Deed:

Additional Obligor means a company or other entity which is wholly owned by the State.

Additional Obligor Step-In Notice has the meaning given in clause 5.1(a)(iv).

Additional Obligor Step-Out Date has the meaning given in clause 5.3(d).

Approved Nominee means a person nominated by the State and approved by the D&C Subcontractor in accordance with clause 6.9 as:

- (a) having the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the Subcontract; and
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and subcontracts) which are sufficient to enable it to perform the obligations of Project Co under the Subcontract.

Assumption Date has the meaning given in clause 5.3(a).

Deed means this deed and includes all schedules, exhibits, attachments and annexures to it.

Default Event means:

- (a) any default (howsoever described) by Project Co under the Subcontract; or
- (b) any other event or circumstance,

which alone or with the giving of notice or passage of time or both, would entitle the D&C Subcontractor to terminate, rescind, accept the repudiation of, or suspend any or all of the D&C Subcontractor's obligations under the Subcontract.

Default Event Notice has the meaning given in clause 4.2(a).

Effective Date means the date specified in the Novation Notice.

Material Adverse Effect means a material adverse effect on:

- (a) the ability of any of a Project Co Entity, the D&C Subcontractor or the Parent Guarantor to perform and observe their respective obligations under any Project Document to which it is a party; or
- (b) the rights of the State under any State Project Document, or the ability or capacity of the State to exercise its rights or perform its obligations under a State Project Document.

Novation Notice has the meaning given in clause 6.1.

Parent Guarantee means each deed of guarantee dated on or about the date of this Deed from the Parent Guarantor in favour of Project Co in respect of the obligations of the D&C Subcontractor under the Subcontract and, if the State gives a Novation Notice, each new guarantee entered into pursuant to clause 6.6.

PPS Law means:

- (a) the *Personal Property Securities Act 2009* (Cth) and any regulation made at any time under the PPSA, including the *Personal Property Securities Regulations 2010* (Cth) (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (a).

Project Co's Rights has the meaning given in clause 5.3(b)(i)(A).

Project Deed means the document entitled '*New Grafton Correctional Centre - Project Deed*' between the State and Project Co dated on or about the date of this Deed.

Receiver means any agent, attorney, trustee, manager, receiver, receiver and manager, administrator, liquidator or provisional liquidator or analogous person appointed under or in connection with the State Security or pursuant to court order on application by the State.

Security Interest has the meaning given to the term in the PPS Law.

State means:

- (a) The Minister for Corrections on behalf of the Crown in right of the State of New South Wales;
- (b) Infrastructure New South Wales (ABN 85 031 302 516); and

- (c) for the purposes of the Project Deed and the Operator Side Deed only, the Commissioner of Corrective Services.

State Cure Notice has the meaning given in clause 4.2(c).

Step-In Right has the meaning given in clause 5.1(a).

Step-In Period has the meaning given in clause 5.1(b).

Subcontract means the contract titled '[insert]' between Project Co and the D&C Subcontractor dated on or about the date of this Deed.

Subcontract Documents means the Subcontract and the Parent Guarantee (or either as the context requires).

Works means [insert].

1.3 Interpretation

In this Deed:

- (a) (**headings**): headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) (**count and gender**): a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) (**Deed and Schedule references**): a reference to:
- (i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Deed; and
 - (ii) a section is a reference to a section of a Schedule;
- (d) (**document as amended**): a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) (**party**): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) (**person**): a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) (**legislation**): a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
- (h) (**Policies**): a reference to a Policy includes that Policy as amended or updated from time to time;
- (i) (**definitions**): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) (**'includes'**): 'includes' and 'including' will be read as if followed by the phrase '(without limitation)';

- (k) (**'or'**): the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;
- (l) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (m) (**'\$'**): a reference to '\$', AUD or dollar is to Australian currency;
- (n) (**Business Day**): if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;
- (o) (**day**): except as otherwise provided in this Deed or where a reference is made to 'Business Days', day means a calendar day;
- (p) (**time**): a reference to time is a reference to time in Sydney, Australia;
- (q) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (r) (**function**): a function includes a power, authority or duty;
- (s) (**obligations and liabilities**): a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (t) (**'may'**): except to the extent that the State is expressly required under this Deed to act reasonably in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion (and without regard to Project Co, the D&C Subcontractor or the Parent Guarantor) and the State has no obligation to do so;
- (u) (**construction**): where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (v) (**asset**): references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset;
- (w) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision; and
- (x) (**PPS Law defined terms**): each of the terms 'financing statement', 'financing change statement' and 'verification statement' have the meanings given to them in the PPS Law.

1.4 Inconsistencies

To the extent of any inconsistency between the terms of this Deed and a Subcontract Document, this Deed will prevail over the applicable Subcontract Document.

1.5 Project Deed, the State Security and Financiers Tripartite Deed

The D&C Subcontractor and the Parent Guarantor acknowledge that they have received a copy of the Project Deed, the State Security and the Financiers Tripartite Deed.

1.6 Exclusion of Civil Liability Act

To the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this Deed, howsoever those rights, obligations or liabilities are sought to be enforced.

1.7 State's executive rights, duties and functions

- (a) (**Acknowledgements**): The parties acknowledge the substance, operation and potential effect and consequences of clause 2.10 (*State's executive rights, duties and functions*) of the Project Deed in relation to this Deed.
- (b) (**No Claim**): Subject to clause 1.7(c), Project Co, the D&C Subcontractor and the Parent Guarantor will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (c) (**Liability for breach**): Clauses 1.7(a) and 1.7(b) do not limit any Liability which the State would have had to Project Co, the D&C Subcontractor or the Parent Guarantor under any State Project Document as a result of a breach by the State of a term of any State Project Document but for these clauses.

2. Securities

2.1 D&C Subcontractor acknowledgements and consents

The D&C Subcontractor:

- (a) acknowledges and consents to the grant of, subject to the Financiers Tripartite Deed, security over all of each Project Co Entity's right, title and interest in and to the Subcontract Documents pursuant to the State Security;
- (b) acknowledges the rights created under the State Security in favour of the State, including the appointment by Project Co of the State as the lawful attorney of Project Co to do, perform and exercise all things, acts and rights under the Subcontract on behalf and for the account of Project Co, pursuant to the State Security, subject to the rights of the Security Trustee under the Financiers Tripartite Deed;
- (c) acknowledges and agrees that, without limiting the State's obligations under this Deed, the State is not subject to any duty or obligation under the Subcontract as a result of the State Security; and
- (d) acknowledges that the grant of the State Security is not, and the exercise by the State of its rights under the State Security will not, of itself, constitute a Default Event.

2.2 Parent Guarantor acknowledgements and consents

The Parent Guarantor:

- (a) acknowledges and consents to the grant of the security over all of Project Co's rights, title and interest in and to the Parent Guarantee pursuant to the State Security;
- (b) acknowledges the rights created under the State Security in favour of the State, including the appointment by Project Co of the State as the lawful attorney of Project Co to do, perform and exercise all things, acts and rights under the Parent Guarantee on behalf of and for the account of Project Co, pursuant to the State Security, subject to the rights of the Security Trustee under the Financiers Tripartite Deed;
- (c) acknowledges and agrees that, without limiting the State's obligations under this Deed, the State is not subject to any duty or obligation under the Parent Guarantee as a result of the State Security; and
- (d) acknowledges that the grant of the State Security does not, and the exercise by the State of its rights under the State Security will not, of itself, give rise to any rights by the Parent Guarantor to revoke or terminate the Parent Guarantee.

3. D&C Subcontractor's warranty and State's rights and liability

3.1 D&C Subcontractor's warranty

- (a) The D&C Subcontractor warrants to the State that it has carried out and, provided the Subcontract has not been terminated, will continue to carry out its duties under the Subcontract in accordance with the Subcontract and that it has exercised and will continue to exercise, in carrying out the Works, the level of skill and care reasonably to be expected from an appropriately qualified and competent contractor providing those Works in relation to a project of a similar size and scope to the Works. In particular and without limiting the generality of the foregoing, the D&C Subcontractor covenants with the State that it has carried out and will, provided the Subcontract has not been terminated, carry out and complete the Works in accordance with the Subcontract and duly observe and perform all its duties and obligations thereunder.
- (b) Without prejudice to any of the State's other rights under this Deed (including, without limitation, under clauses 4 and 6), the State may only exercise its rights under this clause 3.1 upon:
 - (i) the State exercising its step-in rights under the Project Deed;
 - (ii) the termination of the Project Deed or Project Co's employment under the Project Deed; or
 - (iii) Project Co no longer being responsible for performing the Project substantially on the basis set out in the Project Deed and/or the Monthly Service Payment regime no longer applying.

3.2 State's rights under Project Deed and State Security

- (a) The D&C Subcontractor and the Parent Guarantor each acknowledge and agree that:
 - (i) the State's rights under any State Security, including the appointment by any Project Co Entity of the State as attorney of the relevant Project Co Entity to do, perform and exercise all things, acts and rights under the Subcontract Documents on behalf of and for the account of the relevant Project Co Entity; and
 - (ii) the State's rights and Project Co's obligations under the Project Deed, including under the following clauses of the Project Deed:
 - (A) clause 11.3 (Audits for compliance with this Deed);
 - (B) clause 13 (Workforce);
 - (C) clause 20 (State access during the Delivery Phase);
 - (D) clause 28.2 (State access to the Correctional Complex, records and Inmates);
 - (E) clause 32 (Asset Ownership and Condition);
 - (F) clause 37 (Expiry obligations);
 - (G) clause 42 (Emergencies and Step-In by the State);
 - (H) clause 48 (Major Default);
 - (I) clause 49 (Termination);
 - (J) clause 60 (Records and Accounts);
 - (K) clause 61 (Intellectual Property Rights);
 - (L) clause 62 (Confidential Information and disclosure); and

- (M) clause 63 (Probity Events and Probity Investigations).
- (b) The D&C Subcontractor must:
- (i) exercise its rights under the Subcontract in a way that facilitates the effective exercise by the State of the rights referred to in clause 3.2(a); and
 - (ii) permit the State or a State Associate to have access to, and take copies of, the information to which the State is entitled to have access in accordance with the State's rights referred to in clause 3.2(a).
- (c) During the period in which the State is exercising a right referred to in clause 3.2(a), the State may, in accordance with the Project Deed and the Subcontract, require the suspension or the continuation of performance by the D&C Subcontractor of its obligations under the Subcontract, and if it does so, the D&C Subcontractor must (without limiting its rights under clauses 4 and 5) comply with this requirement and with all reasonable directions of the State in relation to the performance of the Subcontract by the D&C Subcontractor during such period.
- (d) The requirement of the State that the D&C Subcontractor suspend or continue to perform its obligations under the Subcontract and the giving of any direction under clause 3.2(c) by the State does not constitute an assumption by the State of any obligations of the D&C Subcontractor under the Subcontract.

3.3 Subcontracting and Probity Investigations

- (a) The D&C Subcontractor and the Parent Guarantor each acknowledges the State's rights and Project Co's obligations under the following clauses of the Project Deed:
- (i) clause 12 (*Subcontracting and third party arrangements*);
 - (ii) the clauses listed in clause 12.3(a)(iii) (*Requirements for subcontracting*); and
 - (iii) clause 63 (*Probity Events and Probity Investigations*).
- (b) The D&C Subcontractor must not subcontract any of its obligations under the Subcontract without ensuring that Project Co has obtained the prior consent of the State to that subcontract, where the State's consent is required in accordance with clause 12 (*Subcontracting and third party arrangements*) of the Project Deed.
- (c) Without limiting the previous paragraphs, the D&C Subcontractor and the Parent Guarantor each acknowledge and agree that:
- (i) in accordance with clauses 12 (*Subcontracting and third party arrangements*) and 63 (*Probity Events and Probity Investigations*) of the Project Deed, the State may, from time to time, or may require Project Co to, conduct Probity Investigations of the D&C Subcontractor, the Parent Guarantor and/or Relevant Persons in respect of the D&C Subcontractor (excluding the Project Co Representative), or other persons to whom the D&C Subcontractor is proposing to subcontract any of its obligations under the Subcontract;
 - (ii) it will procure all relevant consents from any persons in respect of whom a Probity Investigation is to be conducted; and
 - (iii) it will not appoint, or retain the appointment of, and will ensure that no other person appoints, or retains the appointment of, a person to the position of a Relevant Person in relation to the performance of any Project Activities unless the State has given approval (including following a Probity Investigation and any other investigations that the State reasonably requires in accordance with the Project Deed).

3.4 No liability for information

The D&C Subcontractor and the Parent Guarantor each acknowledge and agree that:

- (a) any information, data and documents provided by the State:
 - (i) are provided for information purposes only and all of the State's and its Associates' Intellectual Property Rights therein remain the property of the State or its Associates (as the case may be); and
 - (ii) do not form part of this Deed or constitute an invitation, offer or recommendation by or on behalf of the State or its Associates; and
- (b) to the extent permitted by Law, neither the State nor any of its Associates will have any Liability to the D&C Subcontractor, the Parent Guarantor or any of their Associates, nor will the D&C Subcontractor, the Parent Guarantor or any of their Associates be entitled to make any Claim against the State, or seek, pursue or obtain an indemnity against or contribution to Liability from the State or any of its Associates arising out of or in connection with:
 - (i) the provision of, or purported reliance upon, or use of any information, data and documents referred to in clause 3.4(a) by the D&C Subcontractor, the Parent Guarantor, or any other person to whom such information is disclosed by the D&C Subcontractor, the Parent Guarantor, any of their respective Associates or any person on any of their behalf;
 - (ii) any reference to the State in a Subcontract Document; or
 - (iii) any review of, comments upon, acceptance, approval or certification of the form or substance of a Subcontract Document by the State.

3.5 Subcontract not to affect State's rights

Each of Project Co, the D&C Subcontractor and the Parent Guarantor acknowledge and agree that:

- (a) where the D&C Subcontractor is expressed in the Subcontract to have a right (or possible right) to compensation or relief which is dependent on or determined by reference to the Project Deed or an equivalent or similar right of Project Co:
 - (i) this does not of itself expand Project Co's rights, or the State's Liability, under the Project Deed to include the compensation or relief to which the D&C Subcontractor is or may become entitled under the Subcontract; and
 - (ii) Project Co's rights, and the State's Liability, under the Project Deed will be determined solely in accordance with the terms of the Project Deed;
- (b) as between the State (on the one hand) and Project Co, the D&C Subcontractor and the Parent Guarantor (on the other hand), Project Co, the D&C Subcontractor and the Parent Guarantor accept and will bear the risk of any inconsistency, ambiguity or discrepancy between the terms of the Subcontract and this Deed; and
- (c) notwithstanding anything to the contrary in the Subcontract, neither the D&C Subcontractor nor the Parent Guarantor has any right to deal directly with the State or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:
 - (i) expressly provided to the contrary in the Project Deed or this Deed; or
 - (ii) the State consents in writing.

4. State's right to cure Default Event

4.1 State's cure rights

- (a) On becoming aware of any Default Event (and subject to clause 4.1(b)), the State may (but is not obliged to) take steps to cure or remedy, or procure the cure or remedy of, that Default Event.

- (b) Clause 4.1(a) only applies if the D&C Subcontractor has given a State Cure Notice in accordance with clause 4.2(c).
- (c) Upon the State exercising any of its rights under this clause 4.1, Project Co must cease exercising its rights and performing its obligations under the Subcontract (other than Project Co's obligation to pay money) to the extent and for such period as Project Co is prevented from performing such obligations by the State's exercise of its rights pursuant to clause 4.1(a) (but only until such time as the State ceases to exercise those rights in accordance with clause 4.1(d)).
- (d) If the State exercises its rights pursuant to clause 4.1(a), the State may, after giving reasonable prior notice to Project Co, cease to exercise those rights, and in any event, will cease to exercise those rights once the relevant Default Event has been remedied.

4.2 Restriction on right to terminate or suspend

The D&C Subcontractor must not terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Subcontract unless each of the following conditions has been satisfied:

- (a) the D&C Subcontractor has given to the State prior notice setting out details of the Default Event giving rise to the right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Subcontract, together with the statements referred to in clause 4.3 (**Default Event Notice**);
- (b) if the D&C Subcontractor's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Subcontract is subject to any right of a Financier to cure or remedy the Default Event:
 - (i) the cure or remedy period available to the Financiers in respect of the Default Event under any Finance Document has expired without a cure or remedy being achieved; or
 - (ii) the Security Trustee has notified the D&C Subcontractor in writing that it does not intend to cure or remedy the Default Event;
- (c) the D&C Subcontractor has given notice to the State confirming that, either:
 - (i) the requirements of clause 4.2(b) are satisfied; or
 - (ii) the D&C Subcontractor's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Subcontract is not subject to any right of the Financiers to cure or remedy the Default Event, (**State Cure Notice**); and
- (d) any one of the following has occurred:
 - (i) if:
 - (A) the Default Event is a failure to pay an amount which is due and payable to the D&C Subcontractor, such Default Event has not been cured or remedied within [10] Business Days after the date on which the State Cure Notice is given to the State (or such longer period as is permitted under the Subcontract or agreed to by the D&C Subcontractor); or
 - (B) the Default Event is not one described in clause 4.2(d)(i)(A) but is otherwise capable of cure or remedy within [20] Business Days after the date on which the State Cure Notice is given to the State (or such longer period as is permitted under the Subcontract or agreed to by the D&C Subcontractor), that Default Event has not been cured or remedied within the relevant period;

- (ii) if the Default Event is not one described in clause 4.2(d)(i) but is nevertheless reasonably capable of cure or remedy, the State has not commenced curing or remedying the Default Event within 20 Business Days after the date on which the State Cure Notice is given and has not continued to diligently pursue that cure or remedy;
- (iii) if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice contains a claim for reasonable compensation for the Default Event, Project Co or the State (or another person on behalf of either of them) have not paid or otherwise provided that compensation to the D&C Subcontractor:
 - (A) to the extent that the relevant amount of compensation has been referred to expert determination under clause 11, within 20 Business Days after that dispute is resolved; or
 - (B) otherwise within 20 Business Days after the date on which the State received the State Cure Notice;
- (iv) if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice does not contain a claim for reasonable compensation for the Default Event, the State does not commence and continue to perform Project Co's obligations under the Subcontract within 20 Business Days after the date on which the State Cure Notice is given to the State; or
- (v) the State notifies the D&C Subcontractor in writing after receipt of the State Cure Notice that it elects not to cure or remedy, or procure the cure or remedy of, the Default Event.

4.3 Statements concerning Default Event

- (a) As part of any Default Event Notice, the D&C Subcontractor must submit to the State statements of:
 - (i) where the Default Event is a monetary default:
 - (A) the provisions of the Subcontract alleged to have been breached or not fulfilled; and
 - (B) the amount which must be paid to the D&C Subcontractor to remedy the Default Event;
 - (ii) where the Default Event is of a non-monetary nature:
 - (A) the provisions of the Subcontract alleged to have been breached or not fulfilled;
 - (B) sufficient information to enable the State to identify the material facts;
 - (C) the steps reasonably required to cure or remedy the specified breaches or conditions not fulfilled if reasonably capable of cure or remedy; and
 - (D) the time within which the specified steps can reasonably be expected to be taken;
 - (iii) any rights available to the Financiers, pursuant to any Finance Document to which the D&C Subcontractor is a party, to cure or remedy that Default Event and the period within which that cure or remedy must occur before the Finance Documents permit the D&C Subcontractor to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Subcontract; and
 - (iv) any claims in connection with the Default Event which the D&C Subcontractor is not waiving or abandoning in accordance with clause 4.4.

- (b) If the D&C Subcontractor gives a State Cure Notice to the State in accordance with clause 4.2(c), as part of that notice the D&C Subcontractor must update the matters referred to in clause 4.3(a).

4.4 Warranty of accuracy

- (a) The D&C Subcontractor warrants to the State that statements submitted by it under clause 4.3 will be, so far as reasonably practicable and subject to unintended error which the D&C Subcontractor agrees to promptly rectify, true, complete and accurate statements of the amounts to which the D&C Subcontractor considers itself entitled.
- (b) The D&C Subcontractor and the Parent Guarantor each waive and abandon all claims then known or which ought reasonably to have been known either to the D&C Subcontractor or the Parent Guarantor arising out of or in connection with the Subcontract Documents prior to the date of the Default Event Notice other than the claims disclosed in the statements submitted by it under clause 4.3.

4.5 Disputes as to statements

If the State disputes the amount of any claim or the existence of any default referred to in a Default Event Notice pursuant to clause 11:

- (a) the State must pay the amount not in dispute;
- (b) upon resolution of the dispute in accordance with clause 11, the parties must make payments as determined; and
- (c) during the period of dispute resolution, all parties must continue to perform their obligations under this Deed and the Project Documents.

4.6 Verification

The State may appoint a firm of independent chartered accountants or a firm of technical advisers, in each case approved by Project Co and the D&C Subcontractor (such approval not to be unreasonably withheld or delayed), to verify (at the cost of Project Co) statements submitted by the D&C Subcontractor, and the D&C Subcontractor must (subject to such firm(s) executing an appropriate confidentiality agreement in a form reasonably requested by the D&C Subcontractor) permit such firm to have access to and make copies of all records, documents, data and accounting and other information not subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such statements.

4.7 No Liability

Project Co and the D&C Subcontractor acknowledge that, without limiting the Liability of Project Co (which continues to be responsible for the performance of its obligations under the Subcontract), and without limiting the State's obligations under clause 6, the State will not be liable for any obligation or Liability of Project Co under the Subcontract by reason only of the State performing Project Co's obligations in accordance with the Subcontract. Project Co and the D&C Subcontractor each release the State from any such Liability, except to the extent that such Liability occurs or arises as a direct result of any criminal conduct, fraud or wilful misconduct on the part of the State.

4.8 Project Co to compensate the State

Any reasonable loss suffered or incurred by the State arising out of or in any way in connection with the exercise of its rights under this clause 4 will be a debt due from Project Co to the State.

4.9 No limitation on other rights

The exercise (or failure to exercise) by the State of its rights under this clause 4 will not limit the State's rights against Project Co under the State Project Documents or otherwise according to Law.

5. Step-in by the State

5.1 Step-In Right

- (a) Following receipt of a State Cure Notice, the State may:
- (i) if permitted under the State Security, appoint a Receiver over any Project Co Entity or any or all of its assets (including the Subcontract Documents);
 - (ii) itself enter into possession of any or all of the assets of any Project Co Entity;
 - (iii) take such other action as it is permitted to take under the terms of the Project Documents; or
 - (iv) by notice to the D&C Subcontractor (**Additional Obligor Step-In Notice**), procure that an Additional Obligor assumes jointly and severally with Project Co all of Project Co's rights and obligations under the Subcontract Documents,
- (each a **Step-In Right**).
- (b) The period from the date on which the D&C Subcontractor receives notice of the exercise of any Step-In Right to the earliest of:
- (i) the Additional Obligor Step-Out Date;
 - (ii) the date on which the D&C Subcontractor terminates the Subcontract;
 - (iii) the date of any transfer under clause 6;
 - (iv) the date which the State has notified the D&C Subcontractor that the State will cease to exercise its Step-In Rights; and
 - (v) any other date on which the State ceases to continue to exercise its Step-In Rights,
- is the **Step-In Period**.
- (c) The D&C Subcontractor and the Parent Guarantor each acknowledge that the exercise by the State of a Step-In Right will not of itself contravene the Subcontract Documents, or constitute a Default Event under the Subcontract or entitle the D&C Subcontractor or the Parent Guarantor to exercise any right (including termination) under the Subcontract Documents.

5.2 Step-In by the State

- (a) Subject to the Financiers Tripartite Deed, the State may at any time after it has become entitled to exercise a Step-In Right, exercise all or any of its rights and carry out all or any of the obligations of Project Co in connection with the Subcontract Documents, as if it were Project Co to the exclusion of Project Co.
- (b) Project Co, the D&C Subcontractor and the Parent Guarantor each agree that, subject to clause 5.3(b), neither the State nor any Associate of the State will have any Liability, and none of Project Co, the D&C Subcontractor or the Parent Guarantor will be entitled to make, continue or enforce any Claim against the State or any Associate of the State, arising in connection with the Subcontract Documents or this Deed by reason only of the State or any Associate of the State exercising any of Project Co's rights, or performing any of Project Co's obligations under the Subcontract Documents other than, and then only to the extent of, any Liability for fraudulent, negligent, reckless, unlawful or malicious acts or omissions of the State or any Associate of the State.

5.3 Step-In using Additional Obligor

- (a) The Additional Obligor will become a party to the Subcontract Documents on the date on which the Additional Obligor Step-In Notice is given to the D&C Subcontractor or such later date as the D&C Subcontractor and the State may agree (**Assumption Date**).
- (b) During a Step-In Period in respect of which the State has exercised a Step-In Right under clause 5.1(a)(iv):
- (i) subject to clause 5.3(b)(ii), the Additional Obligor will be jointly and severally:
 - (A) entitled with Project Co to exercise the rights of Project Co under the Subcontract Documents (excluding any accrued rights of Project Co in respect of any loss, cost, damage, charge, expense, outgoing or payment to the extent that the rights arose prior to the Assumption Date) (**Project Co's Rights**); and
 - (B) liable with Project Co for the performance or non-performance of all of Project Co's obligations under the Subcontract Documents arising on or after the Assumption Date except as released in accordance with clause 5.3(e);
 - (ii) as between Project Co, the D&C Subcontractor, the Parent Guarantor and the Additional Obligor, only the Additional Obligor is authorised to deal with the D&C Subcontractor and the Parent Guarantor and to exercise Project Co's Rights;
 - (iii) Project Co acknowledges that it will be legally bound by all the acts and omissions of the Additional Obligor in so dealing with the D&C Subcontractor and the Parent Guarantor and in exercising Project Co's Rights;
 - (iv) the Additional Obligor will be bound by any earlier decision, directions, approvals, notices or consents given or made prior to the Assumption Date;
 - (v) clause 14 will apply to the D&C Subcontractor, the Parent Guarantor and the Additional Obligor as if the address and email address of the Additional Obligor were set out in addition to those of Project Co; and
 - (vi) the D&C Subcontractor and the Parent Guarantor will owe their respective obligations under the Subcontract Documents to Project Co and the Additional Obligor jointly but the performance by the D&C Subcontractor or the Parent Guarantor in favour of either Project Co or the Additional Obligor will be a good discharge of the relevant obligations under the Subcontract Documents.
- (c) Without prejudice to the D&C Subcontractor's rights under clause 4.2, the Additional Obligor will have no obligation to, and no Liability in respect of, remedying any default or breach of Project Co under the Subcontract Documents arising prior to the Assumption Date.
- (d) The Additional Obligor may at any time give the D&C Subcontractor not less than 30 days' notice terminating the Additional Obligor's rights or obligations under the Subcontract Documents (without affecting the continuation of Project Co's obligations or liabilities towards the D&C Subcontractor and the Parent Guarantor under the Subcontract Documents). Such notice must specify the date on which it takes effect, which must be:
- (i) at least 30 days after the date of the notice; or
 - (ii) if a Novation Notice has been given, the date of the Novation Notice,
- (the **Additional Obligor Step-Out Date**).
- (e) On and from the Additional Obligor Step-Out Date, between the D&C Subcontractor, the Parent Guarantor and the Additional Obligor, each of the D&C Subcontractor, the Parent Guarantor and the Additional Obligor will be released from all obligations under the Subcontract Documents (except for those obligations which have arisen during the

relevant Step-In Period), whether or not a Claim has been made in respect of those obligations or they have not fallen due to be performed or have not been performed.

5.4 Indemnity

Project Co must indemnify the State, the Associates of the State and any Additional Obligor against any Claim or Liability (including any Claim made by, or Liability to, a third party) the State or any Associate of the State or any Additional Obligor suffers or incurs arising in connection with taking any action under clause 5.2 or clause 5.3, except to the extent that such Claim or Liability is caused or contributed to by any of the events set out in clause 45.8 (*Limits on Project Co liability to indemnify and release*) of the Project Deed.

6. Novation of Subcontract Documents

6.1 Option

The State may require a novation of the Subcontract Documents in accordance with this clause 6 upon the termination of the Project Deed by giving a notice to the D&C Subcontractor and the Parent Guarantor (**Novation Notice**).

6.2 Novation of Subcontract

With effect from the Effective Date:

- (a) the parties novate the Subcontract so that the State (or, if applicable, the Approved Nominee) and the D&C Subcontractor are parties to a new contract on the same terms as the Subcontract as amended by this Deed; and
- (b) any reference in the Subcontract to Project Co shall be read as a reference to the State (or, if applicable, the Approved Nominee).

6.3 Rights and obligations of the State and the D&C Subcontractor under the Subcontract

If the State gives a Novation Notice then, subject to clause 6.7, with effect from the Effective Date:

- (a) the State (or, if applicable, the Approved Nominee):
 - (i) is entitled to all rights and benefits under the Subcontract to which, but for this Deed, Project Co would have been entitled at and after the Effective Date;
 - (ii) must perform all obligations and discharge all liabilities under the Subcontract which, but for this Deed, Project Co would have been required to perform or discharge at and after the Effective Date; and
 - (iii) is bound by and must comply with all other provisions of the Subcontract by which, but for this Deed, Project Co would have been bound at and after the Effective Date; and
- (b) the D&C Subcontractor:
 - (i) is entitled to all rights and benefits under the Subcontract to which, but for this Deed, it would have been entitled at and after the Effective Date;
 - (ii) must perform all obligations and discharge all liabilities under the Subcontract which, but for this Deed, it would have been required to perform or discharge at and after the Effective Date; and
 - (iii) is bound by and must comply with all other provisions of the Subcontract by which, but for this Deed, it would have been bound at and after the Effective Date,

as if the State (or, if applicable, the Approved Nominee) had originally been a party to the Subcontract in place of Project Co.

6.4 Release by D&C Subcontractor

With effect from the Effective Date, the D&C Subcontractor releases Project Co from all obligations and liability under or in respect of the Subcontract to be performed or discharged at or after the Effective Date.

6.5 Release by Project Co

With effect from the Effective Date, Project Co releases the D&C Subcontractor from all obligations and liability under or in respect of the Subcontract to be performed or discharged at or after the Effective Date.

6.6 Novation of Parent Guarantee

If the State gives a Novation Notice then, subject to clause 6.7, with effect from the Effective Date:

- (a) the parties novate the Parent Guarantee so that the State (or, if applicable, the Approved Nominee) will be named as beneficiary to the new deed of guarantee on the same terms as the Parent Guarantee;
- (b) any reference in the Parent Guarantee to Project Co shall be read as a reference to the State (or, if applicable, the Approved Nominee); and
- (c) the Parent Guarantor will guarantee for the benefit of the State (or, if applicable, the Approved Nominee) all of the obligations of the D&C Subcontractor in accordance with the Parent Guarantee.

6.7 Obligations and liability prior to the Effective Date

Nothing in this Deed releases:

- (a) Project Co or the D&C Subcontractor from any obligation or liability under the Subcontract; or
- (b) Project Co, the D&C Subcontractor or the Parent Guarantor from any obligation or liability under the Parent Guarantee,

arising or accruing before the Effective Date and the State (or, if applicable, the Approved Nominee) does not assume any such obligation or liabilities under this Deed.

6.8 Amendments to Subcontract

- (a) With effect from the Effective Date, the terms of the Subcontract will be deemed to be amended as required to reflect the fact that the Project Deed is at an end, and that the Subcontract must operate independently of the Project Deed, on the basis that:
 - (i) the rights and obligations that the State (or, if applicable, the Approved Nominee) will assume under the Subcontract from the Effective Date will be equivalent to those that Project Co would have had under the Subcontract had the Project Deed not been terminated;
 - (ii) the rights and obligations that the D&C Subcontractor will assume under the Subcontract from the Effective Date will be equivalent to those that the D&C Subcontractor would have had under the Subcontract had the Project Deed not been terminated;
 - (iii) any provisions of the Project Deed incorporated by reference into the Subcontract prior to the Effective Date are incorporated in the Subcontract from the Effective Date; and
 - (iv) without affecting the generality of this clause 6.8(a), clauses [insert relevant clauses of the Subcontract] of the Subcontract will be deleted.

- (b) If at or after the Effective Date, there is a dispute between the State (or, if applicable, the Approved Nominee) and the D&C Subcontractor as to how the terms of the Subcontract are deemed to have been amended pursuant to clause 6.8(a), then upon either party serving a written notice to this effect on the other, the dispute will be determined in accordance with clause 11.

6.9 Approved Nominee

- (a) The State's nominee may be named as a party to the Subcontract Documents in substitution for Project Co if the State's nominee is an Approved Nominee.
- (b) The D&C Subcontractor must:
 - (i) notify the State as to whether the State's nominee is an Approved Nominee, on or before the date falling 30 days after the date of receipt of all information reasonably required by the D&C Subcontractor to decide whether the nominated person is an Approved Nominee;
 - (ii) not unreasonably withhold or delay its decision on whether the State's nominee is an Approved Nominee; and
 - (iii) enter into a side deed with the State and the Approved Nominee on substantially the same terms as this Deed.
- (c) If the Novation Notice specifies that the Approved Nominee is a person other than the State, the State must, at the time it gives a Novation Notice, provide to the D&C Subcontractor the following particulars of the Approved Nominee:
 - (i) name, place of incorporation and identity of shareholder(s);
 - (ii) if available, its most recent published audited accounts; and
 - (iii) sufficient particulars of the finance available to the Approved Nominee to enable the D&C Subcontractor to decide whether to grant its consent to the Approved Nominee.

6.10 Bonds

If the State gives a Novation Notice then, as from the Effective Date, Project Co must (with the support of the D&C Subcontractor to effect this provision) either:

- (a) procure the novation or assignment to the State (or, subject to clause 6.9, the Approved Nominee) of any [insert bonds to be novated/assigned] (each as defined in the Subcontract) held by Project Co under the Subcontract prior to the Effective Date (**Bonds**); or
- (b) procure the issue to the State (or, if applicable, the Approved Nominee) of replacement bonds for the same undrawn value and on the same terms as the Bonds held by Project Co under the Subcontract prior to the Effective Date.

6.11 Insurances

- (a) If the D&C Subcontractor is required under the Subcontract to take out and/or maintain any insurance required under clause 46 (*Insurance*) of the Project Deed to be taken out and maintained by Project Co (each such insurance, a **Subcontract Insurance**), then the D&C Subcontractor undertakes to the State to:
 - (i) take out and/or maintain the Subcontract Insurances; and
 - (ii) comply with clause 46 (*Insurance*) and Schedule 22 (*Insurance Schedule*) of the Project Deed with respect to the Subcontract Insurances, as if that clause and Schedule were set out in full in this Deed (*mutatis mutandis*).

- (b) The D&C Subcontractor acknowledges and agrees that the proceeds of any Subcontract Insurance will be applied in accordance with clause 46.11 (*Application of Insurance Proceeds*) of the Project Deed.

6.12 Other documents under the Subcontract

If the State gives a Novation Notice then, as from the Effective Date, Project Co must procure the novation or assignment to the State (or, if applicable, the Approved Nominee) of:

- (a) *[insert list of documents to be novated/assigned (eg, collateral warranty deeds)].*

7. Appointment of D&C Subcontractor as Principal Contractor

[Note: This clause is to be reviewed in respect of the relevant D&C Subcontractor.]

- (a) In this clause 7, the terms 'workplace', 'construction project', 'principal contractor' and 'WHS management plan' have the same meanings as given to those terms under the WHS Legislation.
- (b) Without limiting the D&C Subcontractor's obligations under any other provision of the Project Documents that the D&C Subcontractor is a party to:
- (i) the State:
 - (A) engages the D&C Subcontractor as the principal contractor for any construction project forming the whole or part of the Works under regulation 293 of the WHS Regulation; and
 - (B) authorises the D&C Subcontractor to have management or control of that part of the workplace to which the construction project relates and to discharge the duties of a principal contractor under the WHS Regulation in relation to any construction project forming the whole or part of the Works;
 - (ii) the D&C Subcontractor agrees that its engagement and appointment as principal contractor in respect of any construction project in relation to the Works will continue until the earlier of:
 - (A) that construction project being complete;
 - (B) the Date of Technical Completion;
 - (C) the termination of the Subcontract; and
 - (D) the Expiry Date;
 - (iii) the D&C Subcontractor accepts the engagement in clause 7(b)(i) and agrees to discharge the duties imposed on a principal contractor under the WHS Legislation and under the Project Deed, this Side Deed and the State Project Documents (as applicable) and the D&C Subcontractor's WHS management plan for the construction project;
 - (iv) if the State's engagement of the D&C Subcontractor as a principal contractor is not effective for any reason, the D&C Subcontractor agrees to discharge the duties imposed on a principal contractor under the WHS Regulation as if it had been engaged as the principal contractor for the construction project under the WHS Regulation, the WHS management plan for the construction project, the Project Deed, the Side Deeds and State Project Documents (as applicable); and
 - (v) if the D&C Subcontractor fails to comply with any of its obligations as principal contractor under the WHS Regulation, the WHS management plan for the construction project, the Project Deed, the Side Deeds and the State Project Documents (as applicable), the State may direct Project Co to carry out the D&C Subcontractor's obligations as principal contractor.

8. Representations and warranties

8.1 Representations and warranties by D&C Subcontractor and Parent Guarantor

- (a) The D&C Subcontractor and the Parent Guarantor each represent and warrant for the benefit of the State that:
- (i) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Deed and each other Project Document to which it is a party and all necessary action has been taken to authorise that execution, delivery and performance;
 - (ii) **(legality)**: the execution, delivery and performance of this Deed and each other Project Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
 - (iii) **(validity)**: this Deed and each other Project Document to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;
 - (iv) **(registration)**: it is duly registered, properly constituted and remains in existence;
 - (v) **(no trust relationship)**: except as stated in this Deed, it is not the trustee, manager or Responsible Entity of any trust nor does it hold any property subject to or impressed by any trust;
 - (vi) **(information true and correct)**: all information provided by it to the State is as at the date on which it is provided true and correct and neither the D&C Subcontractor nor the Parent Guarantor is aware of any material facts or circumstances that have not been disclosed to the State and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed or consent to the entry into the Subcontract;
 - (vii) **(litigation)**: no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a Material Adverse Effect upon it or its ability to perform its financial and other obligations under this Deed or any other Project Document to which it is a party;
 - (viii) **(Insolvency Event)**: no Insolvency Event has occurred in respect of it;
 - (ix) **(accounts)**:
 - (A) its most recent consolidated audited (if the requirement for auditing is applicable) accounts give a true and fair view of its and its subsidiaries' state of affairs as at the date to which they relate and the results of its and its subsidiaries' operations for the accounting period ended on such date;
 - (B) there has been no material adverse change in its or its subsidiaries' state of affairs since such date; and
 - (C) such accounts have been prepared in accordance with the Corporations Act and accounting principles and practices generally accepted in Australia consistently applied, except to the extent of departures from such principles and practices disclosed in such accounts;
 - (x) **(no default)**:
 - (A) it is not in default under any document or agreement binding on it or its assets which relates to financial indebtedness; and
 - (B) nothing has occurred which would, with the giving of notice and/or lapse of time, constitute an event of default, cancellation, prepayment event (pursuant to a bona fide right to exercise prepayment) or similar event (whatever called) under any such document or agreement,

which would have a Material Adverse Effect;

- (xi) **(no immunity)**: neither it nor any of its assets enjoys any immunity from set off, suit or execution in any jurisdiction; and
- (xii) **(own investigations)**: in entering into this Deed, the Subcontract, the Parent Guarantee and any other Project Document to which it is a party it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by the State, Project Co or any other person unless in respect of Project Co or any other person, other than the State or an Associate of the State, it is expressly permitted to do so in accordance with a Project Document to which it is a party.

8.2 Repetition of representations and warranties

The representations and warranties in this clause 8 are taken to be repeated immediately before Financial Close, on the basis of the facts and circumstances as at that date.

8.3 Reliance on representations and warranties

Each of the D&C Subcontractor and the Parent Guarantor acknowledge that the State executed this Deed and agreed to take part in the transactions that this Deed contemplates in reliance on the representations and warranties that are made or repeated in this clause 8.

9. Undertakings by D&C Subcontractor and Parent Guarantor

The D&C Subcontractor and the Parent Guarantor each undertake to the State as follows:

- (a) **(notification of Default Event)**: in the case of the D&C Subcontractor, it will notify the State of any Default Event promptly after it gives notice of that Default Event in accordance with the Subcontract;
- (b) **(documents in relation to Default Event)**: in the case of the D&C Subcontractor, it will promptly give the State a copy of all documents issued by the D&C Subcontractor to Project Co in relation to a Default Event;
- (c) **(no amendment without consent)**: it will not, without first obtaining the consent of the State:
 - (i) make or permit any amendment or replacement of or addition to;
 - (ii) subject to clause 4.2, terminate, surrender, rescind or accept repudiation of;
 - (iii) permit the novation, assignment or substitution of any party's rights, obligations or interest in, except when in accordance with this Deed or clause 8.4 of the Financiers Tripartite Deed; or
 - (iv) allow any express waiver of its material rights and obligations under, a Subcontract Document, provided that the State will not withhold its consent to an amendment or other action contemplated in clauses 9(c)(i) to 9(c)(iv) to which it has consented in accordance with the Project Deed;
- (d) **(disposals)**: it will not, after Financial Close, transfer, assign, mortgage, charge, encumber or otherwise deal with its rights, obligations or interests in a Subcontract Document without first procuring that the proposed transferee, assignee, mortgagee or chargee executes a deed in favour of the State (in form and substance approved by the State) pursuant to which the transferee, assignee, mortgagee or chargee agrees to accept and be bound by this Deed as if it were the D&C Subcontractor or Parent Guarantor (as the case may be);
- (e) **(attend meetings and inspections)**: it will (when reasonably requested by the State):

- (i) attend, where reasonable and appropriate, meetings with the State or any of the State's Associates;
- (ii) provide the State or any of the State's Associates and authorised personnel with:
 - (A) in the case of the D&C Subcontractor, full access to:
 - (I) the Site; and
 - (II) any other place where any Works are being carried out or materials are being prepared or stored,
 to the extent provided in the Project Deed; and
 - (B) any other information, records or documents that the State or any of its Associates (acting reasonably) requires in relation to the carrying out of the Works or compliance with the Subcontract or any information required by the State to comply with requests from the New South Wales Auditor-General; and
- (iii) permit the State or any of the State's Associates to attend all tests and inspections to be carried out in connection with the Project in accordance with the terms of the Subcontract, to the extent provided in, and in accordance with, the Project Deed; and
- (f) **(access to records)**: in the case of the D&C Subcontractor, at the request of the State to the extent provided in, and in accordance with, the Project Deed, the D&C Subcontractor will:
 - (i) permit the State or any of its Associates to inspect all records, reports, plans, programs, specifications and design documents prepared or kept by the D&C Subcontractor in relation to the Works and the Project; and
 - (ii) supply the State or any of its Associates with a copy of any such report or document which they may require from time to time.

10. Acknowledgement by Project Co

Project Co consents to the terms of this Deed and will co operate in the implementation of this Deed.

11. Dispute Resolution

If any dispute or difference of opinion arises between the parties under this Deed, each party may refer any such matter for resolution in accordance with this clause 11 and the dispute or difference of opinion must be resolved in the same manner that disputes or differences of opinion under the Project Deed are resolved. Accordingly, the provisions of clauses 50 (Dispute Resolution procedure) to 53 (Arbitration) of the Project Deed are incorporated into this Deed but as if:

- (a) the only persons party to the Project Deed, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
- (b) the only matters for expert determination under those provisions are the matters referred for expert determination under this Deed.

12. GST

- (a) **(Interpretation)**:

- (i) Except where the context suggests otherwise, terms used in this clause 12 have the meanings given to those terms by the GST Act (as amended from time to time).
 - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 12.
 - (iii) Unless otherwise expressly stated, all consideration to be provided under this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 12.
 - (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) **(Reimbursements):** Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(Additional amount of GST payable):** Subject to clause 12(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:
- (i) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 12), for that supply is exclusive of GST;
 - (ii) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
 - (iii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 12(c)(ii).
- (d) **(Variation of GST):**
- (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 12(c) and clause 12(e)), varies from the additional amount paid by the Recipient under clause 12(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 12(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 12(c).
 - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) **(Exchange of non-monetary consideration):**
- (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 12(c) applies is a Taxable Supply made by the Recipient (the **Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 12(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
 - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 12(c) (or the time at which such GST Amount would have been payable in accordance with clause 12(c) but for the operation of clause 12(e)(i)).

- (f) **(No merger)**: This clause 12 will not merge on completion or termination of this Deed.
- (g) **(Application of Project Deed)**: If clause 36 (*Payments Adjustments & Taxes*) of the Project Deed would apply in connection with a Taxable Supply to which this clause 12 also applies then clause 36 (*Payments Adjustments & Taxes*) of the Project Deed will apply in connection with that supply and the provisions of this clause 12 (but for this paragraph) will not apply.

13. PPSA

- (a) If the State determines that this Deed is or contains a Security Interest, the parties (other than the State) agree to promptly do anything (including amending any document or executing any new document) which the State reasonably requires for the purposes of:
- (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
 - (ii) enabling the State to apply for registration, or give any notification, in connection with the Security Interest; or
 - (iii) enabling the State to exercise rights in connection with the Security Interest.
- (b) The parties (other than State) agree not to exercise its rights to make any request of the State under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- (c) The parties (other than the State) irrevocably and unconditionally waives its right to receive any notice of any verification statement in respect of any financing statement or financing change statement relating to this Deed.

14. Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

State

Name: [Insert]

Address: [Insert]

Email: [Insert]

For the attention of: [Insert]

Project Co

Name: [Insert]

Address: [Insert]

Email: [Insert]

For the attention of: [Insert]

D&C Subcontractor

Name: [Insert]

Address: [Insert]

Email: [Insert]

For the attention of: [Insert]

Parent Guarantor

Name: [Insert]

Address: [Insert]

Email: [Insert]

For the attention of: [Insert]

- (c) (**signed**): must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) (**form of delivery**): must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 14(b); and
- (e) (**taken to be received**): are taken to be received by the addressee at the address set out in clause 14(b):
 - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) subject to clause 14(f), in the case of prepaid post, on the fourth Business Day after the date of posting to an address within Australia and on the tenth Business Day after the date of posting by airmail to an address outside Australia;
 - (iii) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee, unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day; and
- (f) (**notices sent by post**): if sent by post from within Australia, must be sent using the 'priority' postal service offered by Australia Post (or any other postal service provider that assumes any or all of the functions of Australia Post) or other such similar service.

15. Confidential Information and disclosure

15.1 Confidential Information and disclosure by the State

- (a) Subject to clause 15.1(b), the State and any Authority may disclose any information in connection with the Project, including Project Information.

- (b) The State may only disclose the Commercially Sensitive Information:
 - (i) in accordance with:
 - (A) Laws or for the enforcement of any criminal law;
 - (B) where disclosure is in the course of the official duties of a minister, the Treasurer, the Premier or the Attorney General;
 - (C) to satisfy the disclosure requirements of the NSW Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW);
 - (D) to satisfy the requirements of Parliamentary accountability;
 - (E) to any Associate of the State to the extent necessary for the purpose of the Project provided they agree to maintain the confidentiality of any Commercially Sensitive Information;
 - (F) in annual reports of the State; or
 - (G) in accordance with policies of the State or the NSW Government or any Authority;
 - (c) for any tender process required to be conducted under the Termination Payments Schedule; or
 - (d) where the Commercially Sensitive Information is any part of the Design Deliverables, the Design Requirements or the Services Requirements, for the purpose of conducting any tender process required by the terms of the Project Deed.

15.2 Confidential Information and disclosure by D&C Subcontractor and Parent Guarantor

- (a) (**Confidentiality obligation**): Subject to clauses 15.2(b) and clause 15.4(b), the D&C Subcontractor and the Parent Guarantor must treat as secret and confidential all Confidential Information and must not, and must procure that its Associates do not, without the prior written consent of the State, make public or disclose to any person any Confidential Information.
- (b) (**Disclosure of Confidential Information**): Without limiting the D&C Subcontractor and the Parent Guarantor's obligations under clause 15.2(a) and subject to clause 15.2(c), each of the D&C Subcontractor and the Parent Guarantor may disclose Confidential Information:
 - (i) to its Associates to the extent necessary for the purpose of undertaking the Project; and
 - (ii) in accordance with clause 15.4.
- (c) (**Confidentiality deed**): Before disclosing any Confidential Information, the D&C Subcontractor and the Parent Guarantor (as applicable) must ensure that the person to whom the information is disclosed enters into a confidentiality deed with it to keep the Confidential Information confidential in accordance with this clause 15.
- (d) (**Permitted disclosure**): The D&C Subcontractor and the Parent Guarantor may disclose Confidential Information and will not be required to seek the State's consent to a disclosure, announcement or statement under clause 15.2(a) or 15.3(a) or to enter into a confidentiality deed under clause 15.2(c) where the disclosure announcement or statement is:
 - (i) required by Law, provided that it:
 - (A) notifies the State of the requirement to make that disclosure; and

- (B) takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
- (ii) required to obtain legal or other advice from its advisers, provided that the relevant adviser is under a duty of confidentiality;
- (iii) required to be made to a court in the course of proceedings to which the D&C Subcontractor or the Parent Guarantor (as applicable) is a party; or
- (iv) required by a relevant recognised stock exchange, subject to:
 - (A) the disclosure, announcement or statement does not refer to the State's or any of its Associates' involvement in the Project; and
 - (B) the D&C Subcontractor or the Parent Guarantor (as applicable) having used all reasonable endeavours to obtain the State's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant recognised stock exchange.

15.3 Public announcements by D&C Subcontractor and Parent Guarantor

Subject to clause 15.2(d), the D&C Subcontractor and the Parent Guarantor must:

- (a) not make any public disclosures, announcements or statements in relation to the Project or the State's or any of the State's Associates' involvement in the Project, without the State's prior consent;
- (b) comply with any terms and conditions the State imposes and must use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Project or the State's or any of the State's Associates' involvement in the Project before the relevant disclosure, announcement or statement is made; and
- (c) as soon as practicable, give to the State a copy of any public disclosure, announcement or statement agreed to or approved by the State in accordance with this clause 15.3 or for which the State's consent or approval was not required in accordance with clause 15.4.

15.4 Information public or known

Notwithstanding anything in this clause 15, any party may disclose information in connection with the Project (including any Confidential Information) if:

- (a) the party can demonstrate that the relevant information is already generally available and in the public domain otherwise than as a result of breach of this clause 15; or
- (b) the relevant information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party.

15.5 Disclosure by the State under GIPA Act

- (a) Notwithstanding the other provisions of this clause 15, the parties acknowledge that:
 - (i) the Project Documents and information concerning the Project Documents will be published on the State's contracts register in accordance with Division 5 of Part 3 of the GIPA Act; and
 - (ii) the State may make the Project Documents (other than the Key Subcontracts) or any of them available to any person.
- (b) The parties acknowledge that:

- (i) the State will notify the D&C Subcontractor of any proposed disclosure of Commercially Sensitive Information by the State under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;
- (ii) following notification by the State in accordance with clause 15.5(b)(i), the State will take reasonable steps to consult with the D&C Subcontractor before disclosing Commercially Sensitive Information under the GIPA Act;
- (iii) if, following:
 - (A) notification by the State in accordance with clause 15.5(b)(i); or
 - (B) consultation between the State and the D&C Subcontractor in accordance with clause 15.5(b)(ii),
 the D&C Subcontractor objects to disclosure of some or all of the Commercially Sensitive Information, the D&C Subcontractor must provide details of any such objection within five Business Days after the date the D&C Subcontractor received notification from the State or the date on which the consultation process concluded (as relevant);
- (iv) the State may take into account any objection received from the D&C Subcontractor pursuant to clause 15.5(b)(iii) in determining whether the Commercially Sensitive Information identified by the D&C Subcontractor should be disclosed; and
- (v) nothing in this clause 15.5 will limit or otherwise affect the discharge of the State's obligations under the GIPA Act.

15.6 Personal Information

The D&C Subcontractor and the Parent Guarantor must:

- (a) not collect any Personal Information except in accordance with the Design Requirements and Services Requirements, all Laws and Policies;
- (b) not disclose any Personal Information to any person other than as is necessary to provide the Services or to comply with Laws, and then only in accordance with the Design Requirements and Services Requirements, all Laws and Policies; and
- (c) keep, and make available to the State on request, records detailing the recipient of any Personal Information that the D&C Subcontractor has disclosed, the date of disclosure and the Personal Information that has been disclosed.

15.7 Confidential Design Information

The D&C Subcontractor and the Parent Guarantor must:

- (a) **(Access)**: only provide access to Confidential Design Information to Relevant Persons who:
 - (i) are not Uncleared Personnel, are permitted to receive Confidential Design Information in accordance with clause 62.2 of the Project Deed and, where required by the State, have satisfied any Probity Investigation under clause 63.2 of the Project Deed; and
 - (ii) require access to that Confidential Design Information to carry out the Works;
- (b) **(Limited portion)**: where it is necessary to grant access to Confidential Design Information in accordance with clause 15.7(a), grant access to the most limited portion of the Confidential Design Information possible; and

- (c) (**Records**): keep, and make available to the State on request, records detailing the recipient of any Confidential Design Information, the date of disclosure and the Confidential Design Information that has been disclosed.

15.8 Privacy

- (a) (**Compliance**): Without limiting any obligations in respect of privacy set out in the Design Requirements or the Services Requirements, the D&C Subcontractor and the Parent Guarantor agree to, and will ensure that the Subcontract and any other subcontract entered into by the D&C Subcontractor in relation to the Project contains terms which require the D&C Subcontractor to, be bound by the Privacy Legislation with respect to any act done, or practice engaged in, by it in connection with this Deed or with the Subcontract or other relevant subcontract (as the case may be), in the same way as the State would be bound by the Privacy Legislation, in connection with that act or practice had it been directly done or engaged in by the State.
- (b) (**Release and Indemnity**): The D&C Subcontractor and the Parent Guarantor must release, indemnify and must keep indemnified on demand the State and its Associates from and against any Claim or Liability (including any Claim made by, or Liability to, a third party) which the State or any of its Associates suffer or incur resulting from any act done or practice engaged in by the D&C Subcontractor, the Parent Guarantor or any of their respective Associates in connection with the Project, which would, had that act or practice been done or engaged in by the State, have contravened any of the Privacy Legislation.

16. Termination of this Deed

- (a) (**Satisfaction of obligations under the Subcontract**): This Deed will terminate upon the performance and satisfaction of all of the obligations under the Subcontract.
- (b) (**Does not affect rights of parties**): The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.
- (c) (**Surviving clauses**): All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:
- (i) the State's rights to set-off and recover money;
 - (ii) confidentiality or privacy;
 - (iii) Intellectual Property Rights;
 - (iv) any obligation to make any records available to the State;
 - (v) any indemnity or financial security given in accordance with this Deed;
 - (vi) any limitation or exclusion of liability; and
 - (vii) any right or obligation arising on termination or expiry of this Deed.
- (d) (**Interpretation**): No provision of this Deed which is expressed to survive the termination, rescission or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination, rescission or expiration of this Deed.
- (e) (**Survival of rights and obligations**): No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.

17. Governing law and jurisdiction

17.1 Governing law

This Deed is governed by, and must be construed according to, the laws of New South Wales, Australia.

17.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought within an inconvenient forum, if that venue falls within clause 17.2(a).

18. Miscellaneous

18.1 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

- (a) **(entire understanding)**: embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersedes any prior agreement of the parties.

18.2 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to the parties) required by Law or reasonably requested by another party to give effect to this Deed.

18.3 Waiver

- (a) **(Writing)**: A waiver given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver)**: A failure to, a delay in, or the partial exercise or enforcement of, a right provided by Law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Deed.
- (c) **(No waiver of another breach)**: No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

18.4 Consents and approvals

A consent or approval required under this Deed from the State may be given or withheld, or may be given subject to any conditions, as the State (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

18.5 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

18.6 Expenses

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

18.7 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Deed; or
- (b) that provision under the Law of any other jurisdiction.

18.8 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.
- (b) Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.

18.9 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

18.10 Moratorium legislation

The provisions of all Laws which come into effect after the date of this Deed and operate to:

- (a) increase or improve any of Project Co's, the D&C Subcontractor's or the Parent Guarantor's rights, powers or remedies under this Deed or otherwise; or
- (b) prejudicially affect the exercise by the State of any right, power or remedy under this Deed or otherwise,

are expressly waived.

18.11 Limitation of liability

[Note: This clause is to be reviewed in respect of the relevant subcontract.]

- (a) Despite any other provision of any Project Document, the maximum aggregate liability of the D&C Subcontractor and the Parent Guarantor to the State, Associates of the State, Project Co, Associates of Project Co, the Operator and Associates of the Operator arising out of or in connection with the Project Documents whether in contract, in tort (including negligence) or otherwise is no greater than the maximum liability of the D&C Subcontractor under clause *[insert]* of the Subcontract, subject to the same exceptions, exclusions and limitations as are specified in the Subcontract and the Parent Guarantee, less the liability incurred (from time to time) by the D&C Subcontractor and the Parent Guarantor under the Subcontract Documents.
- (b) The payment by the D&C Subcontractor or the Parent Guarantor of any moneys owing to Project Co under the Subcontract Documents:
 - (i) to the State in accordance with this Deed; or

- (ii) in accordance with a direction of the State given under or in connection with this Deed,

will be deemed full discharge of the D&C Subcontractor and the Parent Guarantor's obligations in respect of that amount under the Subcontract Documents.

- (c) The D&C Subcontractor must, within 10 Business Days of a request by the State, notify the value of any claim against the D&C Subcontractor or the Parent Guarantor by Project Co, the Operator or their respective Associates, together with any further detail regarding the calculation of such amount as reasonably requested by the State.

Executed as a deed.

[Execution blocks to be inserted prior to execution.]

Schedule 28

New Grafton Correctional Centre Operator Side Deed

[Insert name of Operator]

[insert ABN/ACN]

[Insert name of Parent Guarantor]

[insert ABN/ACN]

[Insert name of Project Co]

[insert ABN/ACN/ARBN]

[Insert name of State party]

[insert ABN]

Contents

1.	Definitions and interpretation	4
1.1	Project Deed definitions incorporated	4
1.2	Definitions	4
1.3	Interpretation	6
1.4	Inconsistencies	7
1.5	Project Deed, the State Security and Financiers Tripartite Deed	7
1.6	Exclusion of Civil Liability Act	8
1.7	State's executive rights, duties and functions	8
2.	Securities	8
2.1	Operator acknowledgements and consents	8
2.2	Parent Guarantor acknowledgements and consents	8
3.	Operator's warranty and State's rights and liability	9
3.1	Operator's warranty	9
3.2	State's rights under Project Deed and State Security	9
3.3	Subcontracting and Probity Investigations	10
3.4	No liability for information	10
3.5	Subcontract not to affect State's rights	11
4.	State's right to cure Default Event	11
4.1	State's cure rights	11
4.2	Restriction on right to terminate or suspend	12
4.3	Statements concerning Default Event	13
4.4	Warranty of accuracy	13
4.5	Disputes as to statements	14
4.6	Verification	14
4.7	No Liability	14
4.8	Project Co to compensate the State	14
4.9	No limitation on other rights	14
5.	Step-in by the State	14
5.1	Step-In Right	14
5.2	Step-In by the State	15
5.3	Step-In using Additional Obligor	15
5.4	Indemnity	16
6.	Novation of Subcontract Documents	17
6.1	Option	17
6.2	Novation of Subcontract	17
6.3	Rights and obligations of the State and the Operator under the Subcontract	17
6.4	Release by Operator	17
6.5	Release by Project Co	17
6.6	Novation of Parent Guarantee	18
6.7	Obligations and liability prior to the Effective Date	18
6.8	Amendments to Subcontract	18
6.9	Approved Nominee	18

6.10	Bonds	19
6.11	Insurances	19
6.12	Other documents under the Subcontract	19
7.	Appointment of Operator as Principal Contractor	19
8.	Representations and warranties	20
8.1	Representations and warranties by Operator and Parent Guarantor	20
8.2	Repetition of representations and warranties	21
8.3	Reliance on representations and warranties	21
9.	Undertakings by Operator and Parent Guarantor	22
10.	Acknowledgement by Project Co	23
11.	Dispute Resolution	23
12.	GST	23
13.	PPSA	24
14.	Notices	25
15.	Confidential Information and disclosure	26
15.1	Confidential Information and disclosure by the State	26
15.2	Confidential Information and disclosure by Operator and Parent Guarantor	27
15.3	Public announcements by Operator and Parent Guarantor	27
15.4	Information public or known	28
15.5	Disclosure by the State under GIPA Act	28
15.6	Personal Information	29
15.7	Confidential Design Information	29
15.8	Privacy	29
16.	Termination of this Deed	29
17.	Governing law and jurisdiction	30
17.1	Governing law	30
17.2	Jurisdiction	30
18.	Miscellaneous	30
18.1	Entire agreement	30
18.2	Further acts and documents	30
18.3	Waiver	31
18.4	Consents and approvals	31
18.5	Amendments	31
18.6	Expenses	31
18.7	Severance	31
18.8	No representation or reliance	31
18.9	Counterparts	31
18.10	Moratorium legislation	31
18.11	Limitation of liability	32

This Subcontract Side Deed is made on

Between:

[Insert name of party] ABN [Insert ABN] of [Insert address] (**Operator**)

[Insert name of party] ABN [Insert ABN] of [Insert address] (**Parent Guarantor**)

[Insert name of party] ABN [Insert ABN] of [Insert address] (**Project Co**)

[Insert name of party] ABN [Insert ABN] of [Insert address]

Recitals:

- A The State and Project Co have entered, or will enter, into the Project Deed for the provision of the Project.
- B Project Co has subcontracted its obligations to perform the Services (as that term is defined in the Project Deed) to the Operator pursuant to the Subcontract.
- C The Parent Guarantor has, pursuant to the Parent Guarantee, guaranteed to Project Co the performance of the Operator's obligations under the Subcontract.
- D The Operator and the Parent Guarantor have agreed to grant to the State certain rights in relation to the Subcontract Documents.

The parties agree as follows:

1. Definitions and interpretation

1.1 Project Deed definitions incorporated

Unless otherwise expressly defined in this Deed, expressions used in this Deed have the meanings given to them in the Project Deed.

1.2 Definitions

In this Deed:

Additional Obligor means a company or other entity which is wholly owned by the State.

Additional Obligor Step-In Notice has the meaning given in clause 5.1(a)(iv).

Additional Obligor Step-Out Date has the meaning given in clause 5.3(d).

Approved Nominee means a person nominated by the State and approved by the Operator in accordance with clause 6.9 as:

- (a) having the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the Subcontract; and
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and subcontracts) which are sufficient to enable it to perform the obligations of Project Co under the Subcontract.

Assumption Date has the meaning given in clause 5.3(a).

Deed means this deed and includes all schedules, exhibits, attachments and annexures to it.

Default Event means:

- (a) any default (howsoever described) by Project Co under the Subcontract; or
- (b) any other event or circumstance,

which alone or with the giving of notice or passage of time or both, would entitle the Operator to terminate, rescind, accept the repudiation of, or suspend any or all of the Operator's obligations under the Subcontract.

Default Event Notice has the meaning given in clause 4.2(a).

Effective Date means the date specified in the Novation Notice.

Material Adverse Effect means a material adverse effect on:

- (a) the ability of any of a Project Co Entity, the Operator or the Parent Guarantor to perform and observe their respective obligations under any Project Document to which it is a party; or
- (b) the rights of the State under any State Project Document, or the ability or capacity of the State to exercise its rights or perform its obligations under a State Project Document.

Novation Notice has the meaning given in clause 6.1.

Parent Guarantee means each deed of guarantee dated on or about the date of this Deed from the Parent Guarantor in favour of Project Co in respect of the obligations of the Operator under the Subcontract and, if the State gives a Novation Notice, each new guarantee entered into pursuant to clause 6.6.

PPS Law means:

- (a) the *Personal Property Securities Act 2009* (Cth) and any regulation made at any time under the PPSA, including the *Personal Property Securities Regulations 2010* (Cth) (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (a).

Project Co's Rights has the meaning given in clause 5.3(b)(i)(A).

Project Deed means the document entitled '*New Grafton Correctional Centre - Project Deed*' between the State and Project Co dated on or about the date of this Deed.

Receiver means any agent, attorney, trustee, manager, receiver, receiver and manager, administrator, liquidator or provisional liquidator or analogous person appointed under or in connection with the State Security or pursuant to court order on application by the State.

Security Interest has the meaning given to the term in the PPS Law.

Services means *[insert]*.

State means:

- (a) The Minister for Corrections on behalf of the Crown in right of the State of New South Wales;

- (b) Infrastructure New South Wales (ABN 85 031 302 516); and
- (c) for the purposes of the Project Deed and this Deed only, the Commissioner of Corrective Services.

State Cure Notice has the meaning given in clause 4.2(c).

Step-In Right has the meaning given in clause 5.1(a).

Step-In Period has the meaning given in clause 5.1(b).

Subcontract means the contract titled '[Insert]' between Project Co and the Operator dated on or about the date of this Deed.

Subcontract Documents means the Subcontract and the Parent Guarantee (or either as the context requires).

1.3 Interpretation

In this Deed:

- (a) (**headings**): headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) (**count and gender**): a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) (**Deed and Schedule references**): a reference to:
 - (i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Deed; and
 - (ii) a section is a reference to a section of a Schedule;
- (d) (**document as amended**): a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) (**party**): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) (**person**): a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) (**legislation**): a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
- (h) (**Policies**): a reference to a Policy includes that Policy as amended or updated from time to time;
- (i) (**definitions**): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) (**'includes'**): 'includes' and 'including' will be read as if followed by the phrase '(without limitation)';

- (k) (**'or'**): the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;
- (l) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (m) (**'\$'**): a reference to '\$', AUD or dollar is to Australian currency;
- (n) (**Business Day**): if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;
- (o) (**day**): except as otherwise provided in this Deed or where a reference is made to 'Business Days', day means a calendar day;
- (p) (**time**): a reference to time is a reference to time in Sydney, Australia;
- (q) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (r) (**function**): a function includes a power, authority or duty;
- (s) (**obligations and liabilities**): a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (t) (**'may'**): except to the extent that the State is expressly required under this Deed to act reasonably in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion (and without regard to Project Co, the Operator or the Parent Guarantor) and the State has no obligation to do so;
- (u) (**construction**): where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (v) (**asset**): references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset;
- (w) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision; and
- (x) (**PPS Law defined terms**): each of the terms 'financing statement', 'financing change statement' and 'verification statement' have the meanings given to them in the PPS Law.

1.4 Inconsistencies

To the extent of any inconsistency between the terms of this Deed and a Subcontract Document, this Deed will prevail over the applicable Subcontract Document.

1.5 Project Deed, the State Security and Financiers Tripartite Deed

The Operator and the Parent Guarantor acknowledge that they have received a copy of the Project Deed, the State Security and the Financiers Tripartite Deed.

1.6 Exclusion of Civil Liability Act

To the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this Deed, howsoever those rights, obligations or liabilities are sought to be enforced.

1.7 State's executive rights, duties and functions

- (a) **(Acknowledgements):** The parties acknowledge the substance, operation and potential effect and consequences of clause 2.10 (*State's executive rights, duties and functions*) of the Project Deed in relation to this Deed.
- (b) **(No Claim):** Subject to clause 1.7(c), Project Co, the Operator and the Parent Guarantor will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach):** Clauses 1.7(a) and 1.7(b) do not limit any Liability which the State would have had to Project Co, the Operator or the Parent Guarantor under any State Project Document as a result of a breach by the State of a term of any State Project Document but for these clauses.

2. Securities

2.1 Operator acknowledgements and consents

The Operator:

- (a) acknowledges and consents to the grant of, subject to the Financiers Tripartite Deed, security over all of each Project Co Entity's right, title and interest in and to the Subcontract Documents pursuant to the State Security;
- (b) acknowledges the rights created under the State Security in favour of the State, including the appointment by Project Co of the State as the lawful attorney of Project Co to do, perform and exercise all things, acts and rights under the Subcontract on behalf and for the account of Project Co, pursuant to the State Security, subject to the rights of the Security Trustee under the Financiers Tripartite Deed;
- (c) acknowledges and agrees that, without limiting the State's obligations under this Deed, the State is not subject to any duty or obligation under the Subcontract as a result of the State Security; and
- (d) acknowledges that the grant of the State Security is not, and the exercise by the State of its rights under the State Security will not, of itself, constitute a Default Event.

2.2 Parent Guarantor acknowledgements and consents

The Parent Guarantor:

- (a) acknowledges and consents to the grant of the security over all of Project Co's rights, title and interest in and to the Parent Guarantee pursuant to the State Security;
- (b) acknowledges the rights created under the State Security in favour of the State, including the appointment by Project Co of the State as the lawful attorney of Project Co to do, perform and exercise all things, acts and rights under the Parent Guarantee on behalf of and for the account of Project Co, pursuant to the State Security, subject to the rights of the Security Trustee under the Financiers Tripartite Deed;
- (c) acknowledges and agrees that, without limiting the State's obligations under this Deed, the State is not subject to any duty or obligation under the Parent Guarantee as a result of the State Security; and
- (d) acknowledges that the grant of the State Security does not, and the exercise by the State of its rights under the State Security will not, of itself, give rise to any rights by the Parent Guarantor to revoke or terminate the Parent Guarantee.

3. Operator's warranty and State's rights and liability

3.1 Operator's warranty

- (a) The Operator warrants to the State that it has carried out and, provided the Subcontract has not been terminated, will continue to carry out its duties under the Subcontract in accordance with the Subcontract and that it has exercised and will continue to exercise, in carrying out the Services, the level of skill and care reasonably to be expected from an appropriately qualified and competent contractor providing those Services in relation to a project of a similar size and scope to the Services. In particular and without limiting the generality of the foregoing, the Operator covenants with the State that it has carried out and will, provided the Subcontract has not been terminated, carry out and complete the Services in accordance with the Subcontract and duly observe and perform all its duties and obligations thereunder.
- (b) Without prejudice to any of the State's other rights under this Deed (including, without limitation, under clauses 4 and 6), the State may only exercise its rights under this clause 3.1 upon:
 - (i) the State exercising its step-in rights under the Project Deed;
 - (ii) the termination of the Project Deed or Project Co's employment under the Project Deed; or
 - (iii) Project Co no longer being responsible for performing the Project substantially on the basis set out in the Project Deed and/or the Monthly Service Payment regime no longer applying.

3.2 State's rights under Project Deed and State Security

- (a) The Operator and the Parent Guarantor each acknowledge and agree that:
 - (i) the State's rights under any State Security, including the appointment by any Project Co Entity of the State as attorney of the relevant Project Co Entity to do, perform and exercise all things, acts and rights under the Subcontract Documents on behalf of and for the account of the relevant Project Co Entity; and
 - (ii) the State's rights and Project Co's obligations under the Project Deed, including under the following clauses of the Project Deed:
 - (A) clause 11.3 (Audits for compliance with this Deed);
 - (B) clause 13 (Workforce);
 - (C) clause 20 (State access during the Delivery Phase);
 - (D) clause 28.2 (State access to the Correctional Complex, records and Inmates);
 - (E) clause 32 (Asset Ownership and Condition);
 - (F) clause 37 (Expiry obligations);
 - (G) clause 42 (Emergencies and Step-In by the State);
 - (H) clause 48 (Major Default);
 - (I) clause 49 (Termination);
 - (J) clause 60 (Records and Accounts);
 - (K) clause 61 (Intellectual Property Rights);
 - (L) clause 62 (Confidential Information and disclosure); and

- (M) clause 63 (Probity Events and Probity Investigations).
- (b) The Operator must:
- (i) exercise its rights under the Subcontract in a way that facilitates the effective exercise by the State of the rights referred to in clause 3.2(a); and
 - (ii) permit the State or a State Associate to have access to, and take copies of, the information to which the State is entitled to have access in accordance with the State's rights referred to in clause 3.2(a).
- (c) During the period in which the State is exercising a right referred to in clause 3.2(a), the State may, in accordance with the Project Deed and the Subcontract, require the suspension or the continuation of performance by the Operator of its obligations under the Subcontract, and if it does so, the Operator must (without limiting its rights under clauses 4 and 5) comply with this requirement and with all reasonable directions of the State in relation to the performance of the Subcontract by the Operator during such period.
- (d) The requirement of the State that the Operator suspend or continue to perform its obligations under the Subcontract and the giving of any direction under clause 3.2(c) by the State does not constitute an assumption by the State of any obligations of the Operator under the Subcontract.

3.3 Subcontracting and Probity Investigations

- (a) The Operator and the Parent Guarantor each acknowledges the State's rights and Project Co's obligations under the following clauses of the Project Deed:
- (i) clause 12 (*Subcontracting and third party arrangements*);
 - (ii) the clauses listed in clause 12.3(a)(iii) (*Requirements for subcontracting*); and
 - (iii) clause 63 (*Probity Events and Probity Investigations*).
- (b) The Operator must not subcontract any of its obligations under the Subcontract without ensuring that Project Co has obtained the prior consent of the State to that subcontract, where the State's consent is required in accordance with clause 12 (*Subcontracting and third party arrangements*) of the Project Deed.
- (c) Without limiting the previous paragraphs, the Operator and the Parent Guarantor each acknowledge and agree that:
- (i) in accordance with clauses 12 (*Subcontracting and third party arrangements*) and 63 (*Probity Events and Probity Investigations*) of the Project Deed, the State may, from time to time, or may require Project Co to, conduct Probity Investigations of the Operator, the Parent Guarantor and/or Relevant Persons in respect of the Operator (excluding the Project Co Representative), or other persons to whom the Operator is proposing to subcontract any of its obligations under the Subcontract;
 - (ii) it will procure all relevant consents from any persons in respect of whom a Probity Investigation is to be conducted; and
 - (iii) it will not appoint, or retain the appointment of, and will ensure that no other person appoints, or retains the appointment of, a person to the position of a Relevant Person in relation to the performance of any Project Activities unless the State has given approval (including following a Probity Investigation and any other investigations that the State reasonably requires in accordance with the Project Deed).

3.4 No liability for information

The Operator and the Parent Guarantor each acknowledge and agree that:

- (a) any information, data and documents provided by the State:

- (i) are provided for information purposes only and all of the State's and its Associates' Intellectual Property Rights therein remain the property of the State or its Associates (as the case may be); and
 - (ii) do not form part of this Deed or constitute an invitation, offer or recommendation by or on behalf of the State or its Associates; and
- (b) to the extent permitted by Law, neither the State nor any of its Associates will have any Liability to the Operator, the Parent Guarantor or any of their Associates, nor will the Operator, the Parent Guarantor or any of their Associates be entitled to make any Claim against the State, or seek, pursue or obtain an indemnity against or contribution to Liability from the State or any of its Associates arising out of or in connection with:
- (i) the provision of, or purported reliance upon, or use of any information, data and documents referred to in clause 3.4(a) by the Operator, the Parent Guarantor, or any other person to whom such information is disclosed by the Operator, the Parent Guarantor, any of their respective Associates or any person on any of their behalf;
 - (ii) any reference to the State in a Subcontract Document; or
 - (iii) any review of, comments upon, acceptance, approval or certification of the form or substance of a Subcontract Document by the State.

3.5 Subcontract not to affect State's rights

Each of Project Co, the Operator and the Parent Guarantor acknowledge and agree that:

- (a) where the Operator is expressed in the Subcontract to have a right (or possible right) to compensation or relief which is dependent on or determined by reference to the Project Deed or an equivalent or similar right of Project Co:
 - (i) this does not of itself expand Project Co's rights, or the State's Liability, under the Project Deed to include the compensation or relief to which the Operator is or may become entitled under the Subcontract; and
 - (ii) Project Co's rights, and the State's Liability, under the Project Deed will be determined solely in accordance with the terms of the Project Deed;
- (b) as between the State (on the one hand) and Project Co, the Operator and the Parent Guarantor (on the other hand), Project Co, the Operator and the Parent Guarantor accept and will bear the risk of any inconsistency, ambiguity or discrepancy between the terms of the Subcontract and this Deed; and
- (c) notwithstanding anything to the contrary in the Subcontract, neither the Operator nor the Parent Guarantor has any right to deal directly with the State or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:
 - (i) expressly provided to the contrary in the Project Deed or this Deed; or
 - (ii) the State consents in writing.

4. State's right to cure Default Event

4.1 State's cure rights

- (a) On becoming aware of any Default Event (and subject to clause 4.1(b)), the State may (but is not obliged to) take steps to cure or remedy, or procure the cure or remedy of, that Default Event.
- (b) Clause 4.1(a) only applies if the Operator has given a State Cure Notice in accordance with clause 4.2(c).

- (c) Upon the State exercising any of its rights under this clause 4.1, Project Co must cease exercising its rights and performing its obligations under the Subcontract (other than Project Co's obligation to pay money) to the extent and for such period as Project Co is prevented from performing such obligations by the State's exercise of its rights pursuant to clause 4.1(a) (but only until such time as the State ceases to exercise those rights in accordance with clause 4.1(d)).
- (d) If the State exercises its rights pursuant to clause 4.1(a), the State may, after giving reasonable prior notice to Project Co, cease to exercise those rights, and in any event, will cease to exercise those rights once the relevant Default Event has been remedied.

4.2 Restriction on right to terminate or suspend

The Operator must not terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Subcontract unless each of the following conditions has been satisfied:

- (a) the Operator has given to the State prior notice setting out details of the Default Event giving rise to the right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Subcontract, together with the statements referred to in clause 4.3 (**Default Event Notice**);
- (b) if the Operator's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Subcontract is subject to any right of a Financier to cure or remedy the Default Event:
 - (i) the cure or remedy period available to the Financiers in respect of the Default Event under any Finance Document has expired without a cure or remedy being achieved; or
 - (ii) the Security Trustee has notified the Operator in writing that it does not intend to cure or remedy the Default Event;
- (c) the Operator has given notice to the State confirming that, either:
 - (i) the requirements of clause 4.2(b) are satisfied; or
 - (ii) the Operator's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Subcontract is not subject to any right of the Financiers to cure or remedy the Default Event, (**State Cure Notice**); and
- (d) any one of the following has occurred:
 - (i) if:
 - (A) the Default Event is a failure to pay an amount which is due and payable to the Operator, such Default Event has not been cured or remedied within [10] Business Days after the date on which the State Cure Notice is given to the State (or such longer period as is permitted under the Subcontract or agreed to by the Operator); or
 - (B) the Default Event is not one described in clause 4.2(d)(i)(A) but is otherwise capable of cure or remedy within [20] Business Days after the date on which the State Cure Notice is given to the State (or such longer period as is permitted under the Subcontract or agreed to by the Operator), that Default Event has not been cured or remedied within the relevant period;
 - (ii) if the Default Event is not one described in clause 4.2(d)(i) but is nevertheless reasonably capable of cure or remedy, the State has not commenced curing or remedying the Default Event within 20 Business Days after the date on which the

- State Cure Notice is given and has not continued to diligently pursue that cure or remedy;
- (iii) if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice contains a claim for reasonable compensation for the Default Event, Project Co or the State (or another person on behalf of either of them) have not paid or otherwise provided that compensation to the Operator:
 - (A) to the extent that the relevant amount of compensation has been referred to expert determination under clause 11, within 20 Business Days after that dispute is resolved; or
 - (B) otherwise within 20 Business Days after the date on which the State received the State Cure Notice;
 - (iv) if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice does not contain a claim for reasonable compensation for the Default Event, the State does not commence and continue to perform Project Co's obligations under the Subcontract within 20 Business Days after the date on which the State Cure Notice is given to the State; or
 - (v) the State notifies the Operator in writing after receipt of the State Cure Notice that it elects not to cure or remedy, or procure the cure or remedy of, the Default Event.

4.3 Statements concerning Default Event

- (a) As part of any Default Event Notice, the Operator must submit to the State statements of:
 - (i) where the Default Event is a monetary default:
 - (A) the provisions of the Subcontract alleged to have been breached or not fulfilled; and
 - (B) the amount which must be paid to the Operator to remedy the Default Event;
 - (ii) where the Default Event is of a non-monetary nature:
 - (A) the provisions of the Subcontract alleged to have been breached or not fulfilled;
 - (B) sufficient information to enable the State to identify the material facts;
 - (C) the steps reasonably required to cure or remedy the specified breaches or conditions not fulfilled if reasonably capable of cure or remedy; and
 - (D) the time within which the specified steps can reasonably be expected to be taken;
 - (iii) any rights available to the Financiers, pursuant to any Finance Document to which the Operator is a party, to cure or remedy that Default Event and the period within which that cure or remedy must occur before the Finance Documents permit the Operator to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Subcontract; and
 - (iv) any claims in connection with the Default Event which the Operator is not waiving or abandoning in accordance with clause 4.4.
- (b) If the Operator gives a State Cure Notice to the State in accordance with clause 4.2(c), as part of that notice the Operator must update the matters referred to in clause 4.3(a).

4.4 Warranty of accuracy

- (a) The Operator warrants to the State that statements submitted by it under clause 4.3 will be, so far as reasonably practicable and subject to unintended error which the Operator agrees to promptly rectify, true, complete and accurate statements of the amounts to which the Operator considers itself entitled.
- (b) The Operator and the Parent Guarantor each waive and abandon all claims then known or which ought reasonably to have been known either to the Operator or the Parent Guarantor arising out of or in connection with the Subcontract Documents prior to the date of the Default Event Notice other than the claims disclosed in the statements submitted by it under clause 4.3.

4.5 Disputes as to statements

If the State disputes the amount of any claim or the existence of any default referred to in a Default Event Notice pursuant to clause 11:

- (a) the State must pay the amount not in dispute;
- (b) upon resolution of the dispute in accordance with clause 11, the parties must make payments as determined; and
- (c) during the period of dispute resolution, all parties must continue to perform their obligations under this Deed and the Project Documents.

4.6 Verification

The State may appoint a firm of independent chartered accountants or a firm of technical advisers, in each case approved by Project Co and the Operator (such approval not to be unreasonably withheld or delayed), to verify (at the cost of Project Co) statements submitted by the Operator, and the Operator must (subject to such firm(s) executing an appropriate confidentiality agreement in a form reasonably requested by the Operator) permit such firm to have access to and make copies of all records, documents, data and accounting and other information not subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such statements.

4.7 No Liability

Project Co and the Operator acknowledge that, without limiting the Liability of Project Co (which continues to be responsible for the performance of its obligations under the Subcontract), and without limiting the State's obligations under clause 6, the State will not be liable for any obligation or Liability of Project Co under the Subcontract by reason only of the State performing Project Co's obligations in accordance with the Subcontract. Project Co and the Operator each release the State from any such Liability, except to the extent that such Liability occurs or arises as a direct result of any criminal conduct, fraud or wilful misconduct on the part of the State.

4.8 Project Co to compensate the State

Any reasonable loss suffered or incurred by the State arising out of or in any way in connection with the exercise of its rights under this clause 4 will be a debt due from Project Co to the State.

4.9 No limitation on other rights

The exercise (or failure to exercise) by the State of its rights under this clause 4 will not limit the State's rights against Project Co under the State Project Documents or otherwise according to Law.

5. Step-in by the State

5.1 Step-In Right

- (a) Following receipt of a State Cure Notice, the State may:

- (i) if permitted under the State Security, appoint a Receiver over any Project Co Entity or any or all of its assets (including the Subcontract Documents);
 - (ii) itself enter into possession of any or all of the assets of any Project Co Entity;
 - (iii) take such other action as it is permitted to take under the terms of the Project Documents; or
 - (iv) by notice to the Operator (**Additional Obligor Step-In Notice**), procure that an Additional Obligor assumes jointly and severally with Project Co all of Project Co's rights and obligations under the Subcontract Documents,
- (each a **Step-In Right**).
- (b) The period from the date on which the Operator receives notice of the exercise of any Step-In Right to the earliest of:
- (i) the Additional Obligor Step-Out Date;
 - (ii) the date on which the Operator terminates the Subcontract;
 - (iii) the date of any transfer under clause 6;
 - (iv) the date which the State has notified the Operator that the State will cease to exercise its Step-In Rights; and
 - (v) any other date on which the State ceases to continue to exercise its Step-In Rights,
- is the **Step-In Period**.
- (c) The Operator and the Parent Guarantor each acknowledge that the exercise by the State of a Step-In Right will not of itself contravene the Subcontract Documents, or constitute a Default Event under the Subcontract or entitle the Operator or the Parent Guarantor to exercise any right (including termination) under the Subcontract Documents.

5.2 Step-In by the State

- (a) Subject to the Financiers Tripartite Deed, the State may at any time after it has become entitled to exercise a Step-In Right, exercise all or any of its rights and carry out all or any of the obligations of Project Co in connection with the Subcontract Documents, as if it were Project Co to the exclusion of Project Co.
- (b) Project Co, the Operator and the Parent Guarantor each agree that, subject to clause 5.3(b), neither the State nor any Associate of the State will have any Liability, and none of Project Co, the Operator or the Parent Guarantor will be entitled to make, continue or enforce any Claim against the State or any Associate of the State, arising in connection with the Subcontract Documents or this Deed by reason only of the State or any Associate of the State exercising any of Project Co's rights, or performing any of Project Co's obligations under the Subcontract Documents other than, and then only to the extent of, any Liability for fraudulent, negligent, reckless, unlawful or malicious acts or omissions of the State or any Associate of the State.

5.3 Step-In using Additional Obligor

- (a) The Additional Obligor will become a party to the Subcontract Documents on the date on which the Additional Obligor Step-In Notice is given to the Operator or such later date as the Operator and the State may agree (**Assumption Date**).
- (b) During a Step-In Period in respect of which the State has exercised a Step-In Right under clause 5.1(a)(iv):
 - (i) subject to clause 5.3(b)(ii), the Additional Obligor will be jointly and severally:

- (A) entitled with Project Co to exercise the rights of Project Co under the Subcontract Documents (excluding any accrued rights of Project Co in respect of any loss, cost, damage, charge, expense, outgoing or payment to the extent that the rights arose prior to the Assumption Date) (**Project Co's Rights**); and
 - (B) liable with Project Co for the performance or non-performance of all of Project Co's obligations under the Subcontract Documents arising on or after the Assumption Date except as released in accordance with clause 5.3(e);
- (ii) as between Project Co, the Operator, the Parent Guarantor and the Additional Obligor, only the Additional Obligor is authorised to deal with the Operator and the Parent Guarantor and to exercise Project Co's Rights;
 - (iii) Project Co acknowledges that it will be legally bound by all the acts and omissions of the Additional Obligor in so dealing with the Operator and the Parent Guarantor and in exercising Project Co's Rights;
 - (iv) the Additional Obligor will be bound by any earlier decision, directions, approvals, notices or consents given or made prior to the Assumption Date;
 - (v) clause 14 will apply to the Operator, the Parent Guarantor and the Additional Obligor as if the address and email address of the Additional Obligor were set out in addition to those of Project Co; and
 - (vi) the Operator and the Parent Guarantor will owe their respective obligations under the Subcontract Documents to Project Co and the Additional Obligor jointly but the performance by the Operator or the Parent Guarantor in favour of either Project Co or the Additional Obligor will be a good discharge of the relevant obligations under the Subcontract Documents.
- (c) Without prejudice to the Operator's rights under clause 4.2, the Additional Obligor will have no obligation to, and no Liability in respect of, remedying any default or breach of Project Co under the Subcontract Documents arising prior to the Assumption Date.
 - (d) The Additional Obligor may at any time give the Operator not less than 30 days' notice terminating the Additional Obligor's rights or obligations under the Subcontract Documents (without affecting the continuation of Project Co's obligations or liabilities towards the Operator and the Parent Guarantor under the Subcontract Documents). Such notice must specify the date on which it takes effect, which must be:
 - (i) at least 30 days after the date of the notice; or
 - (ii) if a Novation Notice has been given, the date of the Novation Notice,
 (the **Additional Obligor Step-Out Date**).
 - (e) On and from the Additional Obligor Step-Out Date, between the Operator, the Parent Guarantor and the Additional Obligor, each of the Operator, the Parent Guarantor and the Additional Obligor will be released from all obligations under the Subcontract Documents (except for those obligations which have arisen during the relevant Step-In Period), whether or not a Claim has been made in respect of those obligations or they have not fallen due to be performed or have not been performed.

5.4 Indemnity

Project Co must indemnify the State, the Associates of the State and any Additional Obligor against any Claim or Liability (including any Claim made by, or Liability to, a third party) the State or any Associate of the State or any Additional Obligor suffers or incurs arising in connection with taking any action under clause 5.2 or clause 5.3, except to the extent that such Claim or Liability is caused or contributed to by any of the events set out in clause 45.8 (*Limits on Project Co liability to indemnify and release*) of the Project Deed.

6. Novation of Subcontract Documents

6.1 Option

The State may require a novation of the Subcontract Documents in accordance with this clause 6 upon the termination of the Project Deed by giving a notice to the Operator and the Parent Guarantor (**Novation Notice**).

6.2 Novation of Subcontract

With effect from the Effective Date:

- (a) the parties novate the Subcontract so that the State (or, if applicable, the Approved Nominee) and the Operator are parties to a new contract on the same terms as the Subcontract as amended by this Deed; and
- (b) any reference in the Subcontract to Project Co shall be read as a reference to the State (or, if applicable, the Approved Nominee).

6.3 Rights and obligations of the State and the Operator under the Subcontract

If the State gives a Novation Notice then, subject to clause 6.7, with effect from the Effective Date:

- (a) the State (or, if applicable, the Approved Nominee):
 - (i) is entitled to all rights and benefits under the Subcontract to which, but for this Deed, Project Co would have been entitled at and after the Effective Date;
 - (ii) must perform all obligations and discharge all liabilities under the Subcontract which, but for this Deed, Project Co would have been required to perform or discharge at and after the Effective Date; and
 - (iii) is bound by and must comply with all other provisions of the Subcontract by which, but for this Deed, Project Co would have been bound at and after the Effective Date; and
- (b) the Operator:
 - (i) is entitled to all rights and benefits under the Subcontract to which, but for this Deed, it would have been entitled at and after the Effective Date;
 - (ii) must perform all obligations and discharge all liabilities under the Subcontract which, but for this Deed, it would have been required to perform or discharge at and after the Effective Date; and
 - (iii) is bound by and must comply with all other provisions of the Subcontract by which, but for this Deed, it would have been bound at and after the Effective Date,

as if the State (or, if applicable, the Approved Nominee) had originally been a party to the Subcontract in place of Project Co.

6.4 Release by Operator

With effect from the Effective Date, the Operator releases Project Co from all obligations and liability under or in respect of the Subcontract to be performed or discharged at or after the Effective Date.

6.5 Release by Project Co

With effect from the Effective Date, Project Co releases the Operator from all obligations and liability under or in respect of the Subcontract to be performed or discharged at or after the Effective Date.

6.6 Novation of Parent Guarantee

If the State gives a Novation Notice then, subject to clause 6.7, with effect from the Effective Date:

- (a) the parties novate the Parent Guarantee so that the State (or, if applicable, the Approved Nominee) will be named as beneficiary to the new deed of guarantee on the same terms as the Parent Guarantee;
- (b) any reference in the Parent Guarantee to Project Co shall be read as a reference to the State (or, if applicable, the Approved Nominee); and
- (c) the Parent Guarantor will guarantee for the benefit of the State (or, if applicable, the Approved Nominee) all of the obligations of the Operator in accordance with the Parent Guarantee.

6.7 Obligations and liability prior to the Effective Date

Nothing in this Deed releases:

- (a) Project Co or the Operator from any obligation or liability under the Subcontract; or
- (b) Project Co, the Operator or the Parent Guarantor from any obligation or liability under the Parent Guarantee,

arising or accruing before the Effective Date and the State (or, if applicable, the Approved Nominee) does not assume any such obligation or liabilities under this Deed.

6.8 Amendments to Subcontract

- (a) With effect from the Effective Date, the terms of the Subcontract will be deemed to be amended as required to reflect the fact that the Project Deed is at an end, and that the Subcontract must operate independently of the Project Deed, on the basis that:
 - (i) the rights and obligations that the State (or, if applicable, the Approved Nominee) will assume under the Subcontract from the Effective Date will be equivalent to those that Project Co would have had under the Subcontract had the Project Deed not been terminated;
 - (ii) the rights and obligations that the Operator will assume under the Subcontract from the Effective Date will be equivalent to those that the Operator would have had under the Subcontract had the Project Deed not been terminated;
 - (iii) any provisions of the Project Deed incorporated by reference into the Subcontract prior to the Effective Date are incorporated in the Subcontract from the Effective Date; and
 - (iv) without affecting the generality of this clause 6.8(a), clauses [insert relevant clauses of the Subcontract] of the Subcontract will be deleted.
- (b) If at or after the Effective Date, there is a dispute between the State (or, if applicable, the Approved Nominee) and the Operator as to how the terms of the Subcontract are deemed to have been amended pursuant to clause 6.8(a), then upon either party serving a written notice to this effect on the other, the dispute will be determined in accordance with clause 11.

6.9 Approved Nominee

- (a) The State's nominee may be named as a party to the Subcontract Documents in substitution for Project Co if the State's nominee is an Approved Nominee.
- (b) The Operator must:
 - (i) notify the State as to whether the State's nominee is an Approved Nominee, on or before the date falling 30 days after the date of receipt of all information

- reasonably required by the Operator to decide whether the nominated person is an Approved Nominee;
- (ii) not unreasonably withhold or delay its decision on whether the State's nominee is an Approved Nominee; and
 - (iii) enter into a side deed with the State and the Approved Nominee on substantially the same terms as this Deed.
- (c) If the Novation Notice specifies that the Approved Nominee is a person other than the State, the State must, at the time it gives a Novation Notice, provide to the Operator the following particulars of the Approved Nominee:
- (i) name, place of incorporation and identity of shareholder(s);
 - (ii) if available, its most recent published audited accounts; and
 - (iii) sufficient particulars of the finance available to the Approved Nominee to enable the Operator to decide whether to grant its consent to the Approved Nominee.

6.10 Bonds

If the State gives a Novation Notice then, as from the Effective Date, Project Co must (with the support of the Operator to effect this provision) either:

- (a) procure the novation or assignment to the State (or, subject to clause 6.9, the Approved Nominee) of any [insert bonds to be novated/assigned] (each as defined in the Subcontract) held by Project Co under the Subcontract prior to the Effective Date (**Bonds**); or
- (b) procure the issue to the State (or, if applicable, the Approved Nominee) of replacement bonds for the same undrawn value and on the same terms as the Bonds held by Project Co under the Subcontract prior to the Effective Date.

6.11 Insurances

- (a) If the Operator is required under the Subcontract to take out and/or maintain any insurance required under clause 46 (*Insurance*) of the Project Deed to be taken out and maintained by Project Co (each such insurance, a **Subcontract Insurance**), then the Operator undertakes to the State to:
 - (i) take out and/or maintain the Subcontract Insurances; and
 - (ii) comply with clause 46 (*Insurance*) and Schedule 22 (*Insurance Schedule*) of the Project Deed with respect to the Subcontract Insurances, as if that clause and Schedule were set out in full in this Deed (*mutatis mutandis*).
- (b) The Operator acknowledges and agrees that the proceeds of any Subcontract Insurance will be applied in accordance with clause 46.11 (*Application of Insurance Proceeds*) of the Project Deed.

6.12 Other documents under the Subcontract

If the State gives a Novation Notice then, as from the Effective Date, Project Co must procure the novation or assignment to the State (or, if applicable, the Approved Nominee) of:

- (a) [insert list of documents to be novated/assigned (eg, collateral warranty deeds)].

7. Appointment of Operator as Principal Contractor

[Note: This clause is to be reviewed in respect of the relevant Subcontractor.]

- (a) In this clause 7, the terms 'workplace', 'construction project', 'principal contractor' and 'WHS management plan' have the same meanings as given to those terms under the WHS Legislation.
- (b) Without limiting the Operator's obligations under any other provision of the Project Documents that the Operator is a party to:
 - (i) the State:
 - (A) engages the Operator as the principal contractor for any construction project forming the whole or part of the Services under regulation 293 of the WHS Regulation; and
 - (B) authorises the Operator to have management or control of that part of the workplace to which the construction project relates and to discharge the duties of a principal contractor under the WHS Regulation in relation to any construction project forming the whole or part of the Services;
 - (ii) the Operator agrees that its engagement and appointment as principal contractor in respect of any construction project in relation to the Services will continue until the earlier of:
 - (A) that relevant construction project being complete;
 - (B) the termination of the Subcontract; and
 - (C) the Expiry Date;
 - (iii) the Operator accepts the engagement in clause 7(b)(i) and agrees to discharge the duties imposed on a principal contractor under the WHS Legislation and under the Project Deed, this Side Deed and the State Project Documents (as applicable) and the Operator's WHS management plan for the construction project;
 - (iv) if the State's engagement of the Operator as a principal contractor is not effective for any reason, the Operator agrees to discharge the duties imposed on a principal contractor under the WHS Regulation as if it had been engaged as the principal contractor for the construction project under the WHS Regulation, the WHS management plan for the construction project, the Project Deed, the Side Deeds and State Project Documents (as applicable); and
 - (v) if the Operator fails to comply with any of its obligations as principal contractor under the WHS Regulation, the WHS management plan for the construction project, the Project Deed, the Side Deeds and the State Project Documents (as applicable), the State may direct Project Co to carry out the Operator's obligations as principal contractor.

8. Representations and warranties

8.1 Representations and warranties by Operator and Parent Guarantor

- (a) The Operator and the Parent Guarantor each represent and warrant for the benefit of the State that:
 - (i) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Deed and each other Project Document to which it is a party and all necessary action has been taken to authorise that execution, delivery and performance;
 - (ii) **(legality)**: the execution, delivery and performance of this Deed and each other Project Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
 - (iii) **(validity)**: this Deed and each other Project Document to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;

- (iv) **(registration)**: it is duly registered, properly constituted and remains in existence;
- (v) **(no trust relationship)**: except as stated in this Deed, it is not the trustee, manager or Responsible Entity of any trust nor does it hold any property subject to or impressed by any trust;
- (vi) **(information true and correct)**: all information provided by it to the State is as at the date on which it is provided true and correct and neither the Operator nor the Parent Guarantor is aware of any material facts or circumstances that have not been disclosed to the State and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed or consent to the entry into the Subcontract;
- (vii) **(litigation)**: no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a Material Adverse Effect upon it or its ability to perform its financial and other obligations under this Deed or any other Project Document to which it is a party;
- (viii) **(Insolvency Event)**: no Insolvency Event has occurred in respect of it;
- (ix) **(accounts)**:
 - (A) its most recent consolidated audited (if the requirement for auditing is applicable) accounts give a true and fair view of its and its subsidiaries' state of affairs as at the date to which they relate and the results of its and its subsidiaries' operations for the accounting period ended on such date;
 - (B) there has been no material adverse change in its or its subsidiaries' state of affairs since such date; and
 - (C) such accounts have been prepared in accordance with the Corporations Act and accounting principles and practices generally accepted in Australia consistently applied, except to the extent of departures from such principles and practices disclosed in such accounts;
- (x) **(no default)**:
 - (A) it is not in default under any document or agreement binding on it or its assets which relates to financial indebtedness; and
 - (B) nothing has occurred which would, with the giving of notice and/or lapse of time, constitute an event of default, cancellation, prepayment event (pursuant to a bona fide right to exercise prepayment) or similar event (whatever called) under any such document or agreement, which would have a Material Adverse Effect;
- (xi) **(no immunity)**: neither it nor any of its assets enjoys any immunity from set off, suit or execution in any jurisdiction; and
- (xii) **(own investigations)**: in entering into this Deed, the Subcontract, the Parent Guarantee and any other Project Document to which it is a party it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by the State, Project Co or any other person unless in respect of Project Co or any other person, other than the State or an Associate of the State, it is expressly permitted to do so in accordance with a Project Document to which it is a party.

8.2 Repetition of representations and warranties

The representations and warranties in this clause 8 are taken to be repeated immediately before Financial Close, on the basis of the facts and circumstances as at that date.

8.3 Reliance on representations and warranties

Each of the Operator and the Parent Guarantor acknowledge that the State executed this Deed and agreed to take part in the transactions that this Deed contemplates in reliance on the representations and warranties that are made or repeated in this clause 8.

9. Undertakings by Operator and Parent Guarantor

The Operator and the Parent Guarantor each undertake to the State as follows:

- (a) **(notification of Default Event)**: in the case of the Operator, it will notify the State of any Default Event promptly after it gives notice of that Default Event in accordance with the Subcontract;
- (b) **(documents in relation to Default Event)**: in the case of the Operator, it will promptly give the State a copy of all documents issued by the Operator to Project Co in relation to a Default Event;
- (c) **(no amendment without consent)**: it will not, without first obtaining the consent of the State:
 - (i) make or permit any amendment or replacement of or addition to;
 - (ii) subject to clause 4.2, terminate, surrender, rescind or accept repudiation of;
 - (iii) permit the novation, assignment or substitution of any party's rights, obligations or interest in, except when in accordance with this Deed or clause 8.4 of the Financiers Tripartite Deed; or
 - (iv) allow any express waiver of its material rights and obligations under,

a Subcontract Document, provided that the State will not withhold its consent to an amendment or other action contemplated in clauses 9(c)(i) to 9(c)(iv) to which it has consented in accordance with the Project Deed;
- (d) **(disposals)**: it will not, after Financial Close, transfer, assign, mortgage, charge, encumber or otherwise deal with its rights, obligations or interests in a Subcontract Document without first procuring that the proposed transferee, assignee, mortgagee or chargee executes a deed in favour of the State (in form and substance approved by the State) pursuant to which the transferee, assignee, mortgagee or chargee agrees to accept and be bound by this Deed as if it were the Operator or Parent Guarantor (as the case may be);
- (e) **(attend meetings and inspections)**: it will (when reasonably requested by the State):
 - (i) attend, where reasonable and appropriate, meetings with the State or any of the State's Associates;
 - (ii) provide the State or any of the State's Associates and authorised personnel with:
 - (A) in the case of the Operator, full access to:
 - (I) the Site; and
 - (II) any other place where any Services are being carried out or materials are being prepared or stored,

to the extent provided in the Project Deed; and
 - (B) any other information, records or documents that the State or any of its Associates (acting reasonably) requires in relation to the carrying out of the Services or compliance with the Subcontract or any information required by the State to comply with requests from the New South Wales Auditor-General; and

- (iii) permit the State or any of the State's Associates to attend all tests and inspections to be carried out in connection with the Project in accordance with the terms of the Subcontract, to the extent provided in, and in accordance with, the Project Deed; and
- (f) **(access to records)**: in the case of the Operator, at the request of the State to the extent provided in, and in accordance with, the Project Deed, the Operator will:
 - (i) permit the State or any of its Associates to inspect all records, reports, plans, programs, specifications and design documents prepared or kept by the Operator in relation to the Services and the Project; and
 - (ii) supply the State or any of its Associates with a copy of any such report or document which they may require from time to time.

10. Acknowledgement by Project Co

Project Co consents to the terms of this Deed and will co operate in the implementation of this Deed.

11. Dispute Resolution

If any dispute or difference of opinion arises between the parties under this Deed, each party may refer any such matter for resolution in accordance with this clause 11 and the dispute or difference of opinion must be resolved in the same manner that disputes or differences of opinion under the Project Deed are resolved. Accordingly, the provisions of clauses 50 (Dispute Resolution procedure) to 53 (Arbitration) of the Project Deed are incorporated into this Deed but as if:

- (a) the only persons party to the Project Deed, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
- (b) the only matters for expert determination under those provisions are the matters referred for expert determination under this Deed.

12. GST

- (a) **(Interpretation)**:
 - (i) Except where the context suggests otherwise, terms used in this clause 12 have the meanings given to those terms by the GST Act (as amended from time to time).
 - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 12.
 - (iii) Unless otherwise expressly stated, all consideration to be provided under this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 12.
 - (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) **(Reimbursements)**: Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(Additional amount of GST payable)**: Subject to clause 12(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:

- (i) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 12), for that supply is exclusive of GST;
 - (ii) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
 - (iii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 12(c)(ii).
- (d) (**Variation of GST**):
- (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 12(c) and clause 12(e)), varies from the additional amount paid by the Recipient under clause 12(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 12(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 12(c).
 - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) (**Exchange of non-monetary consideration**):
- (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 12(c) applies is a Taxable Supply made by the Recipient (the **Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 12(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
 - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 12(c) (or the time at which such GST Amount would have been payable in accordance with clause 12(c) but for the operation of clause 12(e)(i)).
- (f) (**No merger**): This clause 12 will not merge on completion or termination of this Deed.
- (g) (**Application of Project Deed**): If clause 36 (*Payments Adjustments & Taxes*) of the Project Deed would apply in connection with a Taxable Supply to which this clause 12 also applies then clause 36 (*Payments Adjustments & Taxes*) of the Project Deed will apply in connection with that supply and the provisions of this clause 12 (but for this paragraph) will not apply.

13. PPSA

- (a) If the State determines that this Deed is or contains a Security Interest, the parties (other than the State) agree to promptly do anything (including amending any document or executing any new document) which the State reasonably requires for the purposes of:
 - (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
 - (ii) enabling the State to apply for registration, or give any notification, in connection with the Security Interest; or
 - (iii) enabling the State to exercise rights in connection with the Security Interest.

- (b) The parties (other than State) agree not to exercise its rights to make any request of the State under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- (c) The parties (other than the State) irrevocably and unconditionally waives its right to receive any notice of any verification statement in respect of any financing statement or financing change statement relating to this Deed.

14. Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

State

Name: [Insert]

Address: [Insert]

Email: [Insert]

For the attention of: [Insert]

Project Co

Name: [Insert]

Address: [Insert]

Email: [Insert]

For the attention of: [Insert]

Operator

Name: [Insert]

Address: [Insert]

Email: [Insert]

For the attention of: [Insert]

Parent Guarantor

Name: [Insert]

Address: [Insert]

Email: [Insert]

For the attention of: [Insert]

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;

- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 14(b); and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 14(b):
 - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) subject to clause 14(f), in the case of prepaid post, on the fourth Business Day after the date of posting to an address within Australia and on the tenth Business Day after the date of posting by airmail to an address outside Australia;
 - (iii) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee, unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day; and
- (f) **(notices sent by post)**: if sent by post from within Australia, must be sent using the 'priority' postal service offered by Australia Post (or any other postal service provider that assumes any or all of the functions of Australia Post) or other such similar service.

15. Confidential Information and disclosure

15.1 Confidential Information and disclosure by the State

- (a) Subject to clause 15.1(b), the State and any Authority may disclose any information in connection with the Project, including Project Information.
- (b) The State may only disclose the Commercially Sensitive Information:
 - (i) in accordance with:
 - (A) Laws or for the enforcement of any criminal law;
 - (B) where disclosure is in the course of the official duties of a minister, the Treasurer, the Premier or the Attorney General;
 - (C) to satisfy the disclosure requirements of the NSW Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW);
 - (D) to satisfy the requirements of Parliamentary accountability;
 - (E) to any Associate of the State to the extent necessary for the purpose of the Project provided they agree to maintain the confidentiality of any Commercially Sensitive Information;
 - (F) in annual reports of the State; or
 - (G) in accordance with policies of the State or the NSW Government or any Authority;

- (c) for any tender process required to be conducted under the Termination Payments Schedule; or
- (d) where the Commercially Sensitive Information is any part of the Design Deliverables, the Design Requirements or the Services Requirements, for the purpose of conducting any tender process required by the terms of the Project Deed.

15.2 Confidential Information and disclosure by Operator and Parent Guarantor

- (a) **(Confidentiality obligation):** Subject to clauses 15.2(b) and clause 15.4(b), the Operator and the Parent Guarantor must treat as secret and confidential all Confidential Information and must not, and must procure that its Associates do not, without the prior written consent of the State, make public or disclose to any person any Confidential Information.
- (b) **(Disclosure of Confidential Information):** Without limiting the Operator and the Parent Guarantor's obligations under clause 15.2(a) and subject to clause 15.2(c), each of the Operator and the Parent Guarantor may disclose Confidential Information:
 - (i) to its Associates to the extent necessary for the purpose of undertaking the Project; and
 - (ii) in accordance with clause 15.4.
- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, the Operator and the Parent Guarantor (as applicable) must ensure that the person to whom the information is disclosed enters into a confidentiality deed with it to keep the Confidential Information confidential in accordance with this clause 15.
- (d) **(Permitted disclosure):** The Operator and the Parent Guarantor may disclose Confidential Information and will not be required to seek the State's consent to a disclosure, announcement or statement under clause 15.2(a) or 15.3(a) or to enter into a confidentiality deed under clause 15.2(c) where the disclosure announcement or statement is:
 - (i) required by Law, provided that it:
 - (A) notifies the State of the requirement to make that disclosure; and
 - (B) takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
 - (ii) required to obtain legal or other advice from its advisers, provided that the relevant adviser is under a duty of confidentiality;
 - (iii) required to be made to a court in the course of proceedings to which the Operator or the Parent Guarantor (as applicable) is a party; or
 - (iv) required by a relevant recognised stock exchange, subject to:
 - (A) the disclosure, announcement or statement does not refer to the State's or any of its Associates' involvement in the Project; and
 - (B) the Operator or the Parent Guarantor (as applicable) having used all reasonable endeavours to obtain the State's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant recognised stock exchange.

15.3 Public announcements by Operator and Parent Guarantor

Subject to clause 15.2(d), the Operator and the Parent Guarantor must:

- (a) not make any public disclosures, announcements or statements in relation to the Project or the State's or any of the State's Associates' involvement in the Project, without the State's prior consent;
- (b) comply with any terms and conditions the State imposes and must use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Project or the State's or any of the State's Associates' involvement in the Project before the relevant disclosure, announcement or statement is made; and
- (c) as soon as practicable, give to the State a copy of any public disclosure, announcement or statement agreed to or approved by the State in accordance with this clause 15.3 or for which the State's consent or approval was not required in accordance with clause 15.4.

15.4 Information public or known

Notwithstanding anything in this clause 15, any party may disclose information in connection with the Project (including any Confidential Information) if:

- (a) the party can demonstrate that the relevant information is already generally available and in the public domain otherwise than as a result of breach of this clause 15; or
- (b) the relevant information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party.

15.5 Disclosure by the State under GIPA Act

- (a) Notwithstanding the other provisions of this clause 15, the parties acknowledge that:
 - (i) the Project Documents and information concerning the Project Documents will be published on the State's contracts register in accordance with Division 5 of Part 3 of the GIPA Act; and
 - (ii) the State may make the Project Documents (other than the Key Subcontracts) or any of them available to any person.
- (b) The parties acknowledge that:
 - (i) the State will notify the Operator of any proposed disclosure of Commercially Sensitive Information by the State under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;
 - (ii) following notification by the State in accordance with clause 15.5(b)(i), the State will take reasonable steps to consult with the Operator before disclosing Commercially Sensitive Information under the GIPA Act;
 - (iii) if, following:
 - (A) notification by the State in accordance with clause 15.5(b)(i); or
 - (B) consultation between the State and the Operator in accordance with clause 15.5(b)(ii),

the Operator objects to disclosure of some or all of the Commercially Sensitive Information, the Operator must provide details of any such objection within five Business Days after the date the Operator received notification from the State or the date on which the consultation process concluded (as relevant);
 - (iv) the State may take into account any objection received from the Operator pursuant to clause 15.5(b)(iii) in determining whether the Commercially Sensitive Information identified by the Operator should be disclosed; and

- (v) nothing in this clause 15.5 will limit or otherwise affect the discharge of the State's obligations under the GIPA Act.

15.6 Personal Information

The Operator and the Parent Guarantor must:

- (a) not collect any Personal Information except in accordance with the Design Requirements and Services Requirements, all Laws and Policies;
- (b) not disclose any Personal Information to any person other than as is necessary to provide the Services or to comply with Laws, and then only in accordance with the Design Requirements and Services Requirements, all Laws and Policies; and
- (c) keep, and make available to the State on request, records detailing the recipient of any Personal Information that the Operator has disclosed, the date of disclosure and the Personal Information that has been disclosed.

15.7 Confidential Design Information

The Operator and the Parent Guarantor must:

- (a) **(Access)**: only provide access to Confidential Design Information to Relevant Persons who:
 - (i) are not Uncleared Personnel, are permitted to receive Confidential Design Information in accordance with clause 62.2 of the Project Deed and, where required by the State, have satisfied any Probity Investigation under clause 63.2 of the Project Deed; and
 - (ii) require access to that Confidential Design Information to perform the Services;
- (b) **(Limited portion)**: where it is necessary to grant access to Confidential Design Information in accordance with clause 15.7(a), grant access to the most limited portion of the Confidential Design Information possible; and
- (c) **(Records)**: keep, and make available to the State on request, records detailing the recipient of any Confidential Design Information, the date of disclosure and the Confidential Design Information that has been disclosed.

15.8 Privacy

- (a) **(Compliance)**: Without limiting any obligations in respect of privacy set out in the Design Requirements or the Services Requirements, the Operator and the Parent Guarantor agree to, and will ensure that the Subcontract and any other subcontract entered into by the Operator in relation to the Project contains terms which require the Operator to, be bound by the Privacy Legislation with respect to any act done, or practice engaged in, by it in connection with this Deed or with the Subcontract or other relevant subcontract (as the case may be), in the same way as the State would be bound by the Privacy Legislation, in connection with that act or practice had it been directly done or engaged in by the State.
- (b) **(Release and Indemnity)**: The Operator and the Parent Guarantor must release, indemnify and must keep indemnified on demand the State and its Associates from and against any Claim or Liability (including any Claim made by, or Liability to, a third party) which the State or any of its Associates suffer or incur resulting from any act done or practice engaged in by the Operator, the Parent Guarantor or any of their respective Associates in connection with the Project, which would, had that act or practice been done or engaged in by the State, have contravened any of the Privacy Legislation.

16. Termination of this Deed

- (a) **(Satisfaction of obligations under the Subcontract)**: This Deed will terminate upon the performance and satisfaction of all of the obligations under the Subcontract.

- (b) **(Does not affect rights of parties):** The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.
- (c) **(Surviving clauses):** All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:
 - (i) the State's rights to set-off and recover money;
 - (ii) confidentiality or privacy;
 - (iii) Intellectual Property Rights;
 - (iv) any obligation to make any records available to the State;
 - (v) any indemnity or financial security given in accordance with this Deed;
 - (vi) any limitation or exclusion of liability; and
 - (vii) any right or obligation arising on termination or expiry of this Deed.
- (d) **(Interpretation):** No provision of this Deed which is expressed to survive the termination, rescission or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination, rescission or expiration of this Deed.
- (e) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.

17. Governing law and jurisdiction

17.1 Governing law

This Deed is governed by, and must be construed according to, the laws of New South Wales, Australia.

17.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought within an inconvenient forum, if that venue falls within clause 17.2(a).

18. Miscellaneous

18.1 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

- (a) **(entire understanding):** embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) **(prior agreements):** supersedes any prior agreement of the parties.

18.2 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to the parties) required by Law or reasonably requested by another party to give effect to this Deed.

18.3 Waiver

- (a) (**Writing**): A waiver given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) (**No waiver**): A failure to, a delay in, or the partial exercise or enforcement of, a right provided by Law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Deed.
- (c) (**No waiver of another breach**): No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

18.4 Consents and approvals

A consent or approval required under this Deed from the State may be given or withheld, or may be given subject to any conditions, as the State (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

18.5 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

18.6 Expenses

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

18.7 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Deed; or
- (b) that provision under the Law of any other jurisdiction.

18.8 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.
- (b) Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.

18.9 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

18.10 Moratorium legislation

The provisions of all Laws which come into effect after the date of this Deed and operate to:

- (a) increase or improve any of Project Co's, the Operator's or the Parent Guarantor's rights, powers or remedies under this Deed or otherwise; or
- (b) prejudicially affect the exercise by the State of any right, power or remedy under this Deed or otherwise,

are expressly waived.

18.11 Limitation of liability

[Note: This clause is to be reviewed in respect of the relevant subcontract.]

- (a) Despite any other provision of any Project Document, the maximum aggregate liability of the Operator and the Parent Guarantor to the State, Associates of the State, Project Co, Associates of Project Co, the D&C Subcontractor and Associates of the D&C Subcontractor arising out of or in connection with the Project Documents whether in contract, in tort (including negligence) or otherwise is no greater than the maximum liability of the Operator under clause *[insert]* of the Subcontract, subject to the same exceptions, exclusions and limitations as are specified in the Subcontract and the Parent Guarantee, less the liability incurred (from time to time) by the Operator and the Parent Guarantor under the Subcontract Documents.
- (b) The payment by the Operator or the Parent Guarantor of any moneys owing to Project Co under the Subcontract Documents:
 - (i) to the State in accordance with this Deed; or
 - (ii) in accordance with a direction of the State given under or in connection with this Deed,will be deemed full discharge of the Operator and the Parent Guarantor's obligations in respect of that amount under the Subcontract Documents.
- (c) The Operator must, within 10 Business Days of a request by the State, notify the value of any claim against the Operator or the Parent Guarantor by Project Co, the D&C Subcontractor or their respective Associates, together with any further detail regarding the calculation of such amount as reasonably requested by the State.

Executed as a deed.

[Execution blocks to be inserted prior to execution.]

Schedule 29

New Grafton Correctional Centre Subcontract Side Deed

[Insert name of Subcontractor]

[insert ABN/ACN]

[Insert name of Parent Guarantor]

[insert ABN/ACN]

[Insert name of Project Co]

[insert ABN/ACN/ARBN]

[Insert name of State party]

[insert ABN]

Contents

1.	Definitions and interpretation	4
1.1	Project Deed definitions incorporated	4
1.2	Definitions	4
1.3	Interpretation	6
1.4	Inconsistencies	7
1.5	Project Deed, the State Security and Financiers Tripartite Deed	8
1.6	Exclusion of Civil Liability Act	8
1.7	State's executive rights, duties and functions	8
2.	Securities	8
2.1	Subcontractor acknowledgements and consents	8
2.2	Parent Guarantor acknowledgements and consents	8
3.	Subcontractor's warranty and State's rights and liability	9
3.1	Subcontractor's warranty	9
3.2	State's rights under Project Deed and State Security	9
3.3	Subcontracting and Probity Investigations	10
3.4	No liability for information	11
3.5	Subcontract not to affect State's rights	11
4.	State's right to cure Default Event	12
4.1	State's cure rights	12
4.2	Restriction on right to terminate or suspend	12
4.3	Statements concerning Default Event	13
4.4	Warranty of accuracy	14
4.5	Disputes as to statements	14
4.6	Verification	15
4.7	No Liability	15
4.8	Project Co to compensate the State	15
4.9	No limitation on other rights	15
5.	Step-in by the State	15
5.1	Step-In Right	15
5.2	Step-In by the State	16
5.3	Step-In using Additional Obligor	16
5.4	Indemnity	17
6.	Novation of Subcontract Documents	17
6.1	Option	17
6.2	Novation of Subcontract	17
6.3	Rights and obligations of the State and the Subcontractor under the Subcontract	18
6.4	Release by Subcontractor	18
6.5	Release by Project Co	18
6.6	Novation of Parent Guarantee	18
6.7	Obligations and liability prior to the Effective Date	19
6.8	Amendments to Subcontract	19
6.9	Approved Nominee	19
6.10	Bonds	20
6.11	Insurances	20
6.12	Other documents under the Subcontract	20
7.	Appointment of Subcontractor as Principal Contractor	20

8.	Representations and warranties	21
8.1	Representations and warranties by Subcontractor and Parent Guarantor	21
8.2	Repetition of representations and warranties	22
8.3	Reliance on representations and warranties	22
9.	Undertakings by Subcontractor and Parent Guarantor	23
10.	Acknowledgement by Project Co	24
11.	Dispute Resolution	24
12.	GST	24
13.	PPSA	25
14.	Notices	26
15.	Confidential Information and disclosure	27
15.1	Confidential Information and disclosure by the State	27
15.2	Confidential Information and disclosure by Subcontractor and Parent Guarantor	28
15.3	Public announcements by Subcontractor and Parent Guarantor	29
15.4	Information public or known	29
15.5	Disclosure by the State under GIPA Act	29
15.6	Personal Information	30
15.7	Confidential Design Information	30
15.8	Privacy	30
16.	Termination of this Deed	31
17.	Governing law and jurisdiction	31
17.1	Governing law	31
17.2	Jurisdiction	31
18.	Miscellaneous	32
18.1	Entire agreement	32
18.2	Further acts and documents	32
18.3	Waiver	32
18.4	Consents and approvals	32
18.5	Amendments	32
18.6	Expenses	32
18.7	Severance	32
18.8	No representation or reliance	33
18.9	Counterparts	33
18.10	Moratorium legislation	33
18.11	Limitation of liability	33

This Subcontract Side Deed is made on

Between:

[Insert name of party] ABN [Insert ABN] of [Insert address] (**Subcontractor**)

[Insert name of party] ABN [Insert ABN] of [Insert address] (**Parent Guarantor**)

[Insert name of party] ABN [Insert ABN] of [Insert address] (**Project Co**)

[Insert name of party] ABN [Insert ABN] of [Insert address]

Recitals:

- A The State and Project Co have entered, or will enter, into the Project Deed for the provision of the Project.
- B Project Co has subcontracted its obligations to [insert purpose of subcontract] to the Subcontractor pursuant to the Subcontract.
- C The Parent Guarantor has, pursuant to the Parent Guarantee, guaranteed to Project Co the performance of the Subcontractor's obligations under the Subcontract.
- D The Subcontractor and the Parent Guarantor have agreed to grant to the State certain rights in relation to the Subcontract Documents.

The parties agree as follows:

1. Definitions and interpretation

1.1 Project Deed definitions incorporated

Unless otherwise expressly defined in this Deed, expressions used in this Deed have the meanings given to them in the Project Deed.

1.2 Definitions

In this Deed:

Additional Obligor means a company or other entity which is wholly owned by the State.

Additional Obligor Step-In Notice has the meaning given in clause 5.1(a)(iv).

Additional Obligor Step-Out Date has the meaning given in clause 5.3(d).

Approved Nominee means a person nominated by the State and approved by the Subcontractor in accordance with clause 6.9 as:

- (a) having the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the Subcontract; and
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and subcontracts) which are sufficient to enable it to perform the obligations of Project Co under the Subcontract.

Assumption Date has the meaning given in clause 5.3(a).

Deed means this deed and includes all schedules, exhibits, attachments and annexures to it.

Default Event means:

- (a) any default (howsoever described) by Project Co under the Subcontract; or
- (b) any other event or circumstance,

which alone or with the giving of notice or passage of time or both, would entitle the Subcontractor to terminate, rescind, accept the repudiation of, or suspend any or all of the Subcontractor's obligations under the Subcontract.

Default Event Notice has the meaning given in clause 4.2(a).

Effective Date means the date specified in the Novation Notice.

Material Adverse Effect means a material adverse effect on:

- (a) the ability of any of a Project Co Entity, the Subcontractor or the Parent Guarantor to perform and observe their respective obligations under any Project Document to which it is a party; or
- (b) the rights of the State under any State Project Document, or the ability or capacity of the State to exercise its rights or perform its obligations under a State Project Document.

Novation Notice has the meaning given in clause 6.1.

Parent Guarantee means each deed of guarantee dated on or about the date of this Deed from the Parent Guarantor in favour of Project Co in respect of the obligations of the Subcontractor under the Subcontract and, if the State gives a Novation Notice, each new guarantee entered into pursuant to clause 6.6.

PPS Law means:

- (a) the *Personal Property Securities Act 2009* (Cth) and any regulation made at any time under the PPSA, including the *Personal Property Securities Regulations 2010* (Cth) (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (a).

Project Co's Rights has the meaning given in clause 5.3(b)(i)(A).

Project Deed means the document entitled '*New Grafton Correctional Centre - Project Deed*' between the State and Project Co dated on or about the date of this Deed.

Receiver means any agent, attorney, trustee, manager, receiver, receiver and manager, administrator, liquidator or provisional liquidator or analogous person appointed under or in connection with the State Security or pursuant to court order on application by the State.

Security Interest has the meaning given to the term in the PPS Law.

[Services means [Insert].]

State means:

- (a) The Minister for Corrections on behalf of the Crown in right of the State of New South Wales;
- (b) Infrastructure New South Wales (ABN 85 031 302 516); and

- (c) for the purposes of the Project Deed and the Operator Side Deed only, the Commissioner of Corrective Services.

State Cure Notice has the meaning given in clause 4.2(c).

Step-In Right has the meaning given in clause 5.1(a).

Step-In Period has the meaning given in clause 5.1(b).

Subcontract means the contract titled '[Insert]' between Project Co and the Subcontractor dated on or about the date of this Deed.

Subcontract Documents means the Subcontract and the Parent Guarantee (or either as the context requires).

[Works means [Insert].]

1.3 Interpretation

In this Deed:

- (a) (**headings**): headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) (**count and gender**): a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) (**Deed and Schedule references**): a reference to:
- (i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Deed; and
 - (ii) a section is a reference to a section of a Schedule;
- (d) (**document as amended**): a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) (**party**): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) (**person**): a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) (**legislation**): a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
- (h) (**Policies**): a reference to a Policy includes that Policy as amended or updated from time to time;
- (i) (**definitions**): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) (**'includes'**): 'includes' and 'including' will be read as if followed by the phrase '(without limitation)';

- (k) (**'or'**): the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;
- (l) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (m) (**'\$'**): a reference to '\$', AUD or dollar is to Australian currency;
- (n) (**Business Day**): if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;
- (o) (**day**): except as otherwise provided in this Deed or where a reference is made to 'Business Days', day means a calendar day;
- (p) (**time**): a reference to time is a reference to time in Sydney, Australia;
- (q) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (r) (**function**): a function includes a power, authority or duty;
- (s) (**obligations and liabilities**): a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (t) (**'may'**): except to the extent that the State is expressly required under this Deed to act reasonably in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion (and without regard to Project Co, the Subcontractor or the Parent Guarantor) and the State has no obligation to do so;
- (u) (**construction**): where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (v) (**asset**): references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset;
- (w) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision; and
- (x) (**PPS Law defined terms**): each of the terms 'financing statement', 'financing change statement' and 'verification statement' have the meanings given to them in the PPS Law.

1.4 Inconsistencies

To the extent of any inconsistency between the terms of this Deed and a Subcontract Document, this Deed will prevail over the applicable Subcontract Document.

1.5 Project Deed, the State Security and Financiers Tripartite Deed

The Subcontractor and the Parent Guarantor acknowledge that they have received a copy of the Project Deed, the State Security and the Financiers Tripartite Deed.

1.6 Exclusion of Civil Liability Act

To the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this Deed, howsoever those rights, obligations or liabilities are sought to be enforced.

1.7 State's executive rights, duties and functions

- (a) (**Acknowledgements**): The parties acknowledge the substance, operation and potential effect and consequences of clause 2.10 (*State's executive rights, duties and functions*) of the Project Deed in relation to this Deed.
- (b) (**No Claim**): Subject to clause 1.7(c), Project Co, the Subcontractor and the Parent Guarantor will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (c) (**Liability for breach**): Clauses 1.7(a) and 1.7(b) do not limit any Liability which the State would have had to Project Co, the Subcontractor or the Parent Guarantor under any State Project Document as a result of a breach by the State of a term of any State Project Document but for these clauses.

2. Securities

2.1 Subcontractor acknowledgements and consents

The Subcontractor:

- (a) acknowledges and consents to the grant of, subject to the Financiers Tripartite Deed, security over all of each Project Co Entity's right, title and interest in and to the Subcontract Documents pursuant to the State Security;
- (b) acknowledges the rights created under the State Security in favour of the State, including the appointment by Project Co of the State as the lawful attorney of Project Co to do, perform and exercise all things, acts and rights under the Subcontract on behalf and for the account of Project Co, pursuant to the State Security, subject to the rights of the Security Trustee under the Financiers Tripartite Deed;
- (c) acknowledges and agrees that, without limiting the State's obligations under this Deed, the State is not subject to any duty or obligation under the Subcontract as a result of the State Security; and
- (d) acknowledges that the grant of the State Security is not, and the exercise by the State of its rights under the State Security will not, of itself, constitute a Default Event.

2.2 Parent Guarantor acknowledgements and consents

The Parent Guarantor:

- (a) acknowledges and consents to the grant of the security over all of Project Co's rights, title and interest in and to the Parent Guarantee pursuant to the State Security;
- (b) acknowledges the rights created under the State Security in favour of the State, including the appointment by Project Co of the State as the lawful attorney of Project Co to do, perform and exercise all things, acts and rights under the Parent Guarantee on behalf of and for the account of Project Co, pursuant to the State Security, subject to the rights of the Security Trustee under the Financiers Tripartite Deed;

- (c) acknowledges and agrees that, without limiting the State's obligations under this Deed, the State is not subject to any duty or obligation under the Parent Guarantee as a result of the State Security; and
- (d) acknowledges that the grant of the State Security does not, and the exercise by the State of its rights under the State Security will not, of itself, give rise to any rights by the Parent Guarantor to revoke or terminate the Parent Guarantee.

3. Subcontractor's warranty and State's rights and liability

3.1 Subcontractor's warranty

- (a) The Subcontractor warrants to the State that it has carried out and, provided the Subcontract has not been terminated, will continue to carry out its duties under the Subcontract in accordance with the Subcontract and that it has exercised and will continue to exercise, in carrying out the [Works][Services], the level of skill and care reasonably to be expected from an appropriately qualified and competent contractor providing those [Works][Services] in relation to a project of a similar size and scope to the [Works][Services]. In particular and without limiting the generality of the foregoing, the Subcontractor covenants with the State that it has carried out and will, provided the Subcontract has not been terminated, carry out and complete the [Works][Services] in accordance with the Subcontract and duly observe and perform all its duties and obligations thereunder.
- (b) Without prejudice to any of the State's other rights under this Deed (including, without limitation, under clauses 4 and 6), the State may only exercise its rights under this clause 3.1 upon:
 - (i) the State exercising its step-in rights under the Project Deed;
 - (ii) the termination of the Project Deed or Project Co's employment under the Project Deed; or
 - (iii) Project Co no longer being responsible for performing the Project substantially on the basis set out in the Project Deed and/or the Monthly Service Payment regime no longer applying.

3.2 State's rights under Project Deed and State Security

- (a) The Subcontractor and the Parent Guarantor each acknowledge and agree that:
 - (i) the State's rights under any State Security, including the appointment by any Project Co Entity of the State as attorney of the relevant Project Co Entity to do, perform and exercise all things, acts and rights under the Subcontract Documents on behalf of and for the account of the relevant Project Co Entity; and
 - (ii) the State's rights and Project Co's obligations under the Project Deed, including under the following clauses of the Project Deed:
 - (A) clause 11.3 (Audits for compliance with this Deed);
 - (B) clause 13 (Workforce);
 - (C) clause 20 (State access during the Delivery Phase);
 - (D) clause 28.2 (State access to the Correctional Complex, records and Inmates);
 - (E) clause 32 (Asset Ownership and Condition);
 - (F) clause 37 (Expiry obligations);

- (G) clause 42 (Emergencies and Step-In by the State);
 - (H) clause 48 (Major Default);
 - (I) clause 49 (Termination);
 - (J) clause 60 (Records and Accounts);
 - (K) clause 61 (Intellectual Property Rights);
 - (L) clause 62 (Confidential Information and disclosure); and
 - (M) clause 63 (Probity Events and Probity Investigations).
- (b) The Subcontractor must:
- (i) exercise its rights under the Subcontract in a way that facilitates the effective exercise by the State of the rights referred to in clause 3.2(a); and
 - (ii) permit the State or a State Associate to have access to, and take copies of, the information to which the State is entitled to have access in accordance with the State's rights referred to in clause 3.2(a).
- (c) During the period in which the State is exercising a right referred to in clause 3.2(a), the State may, in accordance with the Project Deed and the Subcontract, require the suspension or the continuation of performance by the Subcontractor of its obligations under the Subcontract, and if it does so, the Subcontractor must (without limiting its rights under clauses 4 and 5) comply with this requirement and with all reasonable directions of the State in relation to the performance of the Subcontract by the Subcontractor during such period.
- (d) The requirement of the State that the Subcontractor suspend or continue to perform its obligations under the Subcontract and the giving of any direction under clause 3.2(c) by the State does not constitute an assumption by the State of any obligations of the Subcontractor under the Subcontract.

3.3 Subcontracting and Probity Investigations

- (a) The Subcontractor and the Parent Guarantor each acknowledges the State's rights and Project Co's obligations under the following clauses of the Project Deed:
- (i) clause 12 (Subcontracting and third party arrangements);
 - (ii) the clauses listed in clause 12.3(a)(iii) (Requirements for subcontracting); and
 - (iii) clause 63 (Probity Events and Probity Investigations).
- (b) The Subcontractor must not subcontract any of its obligations under the Subcontract without ensuring that Project Co has obtained the prior consent of the State to that subcontract, where the State's consent is required in accordance with clause 12 (Subcontracting and third party arrangements) of the Project Deed.
- (c) Without limiting the previous paragraphs, the Subcontractor and the Parent Guarantor each acknowledge and agree that:
- (i) in accordance with clauses 12 (*Subcontracting and third party arrangements*) and 63 (*Probity Events and Probity Investigations*) of the Project Deed, the State may, from time to time, or may require Project Co to, conduct Probity Investigations of the Subcontractor, the Parent Guarantor and/or Relevant Persons in respect of the Subcontractor (excluding the Project Co Representative), or other persons to whom the Subcontractor is proposing to subcontract any of its obligations under the Subcontract;

- (ii) it will procure all relevant consents from any persons in respect of whom a Probity Investigation is to be conducted; and
- (iii) it will not appoint, or retain the appointment of, and will ensure that no other person appoints, or retains the appointment of, a person to the position of a Relevant Person in relation to the performance of any Project Activities unless the State has given approval (including following a Probity Investigation and any other investigations that the State reasonably requires in accordance with the Project Deed).

3.4 No liability for information

The Subcontractor and the Parent Guarantor each acknowledge and agree that:

- (a) any information, data and documents provided by the State:
 - (i) are provided for information purposes only and all of the State's and its Associates' Intellectual Property Rights therein remain the property of the State or its Associates (as the case may be); and
 - (ii) do not form part of this Deed or constitute an invitation, offer or recommendation by or on behalf of the State or its Associates; and
- (b) to the extent permitted by Law, neither the State nor any of its Associates will have any Liability to the Subcontractor, the Parent Guarantor or any of their Associates, nor will the Subcontractor, the Parent Guarantor or any of their Associates be entitled to make any Claim against the State, or seek, pursue or obtain an indemnity against or contribution to Liability from the State or any of its Associates arising out of or in connection with:
 - (i) the provision of, or purported reliance upon, or use of any information, data and documents referred to in clause 3.4(a) by the Subcontractor, the Parent Guarantor, or any other person to whom such information is disclosed by the Subcontractor, the Parent Guarantor, any of their respective Associates or any person on any of their behalf;
 - (ii) any reference to the State in a Subcontract Document; or
 - (iii) any review of, comments upon, acceptance, approval or certification of the form or substance of a Subcontract Document by the State.

3.5 Subcontract not to affect State's rights

Each of Project Co, the Subcontractor and the Parent Guarantor acknowledge and agree that:

- (a) where the Subcontractor is expressed in the Subcontract to have a right (or possible right) to compensation or relief which is dependent on or determined by reference to the Project Deed or an equivalent or similar right of Project Co:
 - (i) this does not of itself expand Project Co's rights, or the State's Liability, under the Project Deed to include the compensation or relief to which the Subcontractor is or may become entitled under the Subcontract; and
 - (ii) Project Co's rights, and the State's Liability, under the Project Deed will be determined solely in accordance with the terms of the Project Deed;
- (b) as between the State (on the one hand) and Project Co, the Subcontractor and the Parent Guarantor (on the other hand), Project Co, the Subcontractor and the Parent Guarantor accept and will bear the risk of any inconsistency, ambiguity or discrepancy between the terms of the Subcontract and this Deed; and

- (c) notwithstanding anything to the contrary in the Subcontract, neither the Subcontractor nor the Parent Guarantor has any right to deal directly with the State or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:
 - (i) expressly provided to the contrary in the Project Deed or this Deed; or
 - (ii) the State consents in writing.

4. State's right to cure Default Event

4.1 State's cure rights

- (a) On becoming aware of any Default Event (and subject to clause 4.1(b)), the State may (but is not obliged to) take steps to cure or remedy, or procure the cure or remedy of, that Default Event.
- (b) Clause 4.1(a) only applies if the Subcontractor has given a State Cure Notice in accordance with clause 4.2(c).
- (c) Upon the State exercising any of its rights under this clause 4.1, Project Co must cease exercising its rights and performing its obligations under the Subcontract (other than Project Co's obligation to pay money) to the extent and for such period as Project Co is prevented from performing such obligations by the State's exercise of its rights pursuant to clause 4.1(a) (but only until such time as the State ceases to exercise those rights in accordance with clause 4.1(d)).
- (d) If the State exercises its rights pursuant to clause 4.1(a), the State may, after giving reasonable prior notice to Project Co, cease to exercise those rights, and in any event, will cease to exercise those rights once the relevant Default Event has been remedied.

4.2 Restriction on right to terminate or suspend

The Subcontractor must not terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Subcontract unless each of the following conditions has been satisfied:

- (a) the Subcontractor has given to the State prior notice setting out details of the Default Event giving rise to the right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Subcontract, together with the statements referred to in clause 4.3 (**Default Event Notice**);
- (b) if the Subcontractor's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Subcontract is subject to any right of a Financier to cure or remedy the Default Event:
 - (i) the cure or remedy period available to the Financiers in respect of the Default Event under any Finance Document has expired without a cure or remedy being achieved; or
 - (ii) the Security Trustee has notified the Subcontractor in writing that it does not intend to cure or remedy the Default Event;
- (c) the Subcontractor has given notice to the State confirming that, either:
 - (i) the requirements of clause 4.2(b) are satisfied; or
 - (ii) the Subcontractor's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Subcontract is not subject to any right of the Financiers to cure or remedy the Default Event, (**State Cure Notice**); and

- (d) any one of the following has occurred:
- (i) if:
 - (A) the Default Event is a failure to pay an amount which is due and payable to the Subcontractor, such Default Event has not been cured or remedied within [10] Business Days after the date on which the State Cure Notice is given to the State (or such longer period as is permitted under the Subcontract or agreed to by the Subcontractor); or
 - (B) the Default Event is not one described in clause 4.2(d)(i)(A) but is otherwise capable of cure or remedy within [20] Business Days after the date on which the State Cure Notice is given to the State (or such longer period as is permitted under the Subcontract or agreed to by the Subcontractor), that Default Event has not been cured or remedied within the relevant period;
 - (ii) if the Default Event is not one described in clause 4.2(d)(i) but is nevertheless reasonably capable of cure or remedy, the State has not commenced curing or remedying the Default Event within 20 Business Days after the date on which the State Cure Notice is given and has not continued to diligently pursue that cure or remedy;
 - (iii) if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice contains a claim for reasonable compensation for the Default Event, Project Co or the State (or another person on behalf of either of them) have not paid or otherwise provided that compensation to the Subcontractor:
 - (A) to the extent that the relevant amount of compensation has been referred to expert determination under clause 11, within 20 Business Days after that dispute is resolved; or
 - (B) otherwise within 20 Business Days after the date on which the State received the State Cure Notice;
 - (iv) if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice does not contain a claim for reasonable compensation for the Default Event, the State does not commence and continue to perform Project Co's obligations under the Subcontract within 20 Business Days after the date on which the State Cure Notice is given to the State; or
 - (v) the State notifies the Subcontractor in writing after receipt of the State Cure Notice that it elects not to cure or remedy, or procure the cure or remedy of, the Default Event.

4.3 Statements concerning Default Event

- (a) As part of any Default Event Notice, the Subcontractor must submit to the State statements of:
- (i) where the Default Event is a monetary default:
 - (A) the provisions of the Subcontract alleged to have been breached or not fulfilled; and
 - (B) the amount which must be paid to the Subcontractor to remedy the Default Event;
 - (ii) where the Default Event is of a non-monetary nature:
 - (A) the provisions of the Subcontract alleged to have been breached or not fulfilled;

- (B) sufficient information to enable the State to identify the material facts;
 - (C) the steps reasonably required to cure or remedy the specified breaches or conditions not fulfilled if reasonably capable of cure or remedy; and
 - (D) the time within which the specified steps can reasonably be expected to be taken;
- (iii) any rights available to the Financiers, pursuant to any Finance Document to which the Subcontractor is a party, to cure or remedy that Default Event and the period within which that cure or remedy must occur before the Finance Documents permit the Subcontractor to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Subcontract; and
 - (iv) any claims in connection with the Default Event which the Subcontractor is not waiving or abandoning in accordance with clause 4.4.
- (b) If the Subcontractor gives a State Cure Notice to the State in accordance with clause 4.2(c), as part of that notice the Subcontractor must update the matters referred to in clause 4.3(a).

4.4 Warranty of accuracy

- (a) The Subcontractor warrants to the State that statements submitted by it under clause 4.3 will be, so far as reasonably practicable and subject to unintended error which the Subcontractor agrees to promptly rectify, true, complete and accurate statements of the amounts to which the Subcontractor considers itself entitled.
- (b) The Subcontractor and the Parent Guarantor each waive and abandon all claims then known or which ought reasonably to have been known either to the Subcontractor or the Parent Guarantor arising out of or in connection with the Subcontract Documents prior to the date of the Default Event Notice other than the claims disclosed in the statements submitted by it under clause 4.3.

4.5 Disputes as to statements

If the State disputes the amount of any claim or the existence of any default referred to in a Default Event Notice pursuant to clause 11:

- (a) the State must pay the amount not in dispute;
- (b) upon resolution of the dispute in accordance with clause 11, the parties must make payments as determined; and
- (c) during the period of dispute resolution, all parties must continue to perform their obligations under this Deed and the Project Documents.

4.6 Verification

The State may appoint a firm of independent chartered accountants or a firm of technical advisers, in each case approved by Project Co and the Subcontractor (such approval not to be unreasonably withheld or delayed), to verify (at the cost of Project Co) statements submitted by the Subcontractor, and the Subcontractor must (subject to such firm(s) executing an appropriate confidentiality agreement in a form reasonably requested by the Subcontractor) permit such firm to have access to and make copies of all records, documents, data and accounting and other information not subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such statements.

4.7 No Liability

Project Co and the Subcontractor acknowledge that, without limiting the Liability of Project Co (which continues to be responsible for the performance of its obligations under the Subcontract), and without limiting the State's obligations under clause 6, the State will not be liable for any obligation or Liability of Project Co under the Subcontract by reason only of the State performing Project Co's obligations in accordance with the Subcontract. Project Co and the Subcontractor each release the State from any such Liability, except to the extent that such Liability occurs or arises as a direct result of any criminal conduct, fraud or wilful misconduct on the part of the State.

4.8 Project Co to compensate the State

Any reasonable loss suffered or incurred by the State arising out of or in any way in connection with the exercise of its rights under this clause 4 will be a debt due from Project Co to the State.

4.9 No limitation on other rights

The exercise (or failure to exercise) by the State of its rights under this clause 4 will not limit the State's rights against Project Co under the State Project Documents or otherwise according to Law.

5. Step-in by the State

5.1 Step-In Right

(a) Following receipt of a State Cure Notice, the State may:

- (i) if permitted under the State Security, appoint a Receiver over any Project Co Entity or any or all of its assets (including the Subcontract Documents);
- (ii) itself enter into possession of any or all of the assets of any Project Co Entity;
- (iii) take such other action as it is permitted to take under the terms of the Project Documents; or
- (iv) by notice to the Subcontractor (**Additional Obligor Step-In Notice**), procure that an Additional Obligor assumes jointly and severally with Project Co all of Project Co's rights and obligations under the Subcontract Documents,

(each a **Step-In Right**).

(b) The period from the date on which the Subcontractor receives notice of the exercise of any Step-In Right to the earliest of:

- (i) the Additional Obligor Step-Out Date;
- (ii) the date on which the Subcontractor terminates the Subcontract;
- (iii) the date of any transfer under clause 6;

- (iv) the date which the State has notified the Subcontractor that the State will cease to exercise its Step-In Rights; and
- (v) any other date on which the State ceases to continue to exercise its Step-In Rights,

is the **Step-In Period**.

- (c) The Subcontractor and the Parent Guarantor each acknowledge that the exercise by the State of a Step-In Right will not of itself contravene the Subcontract Documents, or constitute a Default Event under the Subcontract or entitle the Subcontractor or the Parent Guarantor to exercise any right (including termination) under the Subcontract Documents.

5.2 Step-In by the State

- (a) Subject to the Financiers Tripartite Deed, the State may at any time after it has become entitled to exercise a Step-In Right, exercise all or any of its rights and carry out all or any of the obligations of Project Co in connection with the Subcontract Documents, as if it were Project Co to the exclusion of Project Co.
- (b) Project Co, the Subcontractor and the Parent Guarantor each agree that, subject to clause 5.3(b), neither the State nor any Associate of the State will have any Liability, and none of Project Co, the Subcontractor or the Parent Guarantor will be entitled to make, continue or enforce any Claim against the State or any Associate of the State, arising in connection with the Subcontract Documents or this Deed by reason only of the State or any Associate of the State exercising any of Project Co's rights, or performing any of Project Co's obligations under the Subcontract Documents other than, and then only to the extent of, any Liability for fraudulent, negligent, reckless, unlawful or malicious acts or omissions of the State or any Associate of the State.

5.3 Step-In using Additional Obligor

- (a) The Additional Obligor will become a party to the Subcontract Documents on the date on which the Additional Obligor Step-In Notice is given to the Subcontractor or such later date as the Subcontractor and the State may agree (**Assumption Date**).
- (b) During a Step-In Period in respect of which the State has exercised a Step-In Right under clause 5.1(a)(iv):
 - (i) subject to clause 5.3(b)(ii), the Additional Obligor will be jointly and severally:
 - (A) entitled with Project Co to exercise the rights of Project Co under the Subcontract Documents (excluding any accrued rights of Project Co in respect of any loss, cost, damage, charge, expense, outgoing or payment to the extent that the rights arose prior to the Assumption Date) (**Project Co's Rights**); and
 - (B) liable with Project Co for the performance or non-performance of all of Project Co's obligations under the Subcontract Documents arising on or after the Assumption Date except as released in accordance with clause 5.3(e);
 - (ii) as between Project Co, the Subcontractor, the Parent Guarantor and the Additional Obligor, only the Additional Obligor is authorised to deal with the Subcontractor and the Parent Guarantor and to exercise Project Co's Rights;
 - (iii) Project Co acknowledges that it will be legally bound by all the acts and omissions of the Additional Obligor in so dealing with the Subcontractor and the Parent Guarantor and in exercising Project Co's Rights;
 - (iv) the Additional Obligor will be bound by any earlier decision, directions, approvals, notices or consents given or made prior to the Assumption Date;

- (v) clause 14 will apply to the Subcontractor, the Parent Guarantor and the Additional Obligor as if the address and email address of the Additional Obligor were set out in addition to those of Project Co; and
 - (vi) the Subcontractor and the Parent Guarantor will owe their respective obligations under the Subcontract Documents to Project Co and the Additional Obligor jointly but the performance by the Subcontractor or the Parent Guarantor in favour of either Project Co or the Additional Obligor will be a good discharge of the relevant obligations under the Subcontract Documents.
- (c) Without prejudice to the Subcontractor's rights under clause 4.2, the Additional Obligor will have no obligation to, and no Liability in respect of, remedying any default or breach of Project Co under the Subcontract Documents arising prior to the Assumption Date.
- (d) The Additional Obligor may at any time give the Subcontractor not less than 30 days' notice terminating the Additional Obligor's rights or obligations under the Subcontract Documents (without affecting the continuation of Project Co's obligations or liabilities towards the Subcontractor and the Parent Guarantor under the Subcontract Documents). Such notice must specify the date on which it takes effect, which must be:
- (i) at least 30 days after the date of the notice; or
 - (ii) if a Novation Notice has been given, the date of the Novation Notice,
- (the **Additional Obligor Step-Out Date**).
- (e) On and from the Additional Obligor Step-Out Date, between the Subcontractor, the Parent Guarantor and the Additional Obligor, each of the Subcontractor, the Parent Guarantor and the Additional Obligor will be released from all obligations under the Subcontract Documents (except for those obligations which have arisen during the relevant Step-In Period), whether or not a Claim has been made in respect of those obligations or they have not fallen due to be performed or have not been performed.

5.4 Indemnity

Project Co must indemnify the State, the Associates of the State and any Additional Obligor against any Claim or Liability (including any Claim made by, or Liability to, a third party) the State or any Associate of the State or any Additional Obligor suffers or incurs arising in connection with taking any action under clause 5.2 or clause 5.3, except to the extent that such Claim or Liability is caused or contributed to by any of the events set out in clause 45.8 (*Limits on Project Co liability to indemnify and release*) of the Project Deed.

6. Novation of Subcontract Documents

6.1 Option

The State may require a novation of the Subcontract Documents in accordance with this clause 6 upon the termination of the Project Deed by giving a notice to the Subcontractor and the Parent Guarantor (**Novation Notice**).

6.2 Novation of Subcontract

With effect from the Effective Date:

- (a) the parties novate the Subcontract so that the State (or, if applicable, the Approved Nominee) and the Subcontractor are parties to a new contract on the same terms as the Subcontract as amended by this Deed; and
- (b) any reference in the Subcontract to Project Co shall be read as a reference to the State (or, if applicable, the Approved Nominee).

6.3 Rights and obligations of the State and the Subcontractor under the Subcontract

If the State gives a Novation Notice then, subject to clause 6.7, with effect from the Effective Date:

- (a) the State (or, if applicable, the Approved Nominee):
 - (i) is entitled to all rights and benefits under the Subcontract to which, but for this Deed, Project Co would have been entitled at and after the Effective Date;
 - (ii) must perform all obligations and discharge all liabilities under the Subcontract which, but for this Deed, Project Co would have been required to perform or discharge at and after the Effective Date; and
 - (iii) is bound by and must comply with all other provisions of the Subcontract by which, but for this Deed, Project Co would have been bound at and after the Effective Date; and
- (b) the Subcontractor:
 - (i) is entitled to all rights and benefits under the Subcontract to which, but for this Deed, it would have been entitled at and after the Effective Date;
 - (ii) must perform all obligations and discharge all liabilities under the Subcontract which, but for this Deed, it would have been required to perform or discharge at and after the Effective Date; and
 - (iii) is bound by and must comply with all other provisions of the Subcontract by which, but for this Deed, it would have been bound at and after the Effective Date,

as if the State (or, if applicable, the Approved Nominee) had originally been a party to the Subcontract in place of Project Co.

6.4 Release by Subcontractor

With effect from the Effective Date, the Subcontractor releases Project Co from all obligations and liability under or in respect of the Subcontract to be performed or discharged at or after the Effective Date.

6.5 Release by Project Co

With effect from the Effective Date, Project Co releases the Subcontractor from all obligations and liability under or in respect of the Subcontract to be performed or discharged at or after the Effective Date.

6.6 Novation of Parent Guarantee

If the State gives a Novation Notice then, subject to clause 6.7, with effect from the Effective Date:

- (a) the parties novate the Parent Guarantee so that the State (or, if applicable, the Approved Nominee) will be named as beneficiary to the new deed of guarantee on the same terms as the Parent Guarantee;
- (b) any reference in the Parent Guarantee to Project Co shall be read as a reference to the State (or, if applicable, the Approved Nominee); and
- (c) the Parent Guarantor will guarantee for the benefit of the State (or, if applicable, the Approved Nominee) all of the obligations of the Subcontractor in accordance with the Parent Guarantee.

6.7 Obligations and liability prior to the Effective Date

Nothing in this Deed releases:

- (a) Project Co or the Subcontractor from any obligation or liability under the Subcontract; or
- (b) Project Co, the Subcontractor or the Parent Guarantor from any obligation or liability under the Parent Guarantee,

arising or accruing before the Effective Date and the State (or, if applicable, the Approved Nominee) does not assume any such obligation or liabilities under this Deed.

6.8 Amendments to Subcontract

- (a) With effect from the Effective Date, the terms of the Subcontract will be deemed to be amended as required to reflect the fact that the Project Deed is at an end, and that the Subcontract must operate independently of the Project Deed, on the basis that:
 - (i) the rights and obligations that the State (or, if applicable, the Approved Nominee) will assume under the Subcontract from the Effective Date will be equivalent to those that Project Co would have had under the Subcontract had the Project Deed not been terminated;
 - (ii) the rights and obligations that the Subcontractor will assume under the Subcontract from the Effective Date will be equivalent to those that the Subcontractor would have had under the Subcontract had the Project Deed not been terminated;
 - (iii) any provisions of the Project Deed incorporated by reference into the Subcontract prior to the Effective Date are incorporated in the Subcontract from the Effective Date; and
 - (iv) without affecting the generality of this clause 6.8(a), clauses [insert relevant clauses of the Subcontract] of the Subcontract will be deleted.
- (b) If at or after the Effective Date, there is a dispute between the State (or, if applicable, the Approved Nominee) and the Subcontractor as to how the terms of the Subcontract are deemed to have been amended pursuant to clause 6.8(a), then upon either party serving a written notice to this effect on the other, the dispute will be determined in accordance with clause 11.

6.9 Approved Nominee

- (a) The State's nominee may be named as a party to the Subcontract Documents in substitution for Project Co if the State's nominee is an Approved Nominee.
- (b) The Subcontractor must:
 - (i) notify the State as to whether the State's nominee is an Approved Nominee, on or before the date falling 30 days after the date of receipt of all information reasonably required by the Subcontractor to decide whether the nominated person is an Approved Nominee;
 - (ii) not unreasonably withhold or delay its decision on whether the State's nominee is an Approved Nominee; and
 - (iii) enter into a side deed with the State and the Approved Nominee on substantially the same terms as this Deed.
- (c) If the Novation Notice specifies that the Approved Nominee is a person other than the State, the State must, at the time it gives a Novation Notice, provide to the Subcontractor the following particulars of the Approved Nominee:

- (i) name, place of incorporation and identity of shareholder(s);
- (ii) if available, its most recent published audited accounts; and
- (iii) sufficient particulars of the finance available to the Approved Nominee to enable the Subcontractor to decide whether to grant its consent to the Approved Nominee.

6.10 Bonds

If the State gives a Novation Notice then, as from the Effective Date, Project Co must (with the support of the Subcontractor to effect this provision) either:

- (a) procure the novation or assignment to the State (or, subject to clause 6.9, the Approved Nominee) of any [insert bonds to be novated/assigned] (each as defined in the Subcontract) held by Project Co under the Subcontract prior to the Effective Date (**Bonds**); or
- (b) procure the issue to the State (or, if applicable, the Approved Nominee) of replacement bonds for the same undrawn value and on the same terms as the Bonds held by Project Co under the Subcontract prior to the Effective Date.

6.11 Insurances

- (a) If the Subcontractor is required under the Subcontract to take out and/or maintain any insurance required under clause 46 (*Insurance*) of the Project Deed to be taken out and maintained by Project Co (each such insurance, a **Subcontract Insurance**), then the Subcontractor undertakes to the State to:
 - (i) take out and/or maintain the Subcontract Insurances; and
 - (ii) comply with clause 46 (*Insurance*) and Schedule 22 (*Insurance Schedule*) of the Project Deed with respect to the Subcontract Insurances, as if that clause and Schedule were set out in full in this Deed (*mutatis mutandis*).
- (b) The Subcontractor acknowledges and agrees that the proceeds of any Subcontract Insurance will be applied in accordance with clause 46.11 (*Application of Insurance Proceeds*) of the Project Deed.

6.12 Other documents under the Subcontract

If the State gives a Novation Notice then, as from the Effective Date, Project Co must procure the novation or assignment to the State (or, if applicable, the Approved Nominee) of:

- (a) [insert list of documents to be novated/assigned (eg, collateral warranty deeds)].

7. Appointment of Subcontractor as Principal Contractor

[Note: This clause is to be reviewed in respect of the relevant Subcontractor.]

- (a) In this clause 7, the terms 'workplace', 'construction project', 'principal contractor' and 'WHS management plan' have the same meanings as given to those terms under the WHS Legislation.
- (b) Without limiting the Subcontractor's obligations under any other provision of the Project Documents that the Subcontractor is a party to:
 - (i) the State:

- (A) engages the Subcontractor as the principal contractor for any construction project forming the whole or part of the [Works][Services] under regulation 293 of the WHS Regulation; and
 - (B) authorises the Subcontractor to have management or control of that part of the workplace to which the construction project relates and to discharge the duties of a principal contractor under the WHS Regulation in relation to any construction project forming the whole or part of the [Works][Services];
- (ii) the Subcontractor agrees that its engagement and appointment as principal contractor in respect of any construction project in relation to the [Works][Services] will continue until the earlier of:
 - (A) that construction project being complete;
 - (B) the termination of the Subcontract; and
 - (C) the Expiry Date;
 - (iii) the Subcontractor accepts the engagement in clause 7(b)(i) and agrees to discharge the duties imposed on a principal contractor under the WHS Legislation and under the Project Deed, this Side Deed and the State Project Documents (as applicable) and the Subcontractor's WHS management plan for the construction project;
 - (iv) if the State's engagement of the Subcontractor as a principal contractor is not effective for any reason, the Subcontractor agrees to discharge the duties imposed on a principal contractor under the WHS Regulation as if it had been engaged as the principal contractor for the construction project under the WHS Regulation, the WHS management plan for the construction project, the Project Deed, the Side Deeds and State Project Documents (as applicable); and
 - (v) if the Subcontractor fails to comply with any of its obligations as principal contractor under the WHS Regulation, the WHS management plan for the construction project, the Project Deed, the Side Deeds and the State Project Documents (as applicable), the State may direct Project Co to carry out the Subcontractor's obligations as principal contractor.

8. Representations and warranties

8.1 Representations and warranties by Subcontractor and Parent Guarantor

- (a) The Subcontractor and the Parent Guarantor each represent and warrant for the benefit of the State that:
 - (i) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Deed and each other Project Document to which it is a party and all necessary action has been taken to authorise that execution, delivery and performance;
 - (ii) **(legality)**: the execution, delivery and performance of this Deed and each other Project Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
 - (iii) **(validity)**: this Deed and each other Project Document to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;
 - (iv) **(registration)**: it is duly registered, properly constituted and remains in existence;
 - (v) **(no trust relationship)**: except as stated in this Deed, it is not the trustee, manager or Responsible Entity of any trust nor does it hold any property subject to or impressed by any trust;

- (vi) **(information true and correct)**: all information provided by it to the State is as at the date on which it is provided true and correct and neither the Subcontractor nor the Parent Guarantor is aware of any material facts or circumstances that have not been disclosed to the State and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed or consent to the entry into the Subcontract;
- (vii) **(litigation)**: no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a Material Adverse Effect upon it or its ability to perform its financial and other obligations under this Deed or any other Project Document to which it is a party;
- (viii) **(Insolvency Event)**: no Insolvency Event has occurred in respect of it;
- (ix) **(accounts)**:
 - (A) its most recent consolidated audited (if the requirement for auditing is applicable) accounts give a true and fair view of its and its subsidiaries' state of affairs as at the date to which they relate and the results of its and its subsidiaries' operations for the accounting period ended on such date;
 - (B) there has been no material adverse change in its or its subsidiaries' state of affairs since such date; and
 - (C) such accounts have been prepared in accordance with the Corporations Act and accounting principles and practices generally accepted in Australia consistently applied, except to the extent of departures from such principles and practices disclosed in such accounts;
- (x) **(no default)**:
 - (A) it is not in default under any document or agreement binding on it or its assets which relates to financial indebtedness; and
 - (B) nothing has occurred which would, with the giving of notice and/or lapse of time, constitute an event of default, cancellation, prepayment event (pursuant to a bona fide right to exercise prepayment) or similar event (whatever called) under any such document or agreement, which would have a Material Adverse Effect;
- (xi) **(no immunity)**: neither it nor any of its assets enjoys any immunity from set off, suit or execution in any jurisdiction; and
- (xii) **(own investigations)**: in entering into this Deed, the Subcontract, the Parent Guarantee and any other Project Document to which it is a party it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by the State, Project Co or any other person unless in respect of Project Co or any other person, other than the State or an Associate of the State, it is expressly permitted to do so in accordance with a Project Document to which it is a party.

8.2 Repetition of representations and warranties

The representations and warranties in this clause 8 are taken to be repeated immediately before Financial Close, on the basis of the facts and circumstances as at that date.

8.3 Reliance on representations and warranties

Each of the Subcontractor and the Parent Guarantor acknowledge that the State executed this Deed and agreed to take part in the transactions that this Deed contemplates in reliance on the representations and warranties that are made or repeated in this clause 8.

9. Undertakings by Subcontractor and Parent Guarantor

The Subcontractor and the Parent Guarantor each undertake to the State as follows:

- (a) **(notification of Default Event)**: in the case of the Subcontractor, it will notify the State of any Default Event promptly after it gives notice of that Default Event in accordance with clause [insert relevant clause that relates to notice of Project Co Event of Default] of the Subcontract;
- (b) **(documents in relation to Default Event)**: in the case of the Subcontractor, it will promptly give the State a copy of all documents issued by the Subcontractor to Project Co in relation to a Default Event;
- (c) **(no amendment without consent)**: it will not, without first obtaining the consent of the State:
 - (i) make or permit any amendment or replacement of or addition to;
 - (ii) subject to clause 4.2, terminate, surrender, rescind or accept repudiation of;
 - (iii) permit the novation, assignment or substitution of any party's rights, obligations or interest in, except when in accordance with this Deed or clause [insert relevant clause that relates to the replacement of D&C Subcontractor or Operator] of the Financiers Tripartite Deed; or
 - (iv) allow any express waiver of its material rights and obligations under,

a Subcontract Document, provided that the State will not withhold its consent to an amendment or other action contemplated in clauses 9(c)(i) to 9(c)(iv) to which it has consented in accordance with the Project Deed;
- (d) **(disposals)**: it will not, after Financial Close, transfer, assign, mortgage, charge, encumber or otherwise deal with its rights, obligations or interests in a Subcontract Document without first procuring that the proposed transferee, assignee, mortgagee or chargee executes a deed in favour of the State (in form and substance approved by the State) pursuant to which the transferee, assignee, mortgagee or chargee agrees to accept and be bound by this Deed as if it were the Subcontractor or Parent Guarantor (as the case may be);
- (e) **(attend meetings and inspections)**: it will (when reasonably requested by the State):
 - (i) attend, where reasonable and appropriate, meetings with the State or any of the State's Associates;
 - (ii) provide the State or any of the State's Associates and authorised personnel with:
 - (A) in the case of the Subcontractor, full access to:
 - (I) the Site; and
 - (II) any other place where any [Works][Services] are being carried out or materials are being prepared or stored,

to the extent provided in the Project Deed; and
 - (B) any other information, records or documents that the State or any of its Associates (acting reasonably) requires in relation to the carrying out of the [Works][Services] or compliance with the Subcontract or any information required by the State to comply with requests from the New South Wales Auditor-General; and

- (iii) permit the State or any of the State's Associates to attend all tests and inspections to be carried out in connection with the Project in accordance with the terms of the Subcontract, to the extent provided in, and in accordance with, the Project Deed; and
- (f) **(access to records)**: in the case of the Subcontractor, at the request of the State to the extent provided in, and in accordance with, the Project Deed, the Subcontractor will:
 - (i) permit the State or any of its Associates to inspect all records, reports, plans, programs, specifications and design documents prepared or kept by the Subcontractor in relation to the [Works][Services] and the Project; and
 - (ii) supply the State or any of its Associates with a copy of any such report or document which they may require from time to time.

10. Acknowledgement by Project Co

Project Co consents to the terms of this Deed and will co operate in the implementation of this Deed.

11. Dispute Resolution

If any dispute or difference of opinion arises between the parties under this Deed, each party may refer any such matter for resolution in accordance with this clause 11 and the dispute or difference of opinion must be resolved in the same manner that disputes or differences of opinion under the Project Deed are resolved. Accordingly, the provisions of clauses 50 (Dispute Resolution procedure) to 53 (Arbitration) of the Project Deed are incorporated into this Deed but as if:

- (a) the only persons party to the Project Deed, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
- (b) the only matters for expert determination under those provisions are the matters referred for expert determination under this Deed.

12. GST

- (a) **(Interpretation)**:
 - (i) Except where the context suggests otherwise, terms used in this clause 12 have the meanings given to those terms by the GST Act (as amended from time to time).
 - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 12.
 - (iii) Unless otherwise expressly stated, all consideration to be provided under this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 12.
 - (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) **(Reimbursements)**: Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

- (c) **(Additional amount of GST payable):** Subject to clause 12(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:
- (i) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 12), for that supply is exclusive of GST;
 - (ii) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
 - (iii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 12(c)(ii).
- (d) **(Variation of GST):**
- (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 12(c) and clause 12(e)), varies from the additional amount paid by the Recipient under clause 12(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 12(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 12(c).
 - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) **(Exchange of non-monetary consideration):**
- (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 12(c) applies is a Taxable Supply made by the Recipient (the **Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 12(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
 - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 12(c) (or the time at which such GST Amount would have been payable in accordance with clause 12(c) but for the operation of clause 12(e)(i)).
- (f) **(No merger):** This clause 12 will not merge on completion or termination of this Deed.
- (g) **(Application of Project Deed):** If clause 36 (*Payments Adjustments & Taxes*) of the Project Deed would apply in connection with a Taxable Supply to which this clause 12 also applies then clause 36 (*Payments Adjustments & Taxes*) of the Project Deed will apply in connection with that supply and the provisions of this clause 12 (but for this paragraph) will not apply.

13. PPSA

- (a) If the State determines that this Deed is or contains a Security Interest, the parties (other than the State) agree to promptly do anything (including amending any document or executing any new document) which the State reasonably requires for the purposes of:
- (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
 - (ii) enabling the State to apply for registration, or give any notification, in connection with the Security Interest; or

- (iii) enabling the State to exercise rights in connection with the Security Interest.
- (b) The parties (other than State) agree not to exercise its rights to make any request of the State under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- (c) The parties (other than the State) irrevocably and unconditionally waives its right to receive any notice of any verification statement in respect of any financing statement or financing change statement relating to this Deed.

14. Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

State

Name: [Insert]

Address: [Insert]

Email: [Insert]

For the attention of: [Insert]

Project Co

Name: [Insert]

Address: [Insert]

Email: [Insert]

For the attention of: [Insert]

Subcontractor

Name: [Insert]

Address: [Insert]

Email: [Insert]

For the attention of: [Insert]

Parent Guarantor

Name: [Insert]

Address: [Insert]

Email: [Insert]

For the attention of: [Insert]

- (c) (**signed**): must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) (**form of delivery**): must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 14(b); and
- (e) (**taken to be received**): are taken to be received by the addressee at the address set out in clause 14(b):
 - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) subject to clause 14(f), in the case of prepaid post, on the fourth Business Day after the date of posting to an address within Australia and on the tenth Business Day after the date of posting by airmail to an address outside Australia;
 - (iii) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee, unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day; and
- (f) (**notices sent by post**): if sent by post from within Australia, must be sent using the 'priority' postal service offered by Australia Post (or any other postal service provider that assumes any or all of the functions of Australia Post) or other such similar service.

15. Confidential Information and disclosure

15.1 Confidential Information and disclosure by the State

- (a) Subject to clause 15.1(b), the State and any Authority may disclose any information in connection with the Project, including Project Information.
- (b) The State may only disclose the Commercially Sensitive Information:
 - (i) in accordance with:
 - (A) Laws or for the enforcement of any criminal law;
 - (B) where disclosure is in the course of the official duties of a minister, the Treasurer, the Premier or the Attorney General;
 - (C) to satisfy the disclosure requirements of the NSW Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW);
 - (D) to satisfy the requirements of Parliamentary accountability;

- (E) to any Associate of the State to the extent necessary for the purpose of the Project provided they agree to maintain the confidentiality of any Commercially Sensitive Information;
 - (F) in annual reports of the State; or
 - (G) in accordance with policies of the State or the NSW Government or any Authority;
- (c) for any tender process required to be conducted under the Termination Payments Schedule; or
 - (d) where the Commercially Sensitive Information is any part of the Design Deliverables, the Design Requirements or the Services Requirements, for the purpose of conducting any tender process required by the terms of the Project Deed.

15.2 Confidential Information and disclosure by Subcontractor and Parent Guarantor

- (a) **(Confidentiality obligation):** Subject to clauses 15.2(b) and clause 15.4(b), the Subcontractor and the Parent Guarantor must treat as secret and confidential all Confidential Information and must not, and must procure that its Associates do not, without the prior written consent of the State, make public or disclose to any person any Confidential Information.
- (b) **(Disclosure of Confidential Information):** Without limiting the Subcontractor and the Parent Guarantor's obligations under clause 15.2(a) and subject to clause 15.2(c), each of the Subcontractor and the Parent Guarantor may disclose Confidential Information:
 - (i) to its Associates to the extent necessary for the purpose of undertaking the Project; and
 - (ii) in accordance with clause 15.4.
- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, the Subcontractor and the Parent Guarantor (as applicable) must ensure that the person to whom the information is disclosed enters into a confidentiality deed with it to keep the Confidential Information confidential in accordance with this clause 15.
- (d) **(Permitted disclosure):** The Subcontractor and the Parent Guarantor may disclose Confidential Information and will not be required to seek the State's consent to a disclosure, announcement or statement under clause 15.2(a) or 15.3(a) or to enter into a confidentiality deed under clause 15.2(c) where the disclosure announcement or statement is:
 - (i) required by Law, provided that it:
 - (A) notifies the State of the requirement to make that disclosure; and
 - (B) takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
 - (ii) required to obtain legal or other advice from its advisers, provided that the relevant adviser is under a duty of confidentiality;
 - (iii) required to be made to a court in the course of proceedings to which the Subcontractor or the Parent Guarantor (as applicable) is a party; or
 - (iv) required by a relevant recognised stock exchange, subject to:
 - (A) the disclosure, announcement or statement does not refer to the State's or any of its Associates' involvement in the Project; and

- (B) the Subcontractor or the Parent Guarantor (as applicable) having used all reasonable endeavours to obtain the State's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant recognised stock exchange.

15.3 Public announcements by Subcontractor and Parent Guarantor

Subject to clause 15.2(d), the Subcontractor and the Parent Guarantor must:

- (a) not make any public disclosures, announcements or statements in relation to the Project or the State's or any of the State's Associates' involvement in the Project, without the State's prior consent;
- (b) comply with any terms and conditions the State imposes and must use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Project or the State's or any of the State's Associates' involvement in the Project before the relevant disclosure, announcement or statement is made; and
- (c) as soon as practicable, give to the State a copy of any public disclosure, announcement or statement agreed to or approved by the State in accordance with this clause 15.3 or for which the State's consent or approval was not required in accordance with clause 15.4.

15.4 Information public or known

Notwithstanding anything in this clause 15, any party may disclose information in connection with the Project (including any Confidential Information) if:

- (a) the party can demonstrate that the relevant information is already generally available and in the public domain otherwise than as a result of breach of this clause 15; or
- (b) the relevant information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party.

15.5 Disclosure by the State under GIPA Act

- (a) Notwithstanding the other provisions of this clause 15, the parties acknowledge that:
 - (i) the Project Documents and information concerning the Project Documents will be published on the State's contracts register in accordance with Division 5 of Part 3 of the GIPA Act; and
 - (ii) the State may make the Project Documents (other than the Key Subcontracts) or any of them available to any person.
- (b) The parties acknowledge that:
 - (i) the State will notify the Subcontractor of any proposed disclosure of Commercially Sensitive Information by the State under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;
 - (ii) following notification by the State in accordance with clause 15.5(b)(i), the State will take reasonable steps to consult with the Subcontractor before disclosing Commercially Sensitive Information under the GIPA Act;
 - (iii) if, following:
 - (A) notification by the State in accordance with clause 15.5(b)(i); or
 - (B) consultation between the State and the Subcontractor in accordance with clause 15.5(b)(ii),

the Subcontractor objects to disclosure of some or all of the Commercially Sensitive Information, the Subcontractor must provide details of any such objection within five Business Days after the date the Subcontractor received notification from the State or the date on which the consultation process concluded (as relevant);

- (iv) the State may take into account any objection received from the Subcontractor pursuant to clause 15.5(b)(iii) in determining whether the Commercially Sensitive Information identified by the Subcontractor should be disclosed; and
- (v) nothing in this clause 15.5 will limit or otherwise affect the discharge of the State's obligations under the GIPA Act.

15.6 Personal Information

The Subcontractor and the Parent Guarantor must:

- (a) not collect any Personal Information except in accordance with the Design Requirements and Services Requirements, all Laws and Policies;
- (b) not disclose any Personal Information to any person other than as is necessary to provide the Services or to comply with Laws, and then only in accordance with the Design Requirements and Services Requirements, all Laws and Policies; and
- (c) keep, and make available to the State on request, records detailing the recipient of any Personal Information that the Subcontractor has disclosed, the date of disclosure and the Personal Information that has been disclosed.

15.7 Confidential Design Information

The Subcontractor and the Parent Guarantor must:

- (a) **(Access)**: only provide access to Confidential Design Information to Relevant Persons who:
 - (i) are not Uncleared Personnel, are permitted to receive Confidential Design Information in accordance with clause 62.2 of the Project Deed and, where required by the State, have satisfied any Probity Investigation under clause 63.2 of the Project Deed; and
 - (ii) require access to that Confidential Design Information to [carry out the Works][perform the Services];
- (b) **(Limited portion)**: where it is necessary to grant access to Confidential Design Information in accordance with clause 15.7(a), grant access to the most limited portion of the Confidential Design Information possible; and
- (c) **(Records)**: keep, and make available to the State on request, records detailing the recipient of any Confidential Design Information, the date of disclosure and the Confidential Design Information that has been disclosed.

15.8 Privacy

- (a) **(Compliance)**: Without limiting any obligations in respect of privacy set out in the Design Requirements or the Services Requirements, the Subcontractor and the Parent Guarantor agree to, and will ensure that the Subcontract and any other subcontract entered into by the Subcontractor in relation to the Project contains terms which require the Subcontractor to, be bound by the Privacy Legislation with respect to any act done, or practice engaged in, by it in connection with this Deed or with the Subcontract or other relevant subcontract (as the case may be), in the same way as the State would be bound by the Privacy Legislation, in connection with that act or practice had it been directly done or engaged in by the State.

- (b) **(Release and Indemnity):** The Subcontractor and the Parent Guarantor must release, indemnify and must keep indemnified on demand the State and its Associates from and against any Claim or Liability (including any Claim made by, or Liability to, a third party) which the State or any of its Associates suffer or incur resulting from any act done or practice engaged in by the Subcontractor, the Parent Guarantor or any of their respective Associates in connection with the Project, which would, had that act or practice been done or engaged in by the State, have contravened any of the Privacy Legislation.

16. Termination of this Deed

- (a) **(Satisfaction of obligations under the Subcontract):** This Deed will terminate upon the performance and satisfaction of all of the obligations under the Subcontract.
- (b) **(Does not affect rights of parties):** The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.
- (c) **(Surviving clauses):** All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:
- (i) the State's rights to set-off and recover money;
 - (ii) confidentiality or privacy;
 - (iii) Intellectual Property Rights;
 - (iv) any obligation to make any records available to the State;
 - (v) any indemnity or financial security given in accordance with this Deed;
 - (vi) any limitation or exclusion of liability; and
 - (vii) any right or obligation arising on termination or expiry of this Deed.
- (d) **(Interpretation):** No provision of this Deed which is expressed to survive the termination, rescission or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination, rescission or expiration of this Deed.
- (e) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.

17. Governing law and jurisdiction

17.1 Governing law

This Deed is governed by, and must be construed according to, the laws of New South Wales, Australia.

17.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed; and

- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought within an inconvenient forum, if that venue falls within clause 17.2(a).

18. Miscellaneous

18.1 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

- (a) **(entire understanding)**: embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersedes any prior agreement of the parties.

18.2 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to the parties) required by Law or reasonably requested by another party to give effect to this Deed.

18.3 Waiver

- (a) **(Writing)**: A waiver given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver)**: A failure to, a delay in, or the partial exercise or enforcement of, a right provided by Law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Deed.
- (c) **(No waiver of another breach)**: No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

18.4 Consents and approvals

A consent or approval required under this Deed from the State may be given or withheld, or may be given subject to any conditions, as the State (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

18.5 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

18.6 Expenses

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

18.7 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Deed; or
- (b) that provision under the Law of any other jurisdiction.

18.8 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.
- (b) Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.

18.9 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

18.10 Moratorium legislation

The provisions of all Laws which come into effect after the date of this Deed and operate to:

- (a) increase or improve any of Project Co's, the Subcontractor's or the Parent Guarantor's rights, powers or remedies under this Deed or otherwise; or
- (b) prejudicially affect the exercise by the State of any right, power or remedy under this Deed or otherwise,

are expressly waived.

18.11 Limitation of liability

[Note: This clause is to be reviewed in respect of the relevant subcontract.]

- (a) Despite any other provision of any Project Document, the maximum aggregate liability of the Subcontractor and the Parent Guarantor to the State, Associates of the State, Project Co, Associates of Project Co, the *[insert any other relevant entities]* and *[insert]* Associates arising out of or in connection with the Project Documents whether in contract, in tort (including negligence) or otherwise is no greater than the maximum liability of the Subcontractor under clause *[insert]* of the Subcontract, subject to the same exceptions, exclusions and limitations as are specified in the Subcontract and the Parent Guarantee, less the liability incurred (from time to time) by the Subcontractor and the Parent Guarantor under the Subcontract Documents.
- (b) The payment by the Subcontractor or the Parent Guarantor of any moneys owing to Project Co under the Subcontract Documents:
 - (i) to the State in accordance with this Deed; or
 - (ii) in accordance with a direction of the State given under or in connection with this Deed,

will be deemed full discharge of the Subcontractor and the Parent Guarantor's obligations in respect of that amount under the Subcontract Documents.

- (c) The Subcontractor must, within 10 Business Days of a request by the State, notify the value of any claim against the Subcontractor or the Parent Guarantor by Project Co, *[insert any other relevant entities]* or their respective Associates, together with any further detail regarding the calculation of such amount as reasonably requested by the State.

Executed as a deed.

[Execution blocks to be inserted prior to execution.]

Schedule 30

New Grafton Correctional Centre Expert Determination Agreement

[Insert name of First Party]

[insert ABN/ACN/ARBN]

[Insert name of Second Party]

[insert ABN/ACN/ARBN]

[Insert name of Expert]

Schedule 30 — Expert Determination Agreement

Contents

1.	Definitions	3
1.1	Project Deed definitions incorporated	3
1.2	Definitions	3
1.3	Interpretation	4
2.	Appointment of Expert	5
3.	Confidentiality	6
4.	Costs and fees	6
5.	Exclusion of liability and indemnity	6
6.	Co-operation of the Parties	6
7.	GST	6
8.	Proportionate liability	8
9.	Governing Law and jurisdiction	8
Schedule 1	The Matter	9
Schedule 2	Rules for Expert Determination Process	10
Schedule 3	Schedule of Fees and Disbursements	13

Expert Determination Agreement made on

Parties [Insert party's name, ABN/ACN/ARBN and address] (First Party)

[Insert party's name, ABN/ACN/ARBN and address] (Second Party)

[Insert name and address of Expert agreed between the Parties or appointed pursuant to clause 52.2 (Selection of expert) of the Project Deed or the equivalent clause in each Relevant Agreement] (Expert)

Recitals

- A. The background to the Project is set out in the Project Deed.
- B. On [Insert date of referral] [Insert either: the Parties agreed / the [First Party/Second Party chose]] that the matter described in Schedule 1 be determined by an Expert appointed under clause [Insert clause under which the Expert was appointed (eg, pursuant to clause 52.2 (Selection of expert) of the Project Deed or the equivalent clause in each Relevant Agreement)] of the Relevant Agreement.
- C. In accordance with clause [Insert clause under which the Expert was appointed (eg, pursuant to clause 52.2 (Selection of expert) of the Project Deed or the equivalent clause in each Relevant Agreement)] of the Relevant Agreement, the Expert has been appointed to determine the Matter in accordance with the process set out in this Agreement and the Relevant Agreement.

Operative provisions**1. Definitions****1.1 Project Deed definitions incorporated**

Unless otherwise expressly defined, expression used in this Agreement have the meanings given to them in the Project Deed.

1.2 Definitions

Agreement means this agreement and includes all schedules, exhibits, attachments and annexures to it.

Code of Conduct means the code of conduct set out in section 2 of Schedule 2.

Matter means a dispute under, arising out of, or in connection with the Relevant Agreement and referred to expert determination under clause [Insert relevant clause (eg, pursuant to clause 52.1 (Expert determination) of the Project Deed or the equivalent clause in the Relevant Agreement)] of the Relevant Agreement.

Parties means the First Party and the Second Party.

Project Deed means the document entitled 'New Grafton Correctional Centre – Project Deed' between the State and Project Co dated [Insert date].

Relevant Agreement means [Note: Insert the relevant Project Document under which the Matter arose].

Rules means the 'Rules for Expert Determination Process' set out in Schedule 2.

Schedule of Fees and Disbursements is contained in Schedule 3.

1.3 Interpretation

In this Agreement:

- (a) (**headings**): headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) (**count and gender**): a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) (**Agreement and Schedule references**): a reference to:
- (i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Agreement; and
 - (ii) a section is a reference to a section of a Schedule;
- (d) (**document as amended**): a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) (**party**): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) (**person**): a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) (**legislation**): a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
- (h) (**Policies**): a reference to a Policy includes that Policy as amended or updated from time to time;
- (i) (**definitions**): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) (**'includes'**): 'includes' and 'including' will be read as if followed by the phrase '(without limitation)';
- (k) (**'or'**): the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;
- (l) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (m) (**'\$'**): a reference to '\$', AUD or dollar is to Australian currency;
- (n) (**Business Day**): if the day on or by which anything is to be done under this Agreement is not a Business Day, that thing must be done no later than the next Business Day;
- (o) (**day**): except as otherwise provided in this Agreement or where a reference is made to 'Business Days', day means a calendar day;

- (p) **(time)**: a reference to time is a reference to time in Sydney, Australia;
- (q) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (r) **(function)**: a function includes a power, authority or duty;
- (s) **(obligations and liabilities)**: a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (t) **('may')**: except to the extent that the State is expressly required under this Agreement to act reasonably in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion (and without regard to Project Co or the Expert) and the State has no obligation to do so;
- (u) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Agreement which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Agreement is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Agreement is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (v) **(asset)**: references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset;
- (w) **(remedy)**: the use of the word 'remedy' or any form of it in this Agreement means that the event to be remedied must be cured or its effects overcome; and
- (x) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

2. Appointment of Expert

- (a) **(Parties to appoint Expert)**: The Parties appoint the Expert to determine the Matter in the manner and within the times set out in this Agreement and the Expert accepts the appointment on the basis set out in this Agreement.
- (b) **(Agreement of Conditions)**: The Parties agree that:
 - (i) the Expert will act as an expert and not as an arbitrator;
 - (ii) neither the determination of the Matter, nor the process required by this Agreement, is an arbitration and any conference conducted during the determination is not a hearing conducted under any legislation or rules relating to any form of arbitration;
 - (iii) the rules of evidence do not apply to the determination; and
 - (iv) the Expert must conduct the determination of the Matter in accordance with the Rules including the Code of Conduct.
- (c) **(Independence and bias)**: If, at any time during the determination, the Expert becomes aware of circumstances that might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially, the Expert must inform the Parties immediately and, unless the Parties agree otherwise, terminate this Agreement.

3. Confidentiality

- (a) Subject to clause 3(b), all proceedings and submissions relating to the determination (including the fact that any step in the determination is occurring), and all documents prepared for the purposes of the determination (including the Expert's determination), must be kept confidential.
- (b) No such proceedings, submissions or documents referred to in clause 3(a), nor any other information relating to or arising out of the determination, may be divulged to any person except:
 - (i) with the prior written consent of both Parties;
 - (ii) as may be required by Law;
 - (iii) for the purpose of subsequent arbitration; or
 - (iv) to the extent necessary to enforce the Expert's determination.

4. Costs and fees

- (a) **(Parties joint and severally liable):** As between the Parties and the Expert, the Parties are jointly and severally liable for the payment of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements.
- (b) **(Calculation of costs and fees):** The Parties agree, unless otherwise provided in the Relevant Agreement, as between themselves that:
 - (i) they will each pay one half of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements; and
 - (ii) they will each bear their own costs of and incidental to the preparation of this Agreement and their participation in any determination.

5. Exclusion of liability and indemnity

Except in the case of fraud, the Expert will not be liable to either Party for any act or omission by the Expert in the performance or purported performance of this Agreement. The Parties jointly and severally indemnify the Expert against all Claims or Liability in connection with any act or omission by the Expert (except fraud) in the performance or purported performance by the Expert of the terms of this Agreement.

6. Co-operation of the Parties

Each Party agrees to take part in the determination in good faith and to comply with the reasonable requests and directions of the Expert in relation to the conduct of the determination.

7. GST

- (a) **(Interpretation):**
 - (i) Except where the context suggests otherwise, terms used in this clause 7 have the meanings given to those terms by the GST Act (as amended from time to time).
 - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 7.

- (iii) Unless otherwise expressly stated, all consideration to be provided under this Agreement is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 7.
- (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) **(Reimbursements):** Any payment or reimbursement required to be made under this Agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(Additional amount of GST payable):** Subject to clause 7(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Agreement:
 - (i) any amount payable or consideration to be provided under any provision of this Agreement (other than this clause 7), for that supply is exclusive of GST;
 - (ii) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
 - (iii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 7(c)(ii).
- (d) **(Variation of GST):**
 - (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 7(c) and clause 7(e)), varies from the additional amount paid by the Recipient under clause 7(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 7(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 7(c).
 - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Agreement as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) **(Exchange of non-monetary consideration):**
 - (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 7(c) applies is a Taxable Supply made by the Recipient (the **Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 7(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
 - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 7(c) (or the time at which such GST Amount would have been payable in accordance with clause 7(c) but for the operation of clause 7(e)(i)).
- (f) **(No merger):** This clause 7 will not merge on completion or termination of this Agreement.
- (g) **(Project Deed):** If clause 36 (*Payments Adjustments & Taxes*) of the Project Deed would apply in connection with a Taxable Supply to which this clause 7 also applies then clause

36 (*Payments Adjustments & Taxes*) of the Project Deed will apply in connection with that supply and the provisions of this clause 7 (but for this paragraph) will not apply.

8. Proportionate liability

To the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this Agreement, howsoever those rights, obligations or liabilities are sought to be enforced.

9. Governing Law and jurisdiction

- (a) (**Governing Law**): This Agreement is governed by, and must be construed according to, the Laws of New South Wales, Australia.
- (b) (**Jurisdiction**): Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Agreement.

Schedule 1 – The Matter

[Description of matter to be inserted]

Schedule 2 – Rules for Expert Determination Process

1. Commencement

The expert determination process begins when the Expert accepts an appointment to determine the Matter in accordance with these Rules including the Code of Conduct.

2. Code of Conduct

- (a) The function of the Expert is to make a determination of the Matter in accordance with the Relevant Agreement, the Project Deed and this Agreement, including these Rules and the Code of Conduct.
 - (b) The Expert must receive the written submissions and responses of the Parties in accordance with the procedures specified in these Rules and may require further information or documentation from the Parties which is reasonably necessary to determine the Matter.
 - (c) The Expert must decide whether a conference is necessary to receive further information. The Expert must inform the Parties of the subject matter of any conference and may hear representations only on those matters during any such conference.
 - (d) The Expert must disclose to both Parties all information and documents received.
 - (e) If a Party fails to make a written submission or attend a conference, the Expert may continue with the process.
 - (f) Subject to section 4 of these Rules, meetings and discussions with the Expert must only take place in the presence of both Parties.
-

3. Written Submissions

- (a) Within 5 Business Days after the date that this expert determination process begins, the Party who gave notice under [*Insert either: clause 52.1 (Expert determination) of the Project Deed or the equivalent clause of the Relevant Agreement*] (**Party A**) must give the other Party (**Party B**) and the Expert:
 - (i) a written statement describing the Matter referred for expert determination;
 - (ii) any agreed statement of facts; and
 - (iii) a written submission on the Matter in support of Party A's contentions.
 - (b) Within 5 Business Days after the statement in section 3(a) is served, Party B must give Party A and the Expert a written response to Party A's submissions.
 - (c) If the Expert considers it appropriate, Party A may reply in writing to the other Party's response in section 3(b) within the time allowed by the Expert.
 - (d) If the Expert decides further information or documentation is required for the determination of the Matter, the Expert may direct one or more Parties to provide such further submissions, information or documents as the Expert may require.
-

4. Conference

- (a) The Expert may, if he or she thinks appropriate, call a conference of the Parties. Unless the Parties agree otherwise, the conference will be held in Sydney, Australia.
-

- (b) At least 5 Business Days before the conference, the Expert must inform the Parties of the date, venue and agenda for the conference.
- (c) The Parties must appear at the conference and may make submissions on the subject matter of the conference. If a Party fails to appear at a conference of which that Party had been notified under section 4(b), the Expert and the other Party may nevertheless proceed with the conference and the absence of that Party will not terminate or discontinue the expert determination process.
- (d) The Parties:
 - (i) may be accompanied at a conference by legal or other advisers; and
 - (ii) subject to the terms of this Agreement and the Relevant Agreement, will be bound by any procedural directions given by the Expert in relation to the expert determination process.
- (e) The conference must be held in private.
- (f) If required by any Party, transcripts of the conference proceedings must be taken and made available to the Expert and the Parties.

5. General

- (a) In making a determination or calling or holding a conference, the Expert must proceed in accordance with the Relevant Agreement, this Agreement and these Rules.
- (b) Subject to section 4(c), meetings and discussions with the Expert must only take place in the presence of both Parties.
- (c) Without limiting clause 2(a) of the Agreement, the Expert must:
 - (i) inform the Parties of:
 - (A) any relationship or interest the Expert has with the Parties or their respective Associates;
 - (B) any interest the Expert has in the matters in dispute; and
 - (C) any circumstance which might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially,immediately upon becoming aware of any such circumstance; and
 - (ii) upon making any disclosure under this section 5(c), unless and until the Parties agree otherwise, terminate the proceedings.

6. The Determination

- (a) As soon as possible after receipt of the submissions or after any conference and, in any event not later than 30 days after the Expert's acceptance of appointment, the Expert must:
 - (i) determine the Matter between the Parties; and
 - (ii) notify the Parties of that determination.
- (b) The determination of the Expert must:
 - (i) be in writing stating the Expert's determination and giving reasons;

- (ii) be made on the basis of the submissions (if any) of the Parties, the conference (if any) and the Expert's own expertise; and
 - (iii) meet the requirements of the Relevant Agreement.
- (c) To the extent permitted by Law, the Expert's determination will be final and binding on the Parties unless:
- (i) the Expert's determination includes:
 - (A) payment of compensation and the amount claimed, or subsequently determined by the Expert, to be payable is equal to or greater than \$1,000,000 (Indexed); or
 - (B) an extension of a Date for Completion or rejection of an extension to a Date for Completion and the period of the extension that was claimed in the notice under clause 51(a) (*Senior Negotiations*) of the Project Deed is more than 5 Business Days; and
 - (ii) within 10 Business Days of receipt of the determination, a Party gives notice to the other Party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 52.4(a)(ii) (*Notification*) of the Project Deed.

7. Costs

Security for the Expert's fees and disbursements must be deposited by both Parties at the commencement of the expert determination process in accordance with any direction of the Expert.

8. Modification

These Rules may be modified only by agreement of the Parties and, if the Expert has been appointed, the Expert.

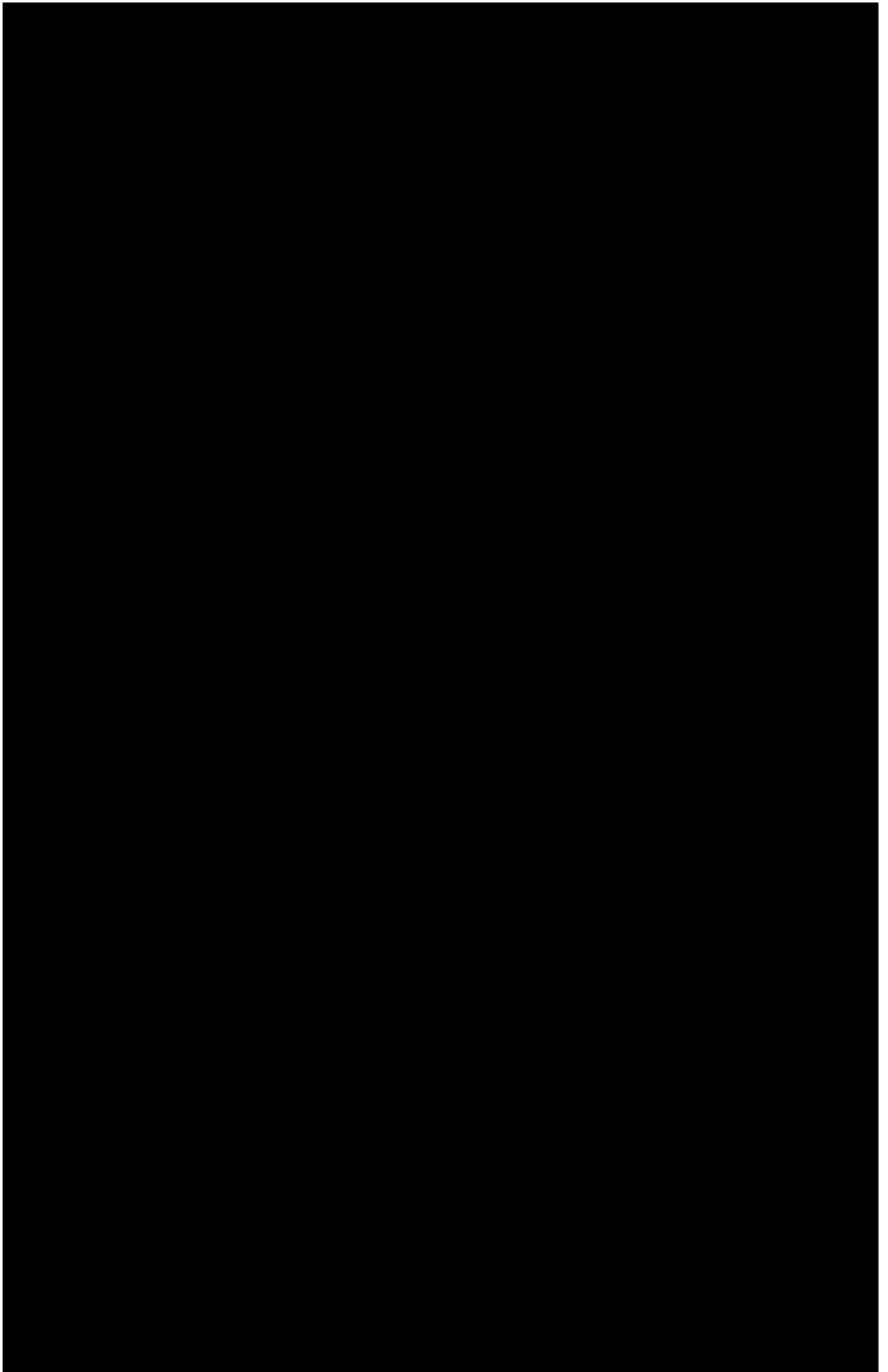
Schedule 3 – Schedule of Fees and Disbursements

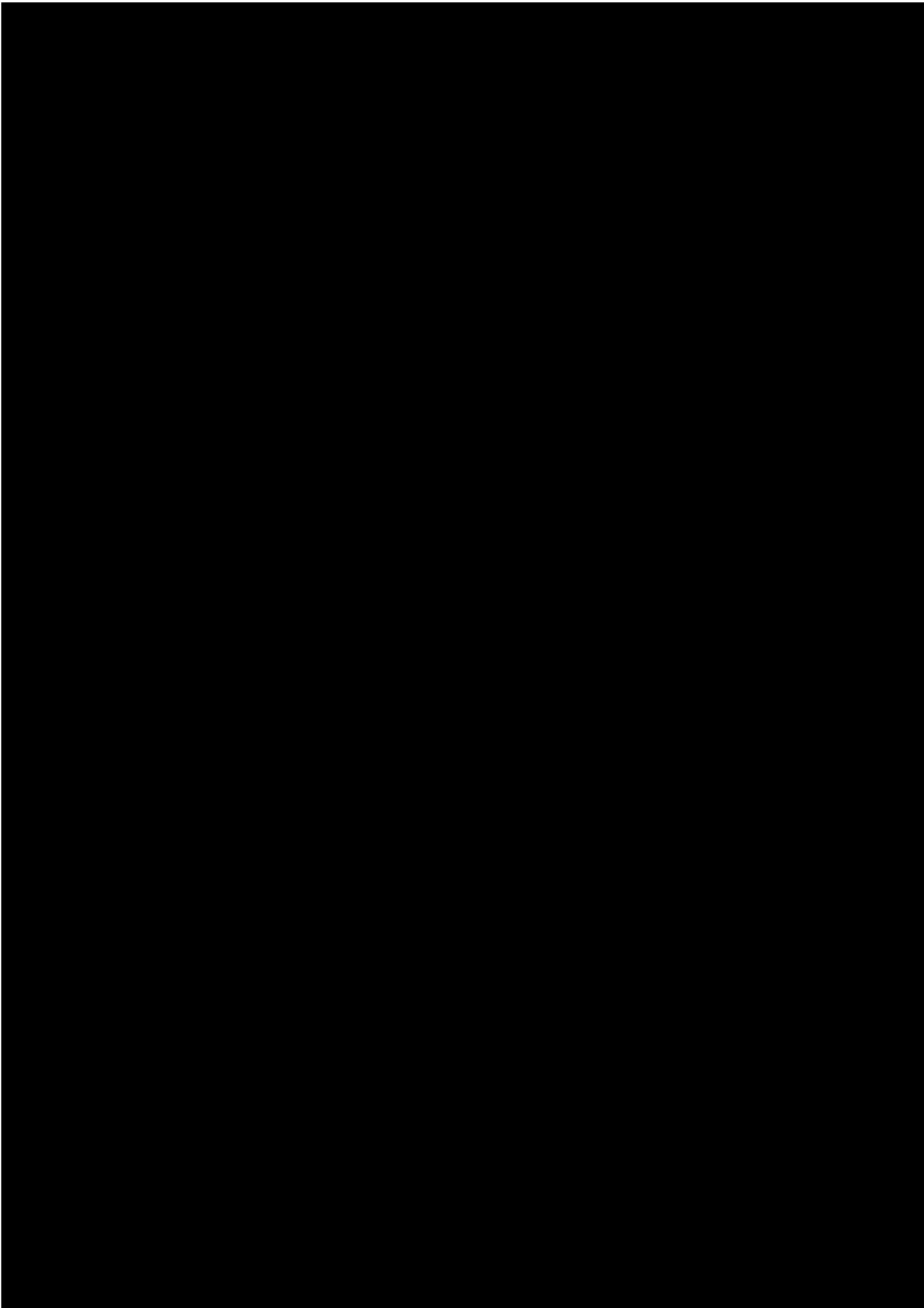
[Expert's fees and disbursements to be inserted.]

Signed as an agreement.

[Execution Blocks to be inserted prior to execution]

Schedule 31 – PAFA Act Deed Poll of Guarantee

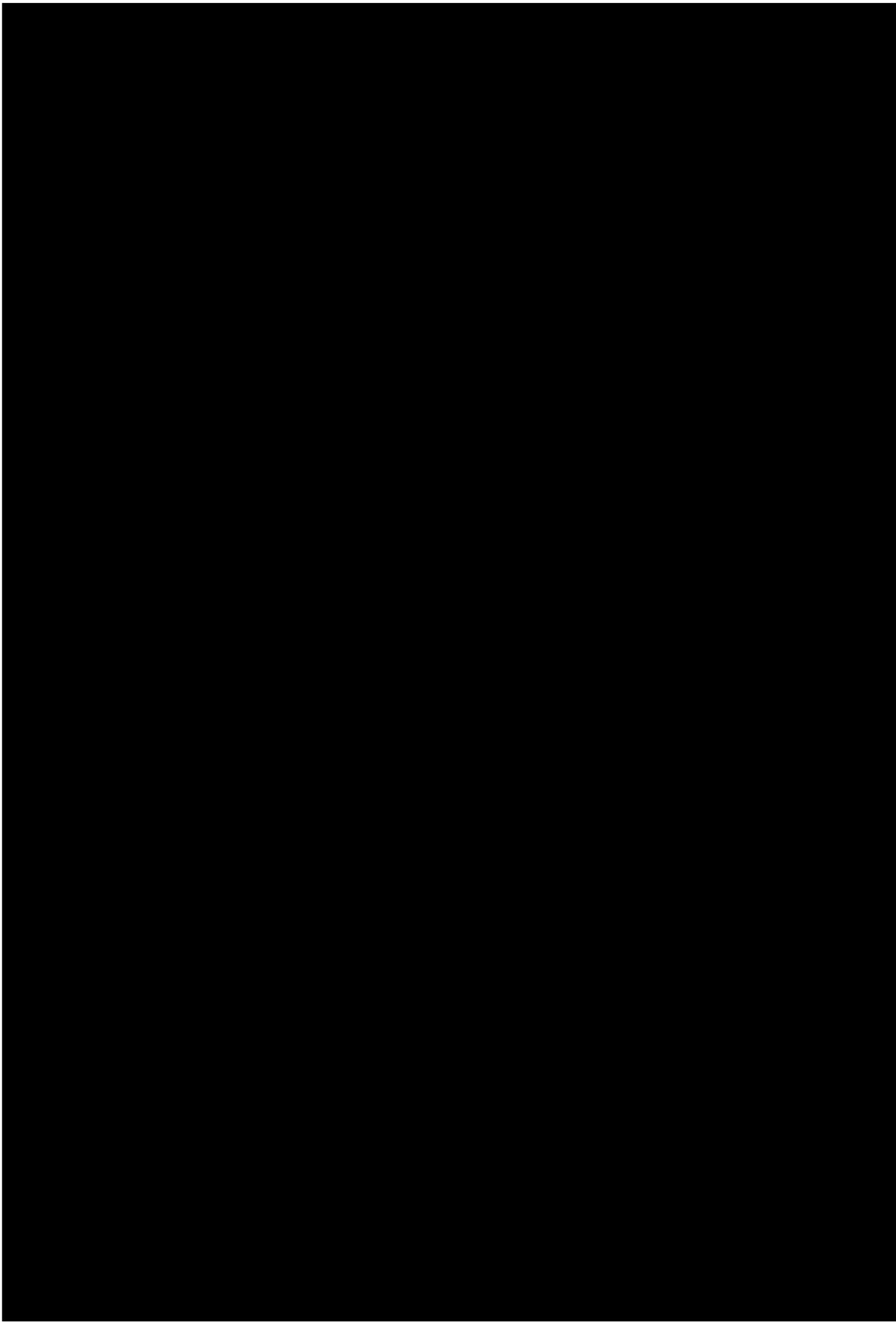


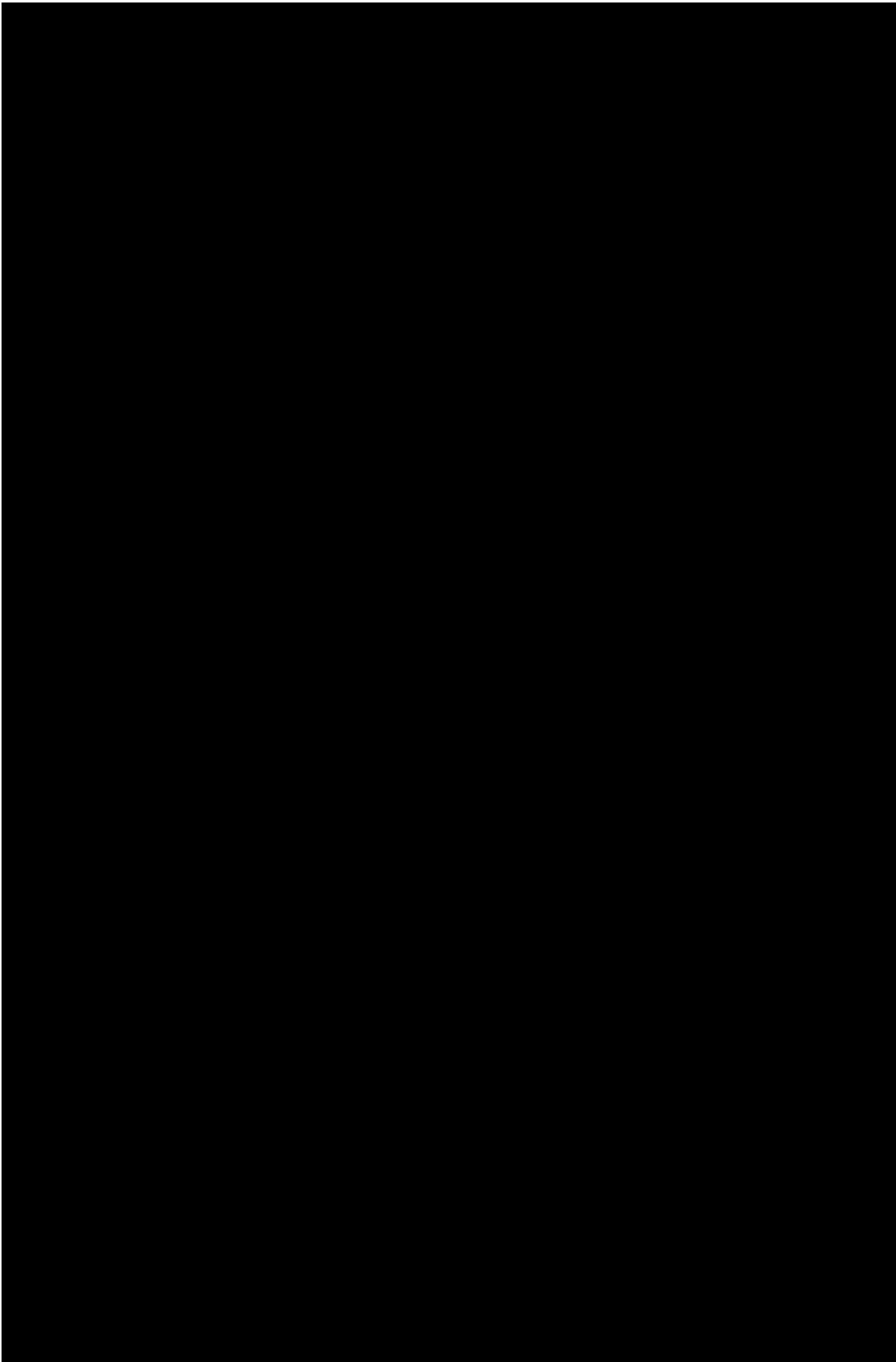


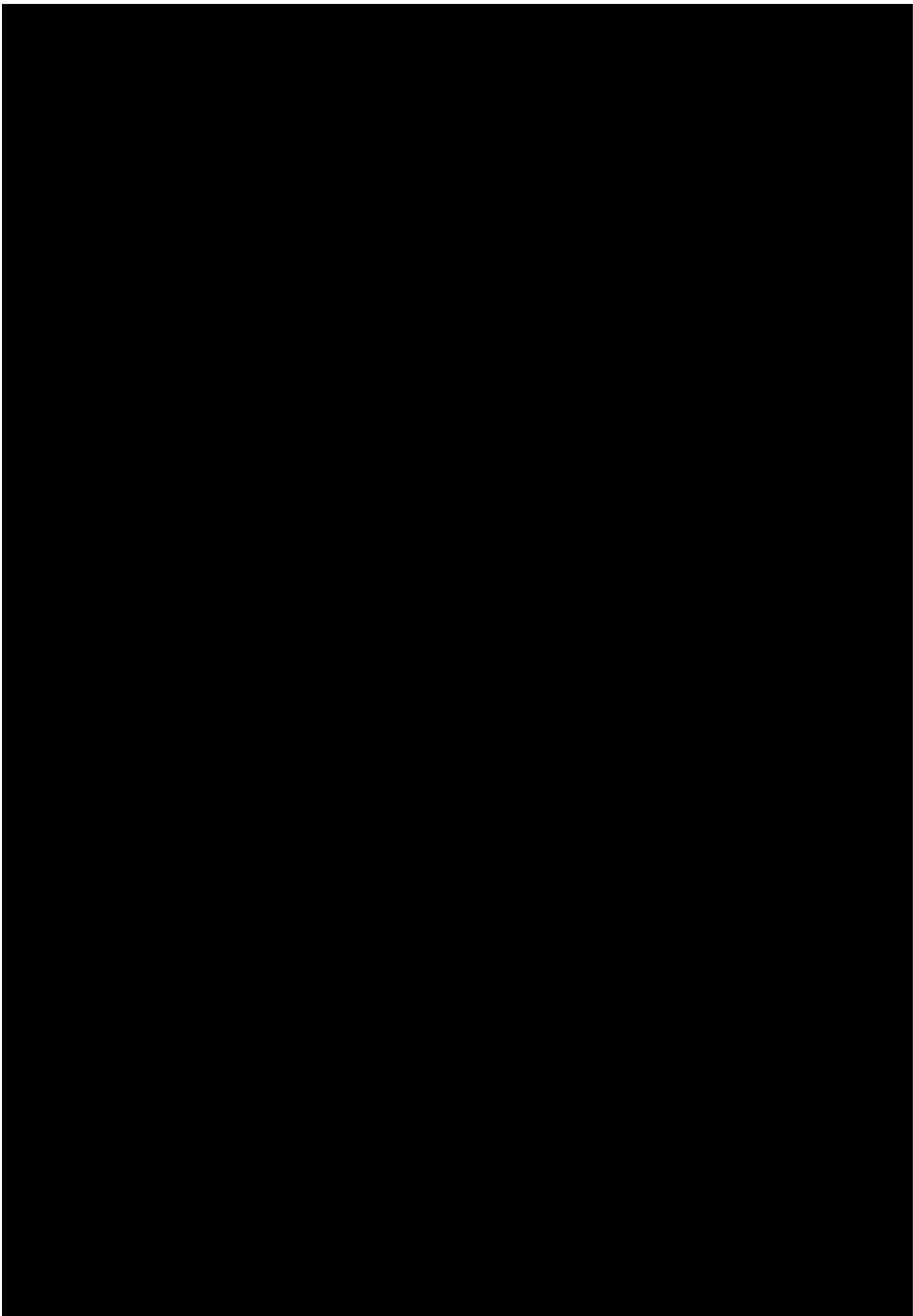
The first part of the document discusses the importance of maintaining accurate records of all transactions. This is essential for ensuring the integrity of the financial statements and for providing a clear audit trail. The second part of the document outlines the various methods used to collect and analyze data, including interviews, focus groups, and surveys. The third part of the document describes the results of the research, highlighting the key findings and their implications for practice. The final part of the document provides a conclusion and a list of references.

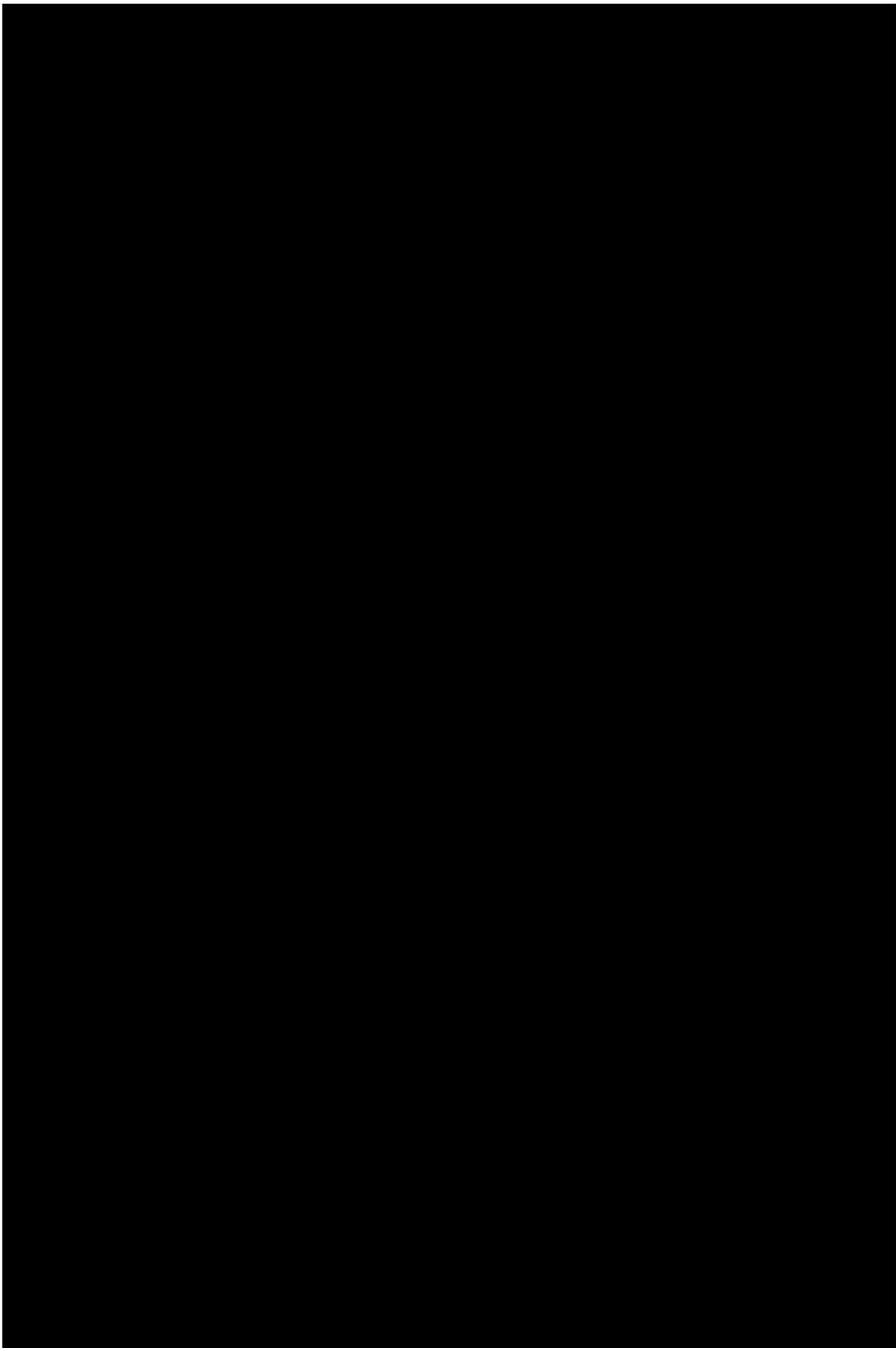
The research was conducted in a systematic and rigorous manner, following the principles of good research practice. The data were collected from a representative sample of participants, and the analysis was conducted using a range of statistical techniques. The results of the research are presented in a clear and concise manner, and the implications for practice are discussed in detail. The research has identified a number of key areas for further research, and the findings have been used to inform the development of new interventions and programs.

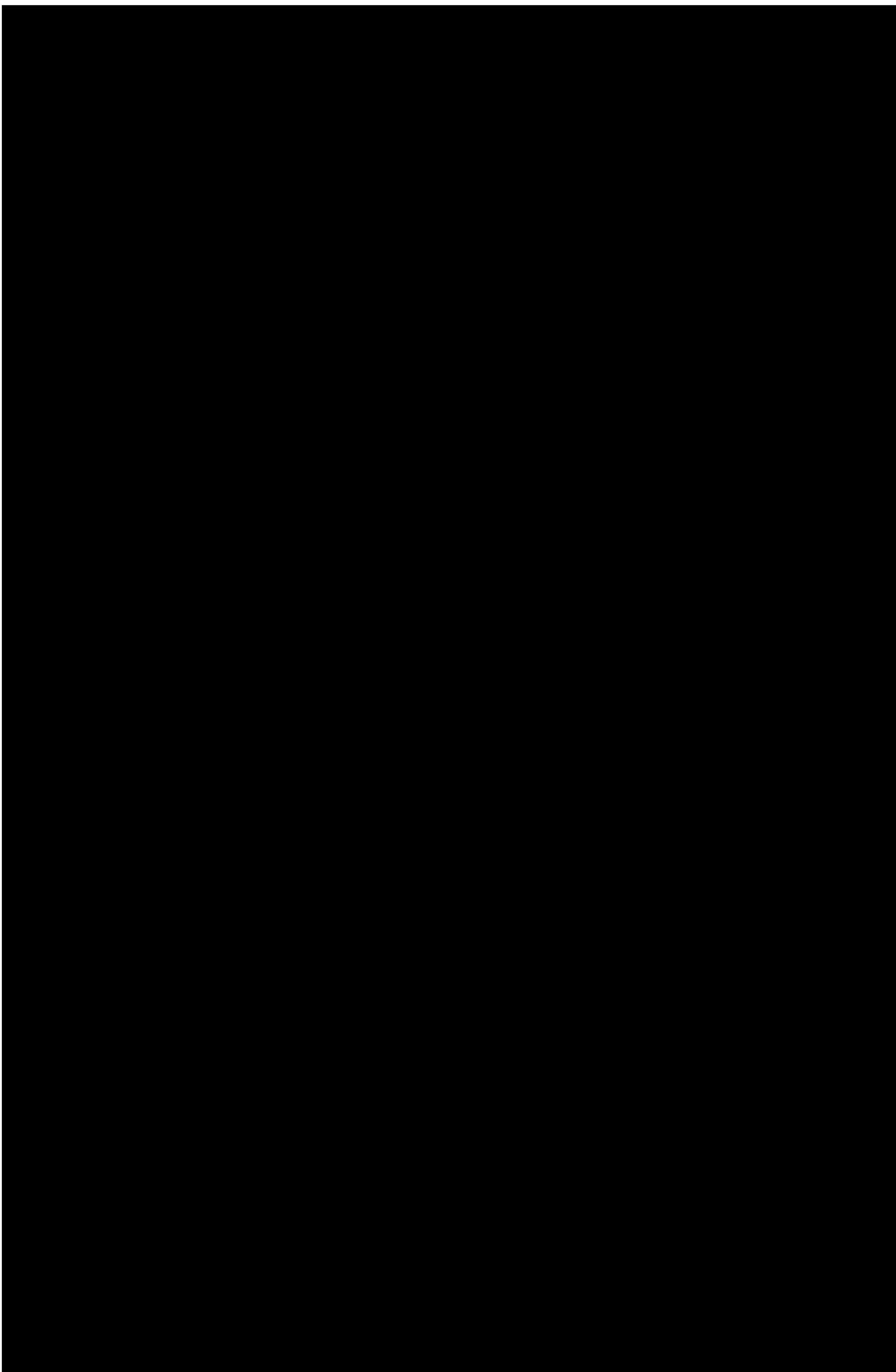
The research has also identified a number of key areas for further research, and the findings have been used to inform the development of new interventions and programs. The research has identified a number of key areas for further research, and the findings have been used to inform the development of new interventions and programs.

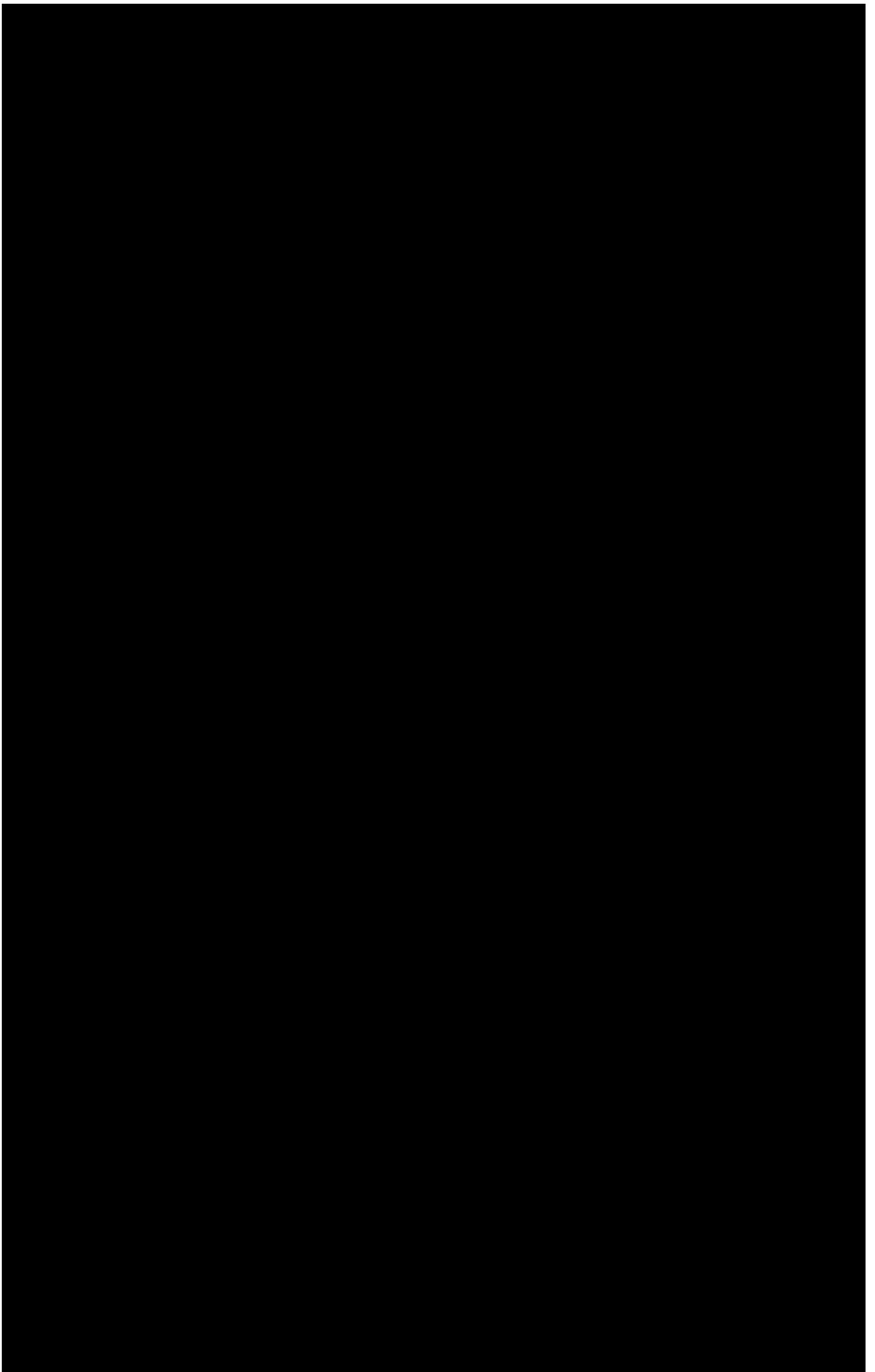


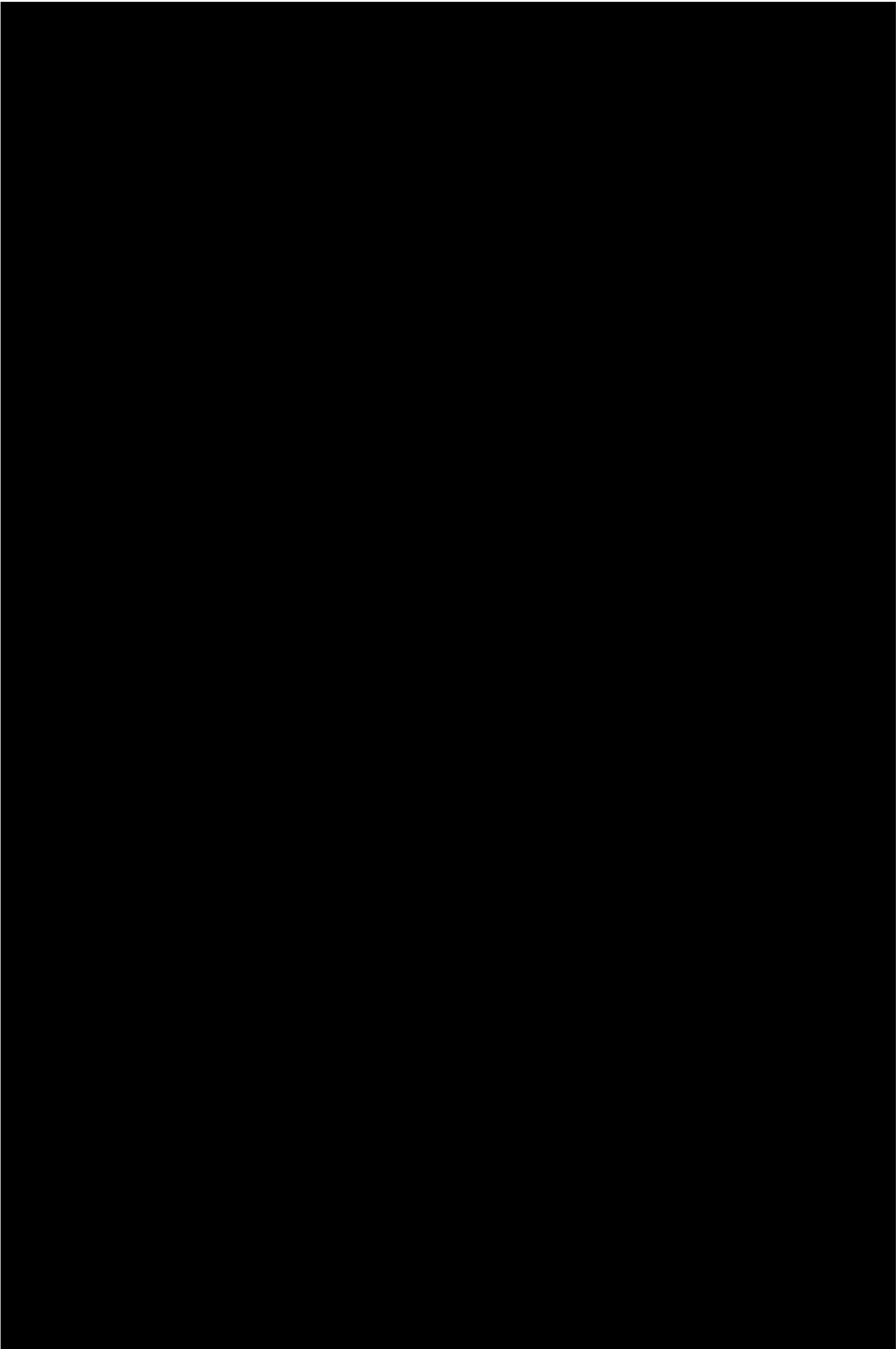












Schedule 32 — Proprietary Software Schedule



Schedule 32A – Escrow Deed

New Grafton Correctional Centre Escrow Deed

[insert]
(the State)

[insert]
(Project Co)

[insert]
(Escrow Agent)

[insert]
(D&C Subcontractor)

[insert]
(Operator)

[insert]
(Electronic Security Provider)

Contents

New Grafton Correctional Centre	1
Escrow Deed	1
1. Definitions and interpretation	1
1.1 Project Deed definitions incorporated	1
1.2 Definitions	1
1.3 Interpretation	1
2. Purpose of agreement	3
3. Term of Deed	3
4. Conduct of Escrow Agent	3
5. Project Co's obligations	3
5.1 Deposit of Source Code Materials	3
5.2 Maintenance of Source Code Materials	3
5.3 Other Material	3
5.4 Warranty	3
5.5 Licence	3
6. Escrow Agent's obligations	4
6.1 Confirmation of receipt	4
6.2 Custody	4
6.3 Storage and preservation of Escrow Material	4
6.4 Escrow Material register	4
6.5 Information and inspection requests	4
6.6 Loss of Escrow Material	4
6.7 No responsibility for completeness	4
6.8 Insurance	5
7. Testing and verification	5
7.1 State may test Escrow Material	5
7.2 Responsibility of Escrow Agent	5
7.3 Release to Inspector	5
7.4 Access rights	5
7.5 Return of Escrow Material	5
7.6 Costs	5
7.7 Deficiencies	5
8. Access to and release of Escrow Material	6
8.1 No access or release other than in accordance with this Deed	6
8.2 Release of Escrow Material by joint notice	6
8.3 Release of Escrow Material to the State	6
8.4 No responsibility to verify notice	6
9. Escrow fees and charges	6
9.1 Payment	6
9.2 Increases	6
9.3 Late payments	7
9.4 Other taxes	7
10. Goods and Services Tax (GST)	7
11. Confidentiality	8
11.1 Confidentiality of Escrow Material	8
11.2 Prohibited acts	8
11.3 After termination	8

12. Termination	8
12.1 Termination by Escrow Agent	8
12.2 Joint termination	8
12.3 New agreement	8
13. Assignment	9
13.1 Assignment by Escrow Agent	9
13.2 Assignment by State and Project Co	9
14. Subcontracting	9
15. Dispute Resolution	9
16. Notices	9
17. Governing law and jurisdiction	11
17.1 Governing law	11
17.2 Jurisdiction	11
18. Miscellaneous	11
18.1 Entire agreement	11
18.2 Further acts and documents	11
18.3 Survival of certain provisions	11
18.4 Waiver	11
18.5 Consents and approvals	12
18.6 Amendments	12
18.7 Expenses	12
18.8 Severance	12
18.9 No representation or reliance	12
18.10 Counterparts	12
18.11 Moratorium legislation	12
18.12 Proportionate liability	12
18.13 Indemnity held on trust	13
18.14 Set off	13
18.15 Remedies cumulative	13
Schedule 1 – Relevant Software	1
Schedule 2 – Escrow Fee	1

This **Escrow Deed** is made on

Between:

[insert] (**the State**)

[insert] (**Project Co**)

[Insert] (**Escrow Agent**)

[insert] (**D&C Subcontract**) [Note: Role of the D&C Subcontractor under this deed is to be resolved prior to execution.]

[insert] (**Operator**)

[insert] (**Electronic Security Provider**)

Recitals:

- A. The background to this Project is set out in the Project Deed.
- B. The Escrow Agent has been appointed by the State and Project Co to hold the Escrow Material in escrow.

1. Definitions and interpretation

1.1 Project Deed definitions incorporated

Unless otherwise expressly defined, expressions used in this Deed have the meaning given to them in or for the purpose of the Project Deed.

1.2 Definitions

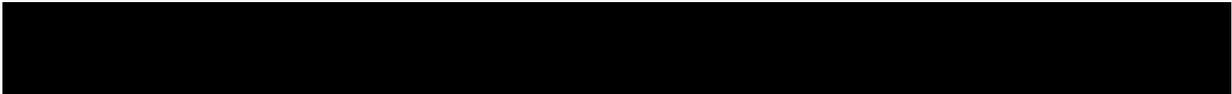
In this Deed, unless the context otherwise requires:

Commencement Date means the date of this Deed.

Deed means this deed and includes all schedules, exhibits, attachments and annexures to it.

Escrow Fee means the fees described in Schedule 2.

Escrow Material means:



New Release means any version of or addition to the Relevant Software produced by or on behalf of Project Co, or made available by or on behalf of Project Co from time to time (whether by way of updates, fixes, enhancements, additions or replacement versions).

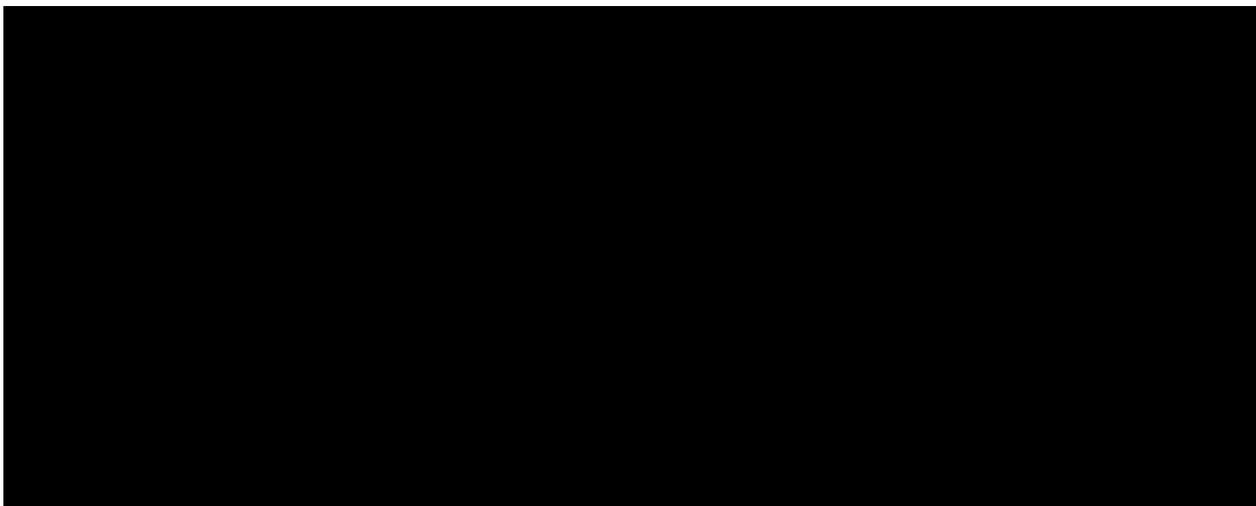


Production Version means the version of the Relevant Software that is deployed into production at the Site from time to time (and includes New Releases of that software deployed into production at the Site from time to time).

Project Deed means the document entitled "New Grafton Correctional Centre - Project Deed" between the State and Project Co dated on or about the date of this Deed.

Proprietary Development Environment means any proprietary programs used in the development environment for the Relevant Software in electronic form, including compilers, workbenches, tools and higher-level (or proprietary) languages employed by Project Co for the development, maintenance, and implementation of the source code, for which there is not a commercially available alternative available to the State on reasonable terms through readily known sources other than Project Co.

Relevant Software means the software listed in Schedule 1.



1.3 Interpretation

In this Deed:

- (a) (**headings**): headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;
- and unless the context otherwise requires:
- (b) (**count and gender**): a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) (agreement and schedule references): a reference to:
- (i) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Deed; and
 - (ii) a section is a reference to a section of a Schedule;
- (d) (**agreement as amended**): a reference to this Deed or to any other deed, agreement, or instrument includes a reference to this Deed or such other deed, agreement, or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) (**Party**): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) (**person**): a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) (**legislation**): a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) (**definitions**): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) ("**includes**"): "includes" will be read as if followed by the phrase "(without limitation)";
- (j) ("**or**"): the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) ("**\$**"): a reference to "\$", AUD or dollar is to Australian currency;
- (m) (**time**): a reference to time is a reference to time in Sydney, Australia;
- (n) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) (**obligations and liabilities**): a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (p) ("**may**"): the term "may", when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) (**construction**): where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
- (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity; and
- (r) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

2. Purpose of agreement

Subject to the terms and conditions of this Deed, to secure the interests of the State and Project Co under the Project Deed:

- (a) **(Deposit of Escrow Material)**: Project Co must deposit the Escrow Material in accordance with this Deed with the Escrow Agent in Sydney; and
- (b) **(Escrow Material)**: the Escrow Agent must act as escrowee of the Escrow Material.

3. Term of Deed

- (a) **(Commencement)**: Subject to clause 3(b), this Deed commences on the Commencement Date and will remain in force until:
 - (i) the Escrow Material is released in accordance with this Deed; or
 - (ii) the Deed is otherwise terminated.
- (b) **(Conditions Precedent)**: The satisfaction or waiver of the Conditions Precedent in accordance with clause 3 (Conditions Precedent) of the Project Deed, is a condition precedent to the coming into operation of this Deed (other than this clause 3).

4. Conduct of Escrow Agent

Neither the State nor Project Co will be liable for any act or omission of the Escrow Agent.

5. Project Co's obligations

5.1 Deposit of Source Code Materials

Project Co must deliver to, and deposit with the Escrow Agent, one copy of the Source Code Materials within [insert] days after the Commencement Date.

5.2 Maintenance of Source Code Materials

- (a) **(Updating the Source Code Materials)**: Project Co must, during the term of this Deed, maintain, amend, modify, update and enhance the Source Code Materials, and ensure that the Source Code Materials deposited with the Escrow Agent are kept up to date (and if necessary replaced), so that they accurately reflect the then-current Production Version of the Relevant Software to which the Source Code Materials relate.
- (b) **(Procedure)**: In depositing or updating Source Code Materials pursuant to paragraph (a), Project Co must comply with any reasonable instructions and conditions imposed by the Escrow Agent, including the completion of any documents evidencing deposit or updating of the Source Code Materials.

5.3 Other Material

Project Co and the State may agree Other Material to be deposited with the Escrow Agent and the Escrow Agent must accept custody of such Other Material deposited with it.

5.4 Warranty

Project Co warrants to the State that the Escrow Material is, to the best of the knowledge of the Subcontractor, free from any malicious computer software or data which would prevent any part of the Escrow Material from performing its desired function or which would prevent or impede a thorough and effective verification of the Escrow Material.

5.5 Licence

Project Co grants to the Escrow Agent a licence to deal with the Escrow Material as is necessary to enable the Escrow Agent to comply with its obligations under this Deed.

6. Escrow Agent's obligations

6.1 Confirmation of receipt

The Escrow Agent must give Project Co and the State written confirmation of receipt of all Escrow Material referred to in clauses 5.1, 5.2 and 5.3 immediately when it is received.

6.2 Custody

The Escrow Agent must accept custody of the Escrow Material on the date of delivery in accordance with clause 5 of this Deed and, subject to the terms and conditions of this Deed, must hold the Escrow Material on behalf of the Project Co and the State. Title to any physical materials on which the Escrow Material is stored will pass to the Escrow Agent upon delivery.

6.3 Storage and preservation of Escrow Material

The Escrow Agent must:

- (a) (**Location**): store the Escrow Material at the Escrow Agent's premises in Sydney; and
- (b) (**Preservation**): take all reasonably necessary steps to ensure the preservation, care, maintenance, safe custody and security of the Escrow Material while in the possession, custody or control of the Escrow Agent, including storage in a secure receptacle and in an environment that does not harm the Escrow Material.

6.4 Escrow Material register

The Escrow Agent must maintain a register of Escrow Material deposited, stored and released under this Deed in the form agreed by the State, Project Co and the Escrow Agent.

6.5 Information and inspection requests

- (a) (**Requests for inspection**): The Escrow Agent must promptly comply with a request of the State or Project Co to inspect and be furnished with a copy of the register referred to in clause 6.4 and to be furnished with information about storage, safety and security procedures relating to the Escrow Material.
- (b) (**Cost of Escrow Agent**): The reasonable costs of the Escrow Agent complying with a request in this clause 6.5 will be borne by Project Co.
- (c) (**State to reimburse for State requests**): The State will promptly reimburse Project Co for the costs of the Escrow Agent borne by Project Co arising from a request by the State under this clause 6.5.

6.6 Loss of Escrow Material

If the Escrow Material or any medium containing the Escrow Material is lost, destroyed or damaged while in the possession, custody or control of the Escrow Agent:

- (a) (**notification**): the Escrow Agent must promptly notify Project Co and the State; and
- (b) (**obligation to replace**): Project Co must within 7 Business Days replace the lost, damaged or destroyed Escrow Material to the extent it is replaceable at:
 - (i) the Escrow Agent's cost if the loss, damage or destruction was caused by the Escrow Agent's fraud, negligence, recklessness, act or omission or breach of this Deed; or
 - (ii) Project Co's and the State's cost (shared equally in each case) in all other circumstances.

6.7 No responsibility for completeness

The Escrow Agent has no obligation to verify:

- (a) (**Completeness**): the completeness or accuracy of Escrow Material, or of electronic or other notations on such deposits; or

- (b) (**Sufficiency**): that the Escrow Material is sufficient to enable the State to use the Escrow Material as contemplated by the Project Deed.

6.8 Insurance

- (a) (**Cover**): The Escrow Agent must:
- (i) effect and maintain insurance during the term of this Deed and for a period of 12 months after this Deed terminates which, in the State's reasonable opinion, is suitable and sufficient to provide the State with appropriate cover against the risk of legal liability to any person arising in connection with the Escrow Material; and
 - (ii) ensure that each policy of insurance names the State as an additional insured.
- (b) (**Evidence**): The Escrow Agent must provide the State with evidence of the terms and currency of the insurance required to be effected under paragraph (a) on the date of this Deed and whenever requested by the State.

7. Testing and verification

7.1 State may test Escrow Material

The State, or an independent assessor acting on behalf of the State (**Inspector**) may, on giving 5 Business Days' notice to Project Co, the Electronic Security Provider and the Escrow Agent, analyse and conduct tests in relation to the Escrow Material to verify that the Escrow Material has been deposited and maintained in accordance with the requirements of this Deed. The Inspector must permit Project Co to be present for this verification if Project Co wishes.

7.2 Responsibility of Escrow Agent

The Escrow Agent has no responsibility for testing and verification of the Escrow Material except as specified in clause 7.3.

7.3 Release to Inspector

The Escrow Agent must release the Escrow Material to the Inspector upon presentation of a copy of the notice issued to the Subcontractor under clause 7.1.

7.4 Access rights

The access granted to the Inspector may include the taking of copies of the Escrow Material and using copies of the Relevant Software with a computer system for the purpose of testing.

7.5 Return of Escrow Material

At the conclusion of any inspection the Inspector must return the Escrow Material and/or destroy or erase any copies as appropriate.

7.6 Costs

The cost of any such inspection will be borne by the State unless the verification shows that the Escrow Material does not contain the relevant materials, in which case Project Co must reimburse the State for its costs of the inspection including any amounts paid to the Inspector or the Escrow Agent.

7.7 Deficiencies

If the Inspector discovers any deficiency in the Escrow Material, the State may give Project Co notice requiring Project Co to correct the deficiency, at the expense of Project Co, within 5 Business Days, and in this respect time is of the essence.

8. Access to and release of Escrow Material

8.1 No access or release other than in accordance with this Deed

The Escrow Agent must not release, or allow access to, the Escrow Material except in accordance with the provisions of this Deed.

8.2 Release of Escrow Material by joint notice

- (a) The Escrow Agent will immediately release the Escrow Material to any person nominated by a notice signed by both the State and Project Co, that one of the following has occurred:
- (i) the Electronic Security Provider has ceased to carry on business, or that portion of its business required to deliver or maintain the Electronic Security System;
 - (ii) the Electronic Security Provider has become subject to any form of insolvency or administration (other than a solvent reconstruction); or
 - (iii) in the opinion of the State and Project Co (acting reasonably), the Electronic Security Provider is unwilling or unable to continue to support and maintain the Relevant Software.
- (b) Project Co will provide a copy of the notice to the Electronic Security Provider promptly and in any event within 2 Business Days of the date on which the Escrow Agent receives notice from the State and Project Co in accordance with clause 8.2(a) above.

8.3 Release of Escrow Material to the State

- (a) **(Release):** Unless ordered by a court not to release the Escrow Material, and provided that the Escrow Agent has received a copy of the notice under paragraph (b) given at least 5 Business Days prior to the notice under this paragraph (a), the Escrow Agent must release the Escrow Material to the State immediately upon receipt of a notice from the State that:
- (i) Project Co is unable or unwilling to perform its obligations under this Deed;
 - (ii) a Major Default or Default Termination Event has occurred under the Project Deed;
 - (iii) the Project Deed has been terminated; or
 - (iv) the Term of the Project Deed has expired.
- (b) **(Notice):** The State must give Project Co and the Electronic Security Provider not less than 5 Business Days prior written notice of giving any notice to the Escrow Agent under paragraph (a).

8.4 No responsibility to verify notice

The Escrow Agent is under no obligation or responsibility to verify or otherwise test the validity of any notice received under clause 8.3, or its contents.

9. Escrow fees and charges

9.1 Payment

During the term of this Deed, Project Co and the State will each pay 50% of the Escrow Fee to the Escrow Agent without demand in accordance with the payment terms of the Escrow Fee in Schedule 2.

9.2 Increases

The Escrow Agent may increase its fees in accordance with Schedule 2.

9.3 Late payments

- (a) (**Escrow Agent to notify**): The Escrow Agent will notify the parties within a reasonable period if either of them fails to make any payment to the Escrow Agent by the due date. On receipt of such notice, the other party may pay to the Escrow Agent all amounts for which the defaulting party is in arrears.
- (b) (**Deduction of late payments**): The State or Project Co may deduct amounts paid or incurred under paragraph (a) by the State or Project Co (as the case may be) from any moneys otherwise due from the State or Project Co (as the case may be) under the Project Deed or otherwise or recover such amounts as a debt.

9.4 Other taxes

Subject to clause 10, the Escrow Fee is inclusive of all taxes, duties, fees or other government charges which may be imposed under or in connection with this Deed.

10. Goods and Services Tax (GST)

- (a) (Interpretation):
 - (i) Except where the context suggests otherwise, terms used in this clause 10 have the meanings given to those terms by the GST Act (as amended from time to time).
 - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 10.
 - (iii) Unless otherwise expressly stated, all consideration to be provided under this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 10.
 - (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) (**Reimbursements**): Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) (**Additional amount of GST payable**): Subject to clause 10(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:
 - (i) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 10), for that supply is exclusive of GST;
 - (ii) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
 - (iii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 10(c)(ii).
- (d) (Variation of GST):
 - (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 10(c) and clause 10(e)), varies from the additional amount paid by the Recipient under clause 10(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 10(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 10(c).

- (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) (Exchange of non-monetary consideration):
 - (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 10(c) applies is a Taxable Supply made by the Recipient (the Recipient Supply), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 10(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
 - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 10(c) (or the time at which such GST Amount would have been payable in accordance with clause 10(c) but for the operation of clause 10(e)(i)).
- (f) (**No merger**): This clause 10 will not merge on completion or termination of this Deed.
- (g) (**Application of Project Deed**): If clause 36 (*Payments Adjustments & Taxes*) of the Project Deed would apply in connection with a Taxable Supply to which this clause 10 also applies then clause 36 (*Payments Adjustments & Taxes*) of the Project Deed will apply in connection with that supply and the provisions of this clause 10 (but for this paragraph) will not apply.

11. Confidentiality

11.1 Confidentiality of Escrow Material

The Escrow Agent must treat the Escrow Material which comes into its possession, control or custody under this Deed as confidential.

11.2 Prohibited acts

Other than as set out in this Deed, the Escrow Agent must not copy, reproduce, deal with or in any way use the Escrow Material or disclose it to any person without the permission of both Project Co and the State.

11.3 After termination

The obligations under this clause 11 survive the termination of this Deed or the release of the Escrow Material.

12. Termination

12.1 Termination by Escrow Agent

The Escrow Agent may, by giving 3 months prior written notice to the State and Project Co, terminate this Deed subject to the pro-rata refund of any advance payment of the Escrow Fee.

12.2 Joint termination

The State and Project Co may jointly terminate this Deed immediately:

- (a) (**Insolvency Event**): if an Insolvency Event has occurred in relation to the Escrow Agent; or
- (b) (**Breach**): if the Escrow Agreement is in breach of any obligation under this Deed so that there is a material failure by the Escrow Agent to perform or observe this Deed.

12.3 New agreement

If this Deed is terminated for any reason, the parties to this Deed (other than the Escrow Agent) must enter into a new escrow agreement on terms and conditions which are the same in all

material respects as those out in this Deed, with an alternative escrow agent who is reasonably acceptable to both the State and Project Co, within 20 Business Days after the date this Deed is terminated. If Project Co refuses to enter into a new escrow agreement complying with this clause 12.3 within 20 Business Days of the date this Deed is terminated, the Escrow Agent must release the Escrow Materials to the State. Where such an agreement is not entered into within that 20 Business Day period for any other reason, then, without limiting any other provision of this Deed, Project Co will hold the Escrow Material and clause 8.3 will apply as though references to the Escrow Agent were references to Project Co, until such time as an escrow agreement complying with the requirements of this clause 12.3 is entered into. This clause 12.3 survives termination of this Deed.

13. Assignment

13.1 Assignment by Escrow Agent

The benefit of this Deed will not be dealt with in any way by the Escrow Agent (whether by assignment or otherwise) without the prior consent of both Project Co and the State.

13.2 Assignment by State and Project Co

The State and Project Co may at any time assign, novate or otherwise transfer all or any part of their rights or liabilities under this Deed to any person to whom the State or Project Co assign their rights under the Project Deed.

14. Subcontracting

The Escrow Agent must not subcontract or otherwise arrange for another person to perform any part of this Deed or to discharge any of its obligations under this Deed without the prior consent of the State and Project Co.

15. Dispute Resolution

If any dispute or difference of opinion arises between the parties under this Deed, each party may refer any such matter for resolution in accordance with this clause 15 and the dispute or difference of opinion must be resolved in the same manner that disputes or differences of opinion under the Project Deed are resolved. Accordingly, the provisions of clauses [50] to [53] of the Project Deed are incorporated into this Deed but as if:

- (a) the only persons party to the Project Deed, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
- (b) the only matters for expert determination under those provisions are the matters referred for expert determination under this Deed.

16. Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices agreements and demands) in connection with this Deed:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed as set out below (or as otherwise notified by that party to each other party from time to time):

State

Attention: **[to be inserted]**
 Role: **[to be inserted]**
 Address: **[to be inserted]**
 Email: **[to be inserted]**

Project Co

Attention: [to be inserted]
 Address: [to be inserted]
 Email: [to be inserted]

Escrow Agent

Attention: [to be inserted]
 Address: [to be inserted]
 Email: [to be inserted]

D&C Subcontractor

Attention: [to be inserted]
 Address: [to be inserted]
 Email: [to be inserted]

Operator

Attention: [to be inserted]
 Address: [to be inserted]
 Email: [to be inserted]

Electronic Security Provider

Attention: [to be inserted]
 Address: [to be inserted]
 Email: [to be inserted]

- (c) (**signed**): must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) (**form of delivery**): must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 16(b); and
- (e) (**taken to be received**): are taken to be received by the addressee at the address set out in clause 16(b):
- (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (iii) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee, unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

17. Governing law and jurisdiction

17.1 Governing law

This Deed is governed by, and must be construed according to, the Laws of New South Wales, Australia.

17.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought within an inconvenient forum, if that venue falls within clause 17.2(a).

18. Miscellaneous

18.1 Entire agreement

To the extent permitted by Law and in relation to their subject matter, this Deed:

- (a) **(entire understanding)**: embody the entire understanding of the parties and constitute the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersede any prior agreement of the parties.

18.2 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this Deed.

18.3 Survival of certain provisions

- (a) **(Surviving clauses)**: All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:
 - (i) the State's rights to set-off and recover money;
 - (ii) confidentiality or privacy;
 - (iii) Intellectual Property Rights;
 - (iv) any obligation to make any Records available to the State;
 - (v) any indemnity or financial security given under this Deed; and
 - (vi) any right or obligation arising on termination of this Deed.
- (b) **(Interpretation)**: No provision of this Deed which is expressed to survive the termination of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination of this Deed.
- (c) **(Survival of rights and obligations)**: No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.

18.4 Waiver

- (a) **(Writing)**: A waiver given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.

- (b) **(No waiver)**: A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Deed.
- (c) **(No waiver of another breach)**: No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

18.5 Consents and approvals

A consent or approval required under this Deed from the State may be given or withheld, or may be given subject to any conditions, as the State (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

18.6 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

18.7 Expenses

Except as otherwise expressly provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

18.8 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Deed; or
- (b) that provision under the Law of any other jurisdiction.

18.9 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.
- (b) Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.

18.10 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

18.11 Moratorium legislation

The provisions of all Laws which come into effect after the date of this Deed and operate to:

- (a) increase or improve any of Project Co's, the Subcontractor's or the Parent Guarantor's rights, powers or remedies under this Deed or otherwise; or
 - (b) prejudicially affect the exercise by the State of any right, power or remedy under this Deed or otherwise,
- are expressly waived.

18.12 Proportionate liability

- (a) **(Excluded operation of Civil Liability Act)**: The operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights of either party under this Deed whether such rights are sought to be enforced in contract, tort or otherwise.

- (b) **(Rights):** Without limiting paragraph (a), the rights of the parties (including those relating to proportionate liability) are as specified in this Deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

18.13 Indemnity held on trust

- (a) **(Benefit of indemnities):** The State holds on trust for its Associates the benefit of:
 - (i) each indemnity, promise and release given by Project Co or the Escrow Agent under this Deed in favour of the State's Associates; and
 - (ii) each right in this Deed to the extent that such right is expressly provided to be for the benefit of the State or its Associates.
- (b) **(Project Co and Escrow Agent acknowledgement):** Project Co and the Escrow Agent acknowledge the existence of such trusts and consents to:
 - (i) the State exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of its Associates; and
 - (ii) the State's Associates exercising rights in relation to, or otherwise enforcing the indemnities, releases and those rights as if they were a party to this Deed.
- (c) **(Consent not required):** The parties agree that the State does not require the consent of its Associate to amend or waive any provision of any Project Document.

18.14 Set off

Without limiting the State's rights under the Project Deed, all moneys which the State may pay or incur and for which Project Co is liable under the terms of the Project Deed or in respect of which it is under this Deed liable to make reimbursement to or indemnify the State, may be deducted by the State from all moneys due, becoming due or to become due from it to Project Co under the Project Deed or may be recovered from Project Co by action at Law or otherwise.

18.15 Remedies cumulative

The rights and remedies provided in this agreement are cumulative and are not exclusive of any rights or remedies provided by Law or any other agreement, except to the extent expressly provided in this agreement.

Schedule 1 – Relevant Software



Schedule 2 – Escrow Fee

[To be inserted.]

Executed as a deed.

[Execution blocks to be inserted prior to execution.]