

Confidential

Execution version

John Morony Correctional Centre – Operating Agreement

The Minister for Corrections for and on behalf of the Crown in right of the State of New South Wales, excluding Manage Co (the State)

and

The Commissioner of Corrective Services and the Assistant Commissioner Custodial Corrections for and on behalf of the administrative business unit of Corrective Services NSW, Department of Justice, formed for the purposes of operating and managing the Correctional Centre, in its capacity as Manage Co in this Agreement (Manage Co)

ABN 32 980 170 687

Contents

| | |
|--|-----------|
| Part A - Interpretation and project parameters | 1 |
| 1. Definitions | 1 |
| 2. General rules of interpretation | 38 |
| 2.1 Interpretation..... | 38 |
| 2.2 Composition of this Agreement and order of precedence | 40 |
| 2.3 Plans, Reports and Procedures..... | 41 |
| 2.4 Version of documents with which Manage Co must comply | 41 |
| 2.5 Approvals, directions and notices in writing | 41 |
| 2.6 Prior approval or consent | 41 |
| 2.7 Action without delay..... | 41 |
| 2.8 Provisions limiting or excluding Liability, rights or obligations..... | 41 |
| 2.9 [Not used] | 42 |
| 2.9A Nature of relationship | 42 |
| 2.10 State's executive rights, duties and functions..... | 42 |
| 2.11 Reasonable endeavours and obligations to act in good faith..... | 42 |
| 2.12 No State liability for review | 43 |
| 2.13 Indexation | 43 |
| 2.14 Cost of carrying out obligations | 44 |
| 2.15 Exclusion of Civil Liability Act 2002 (NSW) | 44 |
| 2.16 Final and binding | 44 |
| 2.17 Governing Law..... | 44 |
| 2.18 Entire Agreement..... | 44 |
| 2.19 Further acts and documents..... | 44 |
| 2.20 Manage Co and its Associates..... | 44 |
| 2.21 Survival of certain provisions..... | 44 |
| 2.22 Waiver..... | 45 |
| 2.23 Severance..... | 45 |
| 2.24 Counterparts | 45 |
| 2.25 Moratorium legislation | 45 |
| Part B - Project commencement | 47 |
| 3. Conditions Precedent | 47 |
| 3.1 Commencement | 47 |
| 3.2 Satisfaction of Conditions Precedent..... | 48 |
| 3.3 Waiver of Conditions Precedent..... | 48 |
| 3.4 Failure to satisfy by the Condition Precedent Deadline | 48 |
| 3.5 [Not used] | 49 |
| 4. Term | 49 |
| 4.1 Commencement date | 49 |
| 4.2 Expiry Date | 49 |
| 4.3 Option to Extend..... | 49 |
| Part C - General Obligations | 51 |
| 5. Overarching obligations | 51 |
| 5.1 Manage Co's primary obligations | 51 |
| 5.2 Disputed Directions | 52 |
| 5.3 All Risks..... | 52 |
| 5.4 Fit For Purpose Warranty | 53 |
| 5.5 Minimum requirements not sufficient..... | 53 |
| 5.6 Corrections Legislation | 53 |
| 6. Approvals and consents | 54 |
| 6.1 [Not used] | 54 |
| 6.2 Other Approvals..... | 54 |
| 6.3 [Not used] | 54 |
| 6.4 [Not used] | 54 |
| 6.5 [Not used] | 54 |

| | | |
|------------|---|-----------|
| 6.6 | [Not used] | 54 |
| 6.7 | Approvals | 54 |
| 7. | Project Information | 55 |
| 7.1 | No representations from the State..... | 55 |
| 7.2 | Collateral warranties for Asset Condition Report | 55 |
| 7.3 | Project Information under this Agreement | 55 |
| 7.4 | Project Information representations and warranties by Manage Co | 55 |
| 8. | The Site | 56 |
| 8.1 | Manage Co to inform itself..... | 56 |
| 8.2 | No representations from the State..... | 56 |
| 8.3 | Environmental issues | 56 |
| 8.4 | Contamination..... | 57 |
| 8.5 | Contamination Remediation Plan | 58 |
| 8.6 | Manage Co's entitlement to compensation for Remediation..... | 59 |
| 8.7 | Liability under the NGER Legislation..... | 59 |
| 8.8 | Reporting Emissions and Energy Data | 60 |
| 8.9 | Provision of Emissions and Energy Data to the State..... | 61 |
| 8.10 | Native Title Claims, Heritage Claims and Artefacts..... | 61 |
| 8.11 | General Site undertakings..... | 62 |
| 9. | Upgrade Works, Utilities Infrastructure and Utilities | 63 |
| 9.1 | Upgrade Works..... | 63 |
| 9.2 | Utilities Infrastructure and Utilities | 65 |
| 10. | Parties, personnel and community | 67 |
| 10.1 | Authorities | 67 |
| 10.2 | State Representative | 67 |
| 10.3 | Manage Co Representative..... | 67 |
| 10.4 | Operational Readiness Co-ordinator | 68 |
| 10.5 | General Manager..... | 69 |
| 10.6 | CSI Contact Person..... | 70 |
| 10.7 | Key People | 70 |
| 10.8 | Project Control Group..... | 70 |
| 10.9 | General requirements for meetings | 72 |
| 10.10 | Communications and Community Relations | 73 |
| 10.11 | Conflicts of Interest..... | 73 |
| 10.12 | [Not used] | 74 |
| 10.13 | Aboriginal participation (operations)..... | 74 |
| 10.14 | [Not used] | 74 |
| 10.15 | [Not used] | 74 |
| 11. | Quality Assurance..... | 74 |
| 11.1 | General Obligations..... | 74 |
| 11.2 | Audits and Rectification of non-conformance..... | 75 |
| 11.3 | Audits for compliance with this Agreement | 75 |
| 12. | Subcontracting and third party arrangements | 77 |
| 12.1 | Subcontracting..... | 77 |
| 12.2 | Key Subcontracts and Significant Subcontracts..... | 77 |
| 12.3 | Requirements for subcontracting..... | 79 |
| 12.4 | Payment of amounts owed to Subcontractors..... | 80 |
| 12.5 | Obligations as to Claims made on pass-through basis | 80 |
| 12.6 | Industrial issues | 80 |
| 12.7 | Competence | 81 |
| 13. | Workforce | 81 |
| 13.1 | Employee Requirements | 81 |
| 13.2 | Principal contractor..... | 82 |
| 13.3 | Work Health and Safety..... | 83 |
| 13.4 | State may act if Manage Co fails to comply | 85 |
| 13.5 | Long service leave levy | 85 |

| | | |
|--|--|-----------|
| 13.6 | Security clearances | 85 |
| 13.7 | [Not used] | 87 |
| 13.8 | [Not used] | 87 |
| 13.9 | [Not used] | 87 |
| 13A | [Not used] | 87 |
| 14. | [Not used] | 87 |
| 15. | NSW Code and Guidelines | 87 |
| 15.1 | Reference | 87 |
| 15.2 | Primary obligation | 87 |
| 15.3 | Access and information | 88 |
| 15.4 | Sanctions | 88 |
| 15.5 | Compliance | 89 |
| Part D - Transition Phase obligations | | 90 |
| 16. | Transition Phase Plans and Reports and Transition Phase Program | 90 |
| 16.1 | Transition Phase Plans and Reports | 90 |
| 16.2 | Transition Phase Program | 90 |
| 17. | [Not used] | 91 |
| 18. | [Not used] | 91 |
| 19. | Transition | 92 |
| 19.1 | Transition Phase Licence | 92 |
| 19.2 | Transition Phase Activities | 92 |
| 19.3 | [Not used] | 93 |
| 19.4 | Corrective Action Plan | 93 |
| 20. | Access during the Transition Phase | 94 |
| 20.1 | Rights to enter, inspect and test | 94 |
| 20.2 | State Access | 94 |
| 20.3 | Manage Co to assist | 94 |
| 20.4 | Costs of inspection or testing | 94 |
| 21. | Testing | 95 |
| 21.1 | Testing | 95 |
| 21.2 | [Not used] | 95 |
| 22. | Quality Assurance during the Transition Phase | 95 |
| 23. | [Not used] | 95 |
| 24. | Transition Phase | 95 |
| 25. | Operational Readiness | 96 |
| 25.1 | Requirement | 96 |
| 25.2 | Notice before Operational Readiness | 96 |
| 25.3 | [Not used] | 96 |
| 25.4 | [Not used] | 96 |
| 25.5 | [Not used] | 96 |
| 25.6 | [Not used] | 96 |
| 25.7 | Operational Readiness Report | 96 |
| 25.8 | Notice of Operational Readiness | 96 |
| 25.9 | Determination of Operational Readiness | 97 |
| 25.10 | Operational Readiness Outstanding Items | 97 |
| 25.11 | [Not used] | 98 |
| 25.12 | Release after Operational Readiness | 98 |
| 26. | [Not used] | 98 |
| Part E - Operating Phase obligations | | 99 |
| 27. | Operating Phase Plans and Operating Phase Reports | 99 |

| | | |
|---|--|------------|
| 28. | Operating Phase Site Access | 99 |
| 28.1 | Operating Phase Licence | 99 |
| 28.2 | State access to the Correctional Centre, records and Inmates..... | 101 |
| 28.3 | Access to the Correctional Centre and Inmates by third parties | 102 |
| 28.4 | Correctional Centre Access Protocols..... | 102 |
| 29. | Obligation to perform the Services | 102 |
| 29.1 | General | 102 |
| 29.2 | Material Defects..... | 103 |
| 29.3 | Applicable Laws..... | 103 |
| 29.4 | Emergency Services Costs | 104 |
| 29.5 | Industries | 104 |
| 29.6 | [Not used] | 105 |
| 29.7 | [Not used] | 105 |
| 30. | Assets during the Operating Phase | 105 |
| 30.1 | Title and responsibility for risk | 105 |
| 30.2 | Replacement..... | 105 |
| 30.3 | Computer requirement..... | 106 |
| 31. | Quality Assurance during the Operating Phase | 107 |
| 32. | Correctional Centre and Asset Condition | 107 |
| 32.1 | Asset Condition Reports..... | 107 |
| 32.2 | [Not used] | 110 |
| 32.3 | [Not used] | 110 |
| 32.4 | [Not used] | 110 |
| 33. | [Not used] | 110 |
| 34. | [Not used] | 110 |
| Part F - Payment Provisions..... | | 111 |
| 35. | [Not used] | 111 |
| 36. | Payments Adjustments & Taxes | 111 |
| 36.1 | State's payment obligations..... | 111 |
| 36.2 | Transition Phase Payments, Rectification Milestone Amounts and Monthly Service Payments | 112 |
| 36.3 | Payment adjustments under the Performance Regime and Payment Schedule..... | 113 |
| 36.4 | Refund | 114 |
| 36.5 | Interest..... | 115 |
| 36.6 | Set-off | 115 |
| 36.7 | Liability for Taxes..... | 115 |
| 36.8 | GST | 118 |
| Part G - Expiry and Handover obligations | | 120 |
| 37. | Expiry obligations | 120 |
| 37.1 | Assistance in securing continuity..... | 120 |
| 37.2 | Dedicated Transition Out Person | 121 |
| 37.3 | Handover | 121 |
| 37.4 | Appointment of Handover Reviewer..... | 123 |
| 37.5 | Handover Reviewer Role..... | 123 |
| 37.6 | State election | 124 |
| 37.7 | Implementing Final Refurbishment Works | 125 |
| 37.8 | [Not used] | 125 |
| 37.9 | [Not used] | 125 |
| 37.10 | [Not used] | 125 |
| Part H - Change in Circumstances | | 126 |
| 38. | Transition Phase - delay..... | 126 |

| | | |
|---|---|------------|
| 38.1 | Delay to Operational Readiness..... | 126 |
| 38.2 | Entitlement to Claim | 126 |
| 38.3 | Change Notice | 126 |
| 38.4 | Conditions precedent to extension of time or relief | 127 |
| 38.5 | Extension of time and relief determined by State..... | 127 |
| 38.6 | Unilateral extensions | 128 |
| 38.7 | Entitlement to Costs | 128 |
| 38.8 | Sole remedy..... | 129 |
| 38.9 | Concurrent delays..... | 129 |
| 38.10 | Acceleration by Manage Co | 129 |
| 38.11 | Acceleration Notice..... | 129 |
| 38.12 | Reasonably achievable | 130 |
| 38.13 | Acceleration | 130 |
| 38.14 | Force Majeure during Transition Phase | 130 |
| 38.15 | Time not at large..... | 131 |
| 38.16 | Sole remedy..... | 131 |
| 39. | Operating Phase – Intervening Events | 131 |
| 39.1 | Intervening Events entitling Claim | 131 |
| 39.2 | Conditions precedent to relief..... | 132 |
| 39.3 | Services suspended and no breach | 132 |
| 39.4 | Continue to provide Services..... | 133 |
| 39.5 | Essential Services | 133 |
| 39.6 | Intervening Events other than Insured Risks or Force Majeure Events | 133 |
| 39.7 | Not used | 134 |
| 39.8 | Intervening Event which is a Force Majeure Event | 134 |
| 39.9 | Alternative arrangements | 134 |
| 39.10 | Cessation of Intervening Event..... | 135 |
| 39.11 | Sole Remedy | 135 |
| 40. | Modifications | 135 |
| 40.1 | Modification Request by the State | 135 |
| 40.2 | Estimate of cost of Change Notice | 136 |
| 40.3 | Modification Proposal | 136 |
| 40.4 | Payment for Change Notice prepared by Manage Co | 136 |
| 40.5 | Change Response | 136 |
| 40.6 | Omission by State..... | 136 |
| 40.7 | Instruction to proceed | 137 |
| 40.8 | Modifications proposed by Manage Co | 137 |
| 40.9 | Directions..... | 137 |
| 40.10 | Change in Mandatory Requirements..... | 138 |
| 40.11 | Extension of time | 139 |
| 40.12 | Minor Modifications..... | 139 |
| 40.13 | Implementation | 141 |
| 41. | [Not used] | 141 |
| 42. | [Not used] | 141 |
| 43. | Relief Events..... | 141 |
| 43.1 | Reduction in State liability for Relief Events | 141 |
| 43.2 | Meetings and other information | 142 |
| Part I - Risk, Indemnity and Insurance | | 143 |
| 44. | Loss or Damage | 143 |
| 44.1 | Risk of loss or damage | 143 |
| 44.2 | Notification of Loss and Damage..... | 143 |
| 44.3 | Repairing and rebuilding..... | 143 |
| 44.4 | Uninsurable Risk or Day 1 Uninsurable Risk | 145 |
| 44.5 | Minor damage..... | 145 |
| 44.6 | Consequences of State election not to repair or rebuild | 145 |
| 44.7 | State may repair or reinstate | 146 |
| 44.8 | Damage to third party property..... | 146 |

| | | |
|--|--|------------|
| 45. | Indemnities and Consequential or Indirect Loss..... | 146 |
| 45.1 | Indemnity for Manage Co breach | 146 |
| 45.2 | General indemnity..... | 147 |
| 45.3 | Corrections Act Indemnity | 147 |
| 45.4 | Project Information..... | 147 |
| 45.5 | Intellectual Property and Moral Rights Indemnity..... | 147 |
| 45.6 | Privacy indemnity..... | 148 |
| 45.7 | Release..... | 149 |
| 45.8 | Limits on Manage Co liability to indemnify and release | 149 |
| 45.9 | Third party claim under indemnity | 149 |
| 45.10 | Continuing obligation | 150 |
| 45.11 | Exclusion of Consequential or Indirect Loss – Manage Co..... | 150 |
| 45.12 | Exclusion of Consequential or Indirect Loss – State | 152 |
| 46. | Insurance | 152 |
| 46.1 | Insurances | 152 |
| 46.2 | General insurance requirements | 153 |
| 46.3 | [Not used] | 153 |
| 46.4 | Insurances primary | 153 |
| 46.5 | Notification and making of claims | 154 |
| 46.6 | [Not used] | 154 |
| 46.7 | [Not used] | 154 |
| 46.8 | [Not used] | 154 |
| 46.9 | [Not used] | 154 |
| 46.10 | [Not used] | 154 |
| 46.11 | Application of Insurance proceeds | 154 |
| 46.12 | [Not used] | 154 |
| 47. | Uninsurable Risks..... | 154 |
| 47.1 | Risks become Uninsurable | 154 |
| 47.2 | No obligation to insure | 155 |
| 47.3 | Agreed Uninsurable Risks resulting in loss or damage..... | 155 |
| 47.4 | Agreed Uninsurable Risk no longer uninsurable | 155 |
| Part J - Default, Termination and Disputes..... | | 156 |
| 48. | Major Default | 156 |
| 48.1 | Meaning of remedy or cure..... | 156 |
| 48.2 | Notice of Major Default | 156 |
| 48.3 | Manage Co to provide remedy program and comply with Major Default Notice..... | 158 |
| 48.4 | Extension of remedy program | 159 |
| 48.5 | Effect of curing..... | 160 |
| 49. | Termination..... | 160 |
| 49.1 | Sole basis | 160 |
| 49.2 | Voluntary Termination | 160 |
| 49.3 | Termination for Force Majeure | 160 |
| 49.4 | Default Termination Event | 161 |
| 49.5 | Assistance | 161 |
| 49.6 | Payment on termination..... | 161 |
| 49.7 | [Not used] | 162 |
| 49.8 | Waiver..... | 162 |
| 49.9 | Additional rights and obligations on Termination..... | 162 |
| 50. | Dispute Resolution procedure..... | 162 |
| 50.1 | Procedure | 162 |
| 50.2 | Selection of resolution process..... | 163 |
| 50.3 | Continue to perform..... | 163 |
| 51. | Senior Negotiations | 163 |
| 52. | [Not used] | 164 |

| | | |
|---|---|------------|
| 53. | [Not used] | 164 |
| Part K - Corporate obligations | | 165 |
| 54. | Representations and warranties | 165 |
| 54.1 | State's representations and warranties | 165 |
| 54.2 | Manage Co's representations and warranties | 165 |
| 54.3 | Repetition of representation and warranties | 166 |
| 55. | Benefits held on trust for its Associates | 166 |
| 56. | Manage Co general undertakings | 166 |
| 57. | Assignment and amendments | 167 |
| 57.1 | Assignment, amendments and other dealings by Manage Co | 167 |
| 57.2 | Amendment of State Project Document | 168 |
| 57.3 | Assignment by the State | 168 |
| 57.4 | [Not used] | 169 |
| 57.5 | [Not used] | 169 |
| 58. | [Not used] | 169 |
| 59. | Payment Model | 169 |
| 59.1 | Development of the Payment Model | 169 |
| 59.2 | Status of the Payment Model | 169 |
| 59.3 | Varying the Payment Model | 169 |
| 59.4 | Principles for variations to the Payment Model | 170 |
| 59.5 | Procedures for variations to the Payment Model | 170 |
| 59.6 | Access to information | 171 |
| 59.7 | Custody of Payment Model | 171 |
| 60. | Records and Accounts | 171 |
| 60.1 | Accounting records | 171 |
| 60.2 | [Not used] | 172 |
| 60.3 | Financial statements | 172 |
| 60.4 | Records | 172 |
| 60.5 | Other information | 172 |
| 60.6 | Manage Co Material | 172 |
| 61. | Intellectual Property Rights | 173 |
| 61.1 | Warranties | 173 |
| 61.2 | Background IP | 173 |
| 61.3 | Developed IP | 174 |
| 61.4 | Manage Co licence for Manage Co Background IP | 175 |
| 61.5 | Third Party Materials | 175 |
| 61.6 | Manage Co Material and Relevant Infrastructure | 176 |
| 61.7 | Use of State Background IP | 176 |
| 61.8 | Moral rights | 176 |
| 61.9 | [Not used] | 176 |
| 62. | Confidential Information and disclosure | 176 |
| 62.1 | Confidential Information and disclosure by the State | 176 |
| 62.2 | Confidential Information and disclosure by Manage Co | 177 |
| 62.3 | Public announcements by Manage Co | 178 |
| 62.4 | Information public or known | 178 |
| 62.5 | Disclosure by the State under GIPA Act | 179 |
| 62.6 | Personal Information | 179 |
| 62.7 | [Not used] | 180 |
| 62.8 | Privacy | 180 |
| 63. | Probity Events and Probity Investigations | 180 |
| 63.1 | Probity Event | 180 |
| 63.2 | Probity Investigation | 180 |
| 63.3 | State costs of Probity Events and Probity Investigation | 181 |

| | | |
|------------|--|------------|
| 64. | Notices and bar to Claims | 181 |
| 64.1 | Notices | 181 |
| 64.2 | Notices of Claims | 182 |
| 64.3 | Prescribed notices | 182 |
| 64.4 | Continuing events | 183 |
| 64.5 | [Not used] | 183 |
| 64.6 | [Not used] | 183 |
| 65. | PPSA | 183 |

Schedule 1 – Contract Particulars

Schedule 2 – Conditions Precedent Schedule

Schedule 3 – Output Specification

Schedule 4 – Transition Phase Program

Schedule 5 – Change Compensation Principles

Schedule 6 – Site Plans

Schedule 7 – [Not used]

Schedule 8 – [Not used]

Schedule 9 – Review Procedures

Schedule 10 – Moral Rights Consent

Schedule 11 – Transition Phase Plans and Reports Schedule

Schedule 12 – Operational Readiness Schedule

Schedule 13 – [Not used]

Schedule 14 – [Not used]

Schedule 15 – Operating Phase Plans and Reports

Schedule 16 – Payment Schedule

Schedule 17 – Performance Regime

Schedule 18 – [Not used]

Schedule 19 – [Not used]

Schedule 20 – [Not used]

Schedule 21 – [Not used]

Schedule 22 – Insurance Schedule

Schedule 23 – Commercially Sensitive Information Schedule

Schedule 24 – Termination Payments Schedule

Schedule 25 – Handover Reviewer Deed

Schedule 26 – [Not used]

Schedule 27 – [Not used]

Schedule 28 – [Not used]

Schedule 29 – [Not used]

Schedule 30 – [Not used]

Schedule 31 – [Not used]

Schedule 32 – Initial Rectification Schedule

Schedule 33 – Food and Laundry Services

Schedule 34 – [Not used]

Schedule 35 – Manage Co Equipment

Schedule 36 – Upgrade Works

Annexure A – [Not used]

Annexure B – Services Proposal

Annexure C – [Not used]

John Morony Correctional Centre – Operating Agreement

Date 14 August 2017

Parties The Minister for Corrections for and on behalf of the Crown in right of the State of New South Wales, excluding Manage Co (the **State**)

The Commissioner of Corrective Services and the Assistant Commissioner Custodial Corrections for and on behalf of the administrative business unit of Corrective Services NSW, Department of Justice, formed for the purposes of operating and managing the Correctional Centre, in its capacity as Manage Co in this Agreement (ABN 32 980 170 687) (**Manage Co**)

Background

- A. The Governor of the State of New South Wales has declared the Correctional Centre to be a correctional centre for the purposes of the Corrections Legislation.
- B. The Commissioner has the care, direction, control and management of all correctional centres under the Corrections Legislation.
- C. [Not used]
- D. The State has conducted a public tender process and selected Manage Co as the preferred tenderer for the Project.
- E. The State has agreed that Manage Co should manage and operate the Correctional Centre including providing the Services and in the capacity described in this Agreement, subject to the terms and conditions set out below.
- F. This Agreement sets out the terms on which:
 - (a) Manage Co agrees to deliver the Services;
 - (b) the State agrees to pay the Monthly Service Payments to Manage Co; and
 - (c) the risks associated with the Project are allocated as between the State and Manage Co.

Operative provisions

Part A - Interpretation and project parameters

1. Definitions

In this Agreement, 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 means the Operating Phase Plan of that name.

Aboriginal Participation Report means Operating Phase Report of that name.

Accounts and Records has the meaning given in clause 60.1(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 Manage Co has actual knowledge,

in each case as at the date of this Agreement.

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.

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

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

Approval means:

- (a) [Not used];
- (b) [Not used]; 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.

Assets means all physical infrastructure, plant, equipment (including health and industries equipment and Manage Co Equipment), machinery, furniture, fittings, fixtures, consumables and other assets which:

- (a) is necessary to ensure the Correctional Centre meets the FFP Warranty;
- (b) are used by Manage Co or its Associates on the Site for the delivery of the Services or the performance of its other obligations under this Agreement; or
- (c) without limiting paragraphs (a) and (b) above, Manage Co or its Associates installs, constructs or places on the Site and which is, or becomes, part of the Correctional Centre,

and includes the physical infrastructure, plant, equipment, machinery, furniture, fittings, fixtures, consumables, spare parts and other assets referred to in the Output Specification or Asset Management Plan.

Asset Condition Change has the meaning set out in clause 32.1(h)(ii).

Asset Condition Report Warranties means the warranties provided on or about the date of this Agreement, by the Asset Condition Report providers to Manage Co in relation to the Asset Condition Report.

Asset Condition Report means the Asset Condition Report (First) and Asset Condition Report (Final) and the Asset Condition Report means either of them.

Asset Condition Report (First) means each Asset Condition Report identified as an Asset Condition Report in the Contract Particulars.

Asset Condition Report (Final) has the meaning given in clause 32.1(h).

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 Manage Co, includes:
- (i) the Manage Co Representative;
 - (ii) the General Manager;
 - (iii) [Not used];
 - (iv) 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;
 - (v) any person on or at the Site at the express or implied invitation of Manage Co or a Subcontractor in connection with the performance of the Project Activities; and
 - (vi) Justice Health and CSI,
- but does not include the State or any of the State's Associates 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;
 - (iii) the Minister;
 - (iv) the Commissioner;
 - (v) [not used];
 - (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 Agreement,

but does not include Justice Health, CSI, Manage Co or any of Manage Co's Associates, any Handover Reviewer or the Asset Condition Report providers.

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.

Beneficiaries has the meaning given in clause 61.8.

Best Industry Practices means the practices required for the operation and maintenance of a correctional centre similar to the Correctional Centre 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 centre similar to the Correctional Centre;
- (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 Centre;
- (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 adopting innovation to improve service quality and value for money, provided that this requirement in and of itself does not require Manage Co to upgrade the Correctional Centre.

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.

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

Certificate of Operational Readiness has the meaning given in clause 25.9(a)(i).

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

Change Compensation Principles means Schedule 5.

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 Agreement, but does not include:

- (c) a change in the way a Law is applied or interpreted due to:
 - (i) the failure of Manage Co or any of its Associates to comply with a Law, Policy or Approval; or
 - (ii) a Manage 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 Agreement 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 Agreement;
 - (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 Agreement;
 - (iv) is substantially the same as a Law in force prior to the date of this Agreement; or
 - (v) is substantially the same as any other requirement with which Manage Co was required to comply under any State Project Document as at the date of this Agreement; 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 Manage Co;
- (b) the senior employees of any Entity which provides management functions to Manage Co; or
- (c) the senior management of Manage Co,

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 Agreement 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 Agreement:

- (a) the introduction of a new Policy;
- (b) a change in a Policy;
- (c) [Not used]; or
- (d) [Not used],

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 Manage Co prior to the date of this Agreement;
 - (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 Manage Co or any of its Associates in connection with the Project prior to the date of this Agreement;
 - (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 Agreement;
 - (iv) which is substantially the same as a Policy in force prior to the date of this Agreement; or
 - (v) which is substantially the same as any other requirement with which Manage Co was required to comply with under the State Project Documents prior to the date of this Agreement;
- (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.
- (g) any of the events referred to in paragraphs (a) to (d) that results from or is in response to any Manage 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 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 Manage Co in accordance with clause 3.2(d).

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.

Communications and Community Relations Plan means 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.

Compensable Extension Event means any of the following events occurring during the Transition 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 Transition Phase Activities (or a material change in the way the Transition 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 Transition Phase Activities are carried out) exceeds 10 Business Days;

- (e) **(Project specific industrial action)**: industrial action which affects the Project, which is the direct result of an act or omission of the State or any of its Associates other than any act or omission which is authorised or permitted under a State Project Document, Policy or Law;
- (f) [Not used];
- (g) [Not used];
- (h) [Not used];
- (i) [Not used]; and
- (j) **(other events)**: any other event described as a Compensable Extension Event in this Agreement.

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 (other than a CSI Breach);
- (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; and
- (e) **(Project specific industrial action)**: industrial action which affects , the Project which is the direct result of an act or omission of the State or any of its Associates other than an act or omission which is authorised or permitted under a State Project Document, Policy or Law.

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

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 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 Manage Co or any of its Associates; or
 - (ii) Manage Co or any of its Associates to the State or any of its Associates, in connection with this Agreement or the Project, whether provided prior to or after the date of this Agreement;
- (e) Manage Co Material;
- (f) [Not used]; 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 Manage Co or its Associates of its obligations pursuant to this Agreement.

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.

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 Manage Co is required under clause 8.4(f) to:

- (a) Remediate Contamination that:
 - (i) is on, in, over, under or emanating from the Site, to the extent to which such Contamination has been caused or contributed to by the State or its Associates after the date of this Agreement;
 - (ii) that has migrated onto the Site from an Adjoining Property after the date of this Agreement, if:
 - A. the presence of the Contamination presents an unacceptable risk of harm to human health or the Environment, having regard to Best Industry Practice; or
 - B. the Contamination is required to be Remediated to comply with any Laws or any Contamination Remediation Notice; or
 - (iii) that is Unidentified Pre-Existing Contamination, other than the extent to which the Contamination:
 - (iv) [Not used];
 - (v) has been caused or contributed to or disturbed by a Manage Co Act or Omission;

- (vi) would have been minimised by a prudent, experienced and competent contractor in the same circumstances using Best Industry Practices;
 - (vii) is Pre-Existing Contamination identified in the Asset Condition Report (First) or in investigations carried out by, or on behalf of, Manage Co or its Associates on the Site; or
 - (viii) is Contamination that would occur in the normal course of operating a similar facility providing similar services in accordance with Best Industry Practices; or
- (b) Remediate Contamination that is outside the boundary of the Site other than the extent to which the Contamination has been caused or contributed to or disturbed by a Manage Co Act or Omission.

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 Manage Co in accordance with this Agreement.

Contract Particulars means Schedule 1.

Contractor (UW) means any one or more contractors or consultants appointed to undertake or provide services arising from or in connection with the Upgrade Works.

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

Correctional Centre means the John Morony Correctional Centre, a correctional centre declared to be a correctional centre by the Governor pursuant to section 225 of the Corrections Act and which includes the whole of the area inside the boundaries of the Site, the grounds contained within those boundaries, and all Assets.

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

Correctional Complex means the John Morony Correctional Complex, a correctional complex declared by the Governor pursuant to section 224 of the Corrections Act.”

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).

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;

CSI means Corrective Services Industries, an administrative business unit of Corrective Services NSW, Department of Justice.

CSI Breach means a breach by the State (or CSI on behalf of the State) of any of the State's obligations to provide Meals or Laundry Services in accordance with sections 1 to 3 of Schedule 33.

CSI Contact Person means the person identified as such in the Contract Particulars, subject to replacement or delegation in accordance with clause 10.6.

CSNSW Employees means any employee of the State who is working at the Correctional Centre.

Custodial Patients means all Inmates.

Date for Operational Readiness means the date specified as such in the Contract Particulars, as adjusted (if at all) in accordance with this Agreement.

Date of Operational Readiness means the later of:

- (a) date specified in the Certificate of Operational Readiness as the date on which Manage Co achieved Operational Readiness; and
- (b) the Date for Operational Readiness.

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 Manage Co Act or Omission or an act or omission of an Inmate, to the extent arising from a failure by Manage Co or its Associates to perform the Services in accordance with this Agreement.

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

- (a) **(abandonment)**: Manage Co wholly or substantially abandons the Project or any material part of the Project Activities;
- (b) **(Group Member Insolvency Event)**: [Not used];
- (c) **(Manage Co fraud)**: Manage Co engages in fraud, collusion or dishonest conduct in performing its obligations under any Project Document;
- (d) **(assignment, transfer or disposal)**: Manage Co 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):** [Not used];
- (f) **(unremedied Major Default):** a Major Default is capable, or is deemed to be capable of remedy and Manage 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 Manage Co fails to remedy the Major Default by the Sunset Date (including a failure to achieve Operational Readiness by the applicable Sunset Date);
- (h) **(Major Default not capable of remedy):** a Major Default is not capable of remedy and Manage 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 three Major Default Service Failures in any rolling three year period (whether or not they have been cured by Manage Co);
- (j) **(Charge Events):** Manage Co has accrued a Charge Event liability of greater than [REDACTED] Indexed by the CPI Annual Multiplier (as defined in Schedule 16) in any rolling [REDACTED] period. For the purposes of this paragraph only, if two or more Escapes occur concurrently, Manage Co's Charge Event liability will be calculated as if this was one Charge Event;
- (k) **(Total Deductions):** Manage Co has incurred Total Deductions (calculated in accordance with section 10 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 rolling [REDACTED] period; or
 - (ii) [REDACTED] % of the Base Fee and Volumetric Adjustment (as calculated in accordance with the Payment Schedule) in any rolling [REDACTED] period;
- (l) **(Illegality Event):** an Illegality Event occurs;
- (m) **(Probity Event):** Manage 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 Agreement including any aspect of the Assets which does not satisfy the Maintenance and Performance Standards.

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

- (a) developments, modifications, improvements or additions to, or adaptations, customisations or enhancements of, or deletions or derivatives from, Manage Co Background IP, that are developed as part of the Project Activities, or for the purposes of the Project (regardless of whether developed prior to the date of this Agreement);
- (b) all research conducted by Manage Co or any of its Associates in relation to the Project, the Inmates, the Correctional Centre, the Inmate programs, any other user of the Services (including former Inmates) or any part of them;
- (c) any data recorded by Manage Co or its Associates under this Agreement in respect of the management of Inmates or the Correctional Centre;
- (d) Inmates professional management, detention, case, medical and dental files;
- (e) all manuals in respect of the management of Inmates or the Correctional Centre; and
- (f) information about:
 - (i) the management of Inmates produced by Manage Co or its Associates; and
 - (ii) Manage Co or its Associates obligations under the Agreement in respect of the management of Inmates or the Correctional Centre.

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

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

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

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

Early Warning (Services) 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 Agreement.

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 Manage Co to manage a disturbance including a Critical Incident.

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.

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

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

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 Transition 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).

Escape has the meaning given in the Performance Regime.

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).

Expiry Date has the meaning given in clause 4.2.

Extension Event means any of the following events occurring during the Transition 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 Site or the Transition 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) [Not used]; and
- (h) **(Agreed Uninsurable Risk)**: the State requires Manage Co to repair or rebuild the Relevant Infrastructure and clause 47.3(a)(i) applies.

External Infrastructure means infrastructure which is external to the Site and which is used in common with other users, including roads, footpaths, transport facilities and any Utility Infrastructure external to the Site.

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

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

- (a) the Date for Operational Readiness; and
- (b) the Date of Operational Readiness,

as extended if at all, under clause 4.

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

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

Fit For Purpose or FFP means the Correctional Centre:

- (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, Performance Regime and the Payment Schedule;
- (b) [Not used]; 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.

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 Agreement be expected to occur no less 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 Centre;

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 Manage Co from carrying out all or substantially all of the Project Activities; or
 - (ii) all other circumstances, prevents Manage Co from carrying out all or substantially all of the Project Activities;
- (h) was not caused by Manage Co or its Associates, or the State or its Associates;
- (i) was beyond the reasonable control of Manage 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 operator of or maintenance contractor for 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 Manage 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 Agreement.

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

Fortnightly Transition Report means the Transition Phase Report of that name.

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 general manager of the Correctional Centre pursuant to this Agreement 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 Member means Manage Co.

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 Manage Co has done everything that this Agreement requires to enable Manage Co to handover the Relevant Infrastructure in the Handover Condition.

Handover Condition means, the Correctional Centre and Site:

- (a) meet or exceed the Maintenance and Performance Standards;
- (b) enable Manage Co (or at the end of the Term, the State or its nominee) to manage, operate and maintain the Correctional Centre in accordance with the Output Specification in a safe and effective manner; and
- (c) would be in if Manage Co had complied with all of its obligations under this Agreement (including the Maintenance and Performance Standards and Asset Management Plan) having regard to the time at which and circumstances in which Manage Co is obliged to handover the Correctional Centre and Site to the State.

Handover Package means the 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.

Handover Reviewer Deed means the deed so entitled to be entered into between the State, Manage Co and the Handover Reviewer substantially in the form set out in Schedule 25.

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 C.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.

Illegality Event means Manage 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 Manage Co's obligations under this Agreement and such failure or breach is not remedied within 30 days after the earlier of:

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

Imprest Stock those Pharmaceuticals held in the Correctional Complex which are to be routinely administered to Inmates as circumstances require.

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

Indemnified Person has the meaning in clause 45.1.

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 Operating Phase Plans means the version of the Operating Phase Plans current at the date of this Agreement included within the Services Proposal.

Initial Rectification Activities has the meaning set out in clause 32.1(c)(ii)A and as at the date of this Agreement the details of those works and services are identified in the Initial Rectification Schedule.

Initial Rectification Schedule means:

- (a) on and from the Initial Rectification Schedule Update Date, the updated document of that name provided by Manage Co in accordance with clause 32.1(c); or
- (b) prior to the Initial Rectification Schedule Update Date, Schedule 32.

Initial Rectification Schedule Update Date has the meaning given in clause 32.1(c)(i).

Initial Transition Phase Plans means the version of the Transition Phase Plans current at the date of this Agreement included within the Services Proposal.

Initial Transition Phase Program means the version of the Transition Phase Program current at the date of this Agreement included within the Services Proposal.

Inmate means those persons from time to time:

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

under Legislation into the legal or physical custody of Manage 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 Agreement; 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).

Insurance Schedule means Schedule 22.

Insurances means the insurances or NSW Government self insurance cover through the TMF required to be effected and maintained in accordance with this Agreement.

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 referred to in paragraph (a) of Part C of the Insurance Schedule

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.

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 Manage Co to repair or rebuild the Relevant Infrastructure and clause 44.3(d) applies or the State provides a notice to Manage Co under clause 44.7(b)(i);
- (e) **(Emergency and Step-In):** [Not used];
- (f) **(Unidentified Pre-Existing Defect):** the discovery or remedy of an Unidentified Pre-Existing Defect during the Operations Phase; or
- (g) **(Upgrade Work Defects):** the remedy of a Defect in the Upgrade Works which arises in the first ■ months after the relevant part of the Upgrade Works reaches completion in accordance with Schedule 36 as determined by the State, other than where that Defect results from a Manage Co Act or Omission or an act or omission of an Inmate.

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 Subcontract means:

- (a) [Not used];
- (b) [Not used]; 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) [Not used];
- (b) [Not used]; 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 Agreement, any other Project Documents or arising at Law.

Licence means:

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

Lifecycle Charge has the meaning given in the Payment Schedule.

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

Maintenance and Performance Standards means those minimum condition and performance standards contained in Attachment C.1 of Part C of the Output Specification.

Major Default means any of the following events:

- (a) [Not used];
- (b) **(late Operational Readiness)**: Manage Co fails to achieve Operational Readiness by the Date for Operational Readiness;
- (c) [Not used];
- (d) **(fraud)**: an Associate of Manage Co 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 Manage Co 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 Manage Co in respect of any financial statements or invoices or other books or records of Manage Co;
- (f) **(subcontracting and Key People)**: Manage Co breaches an obligation in clause 12.2, 12.3 or 12.4;
- (g) **(Personal Information)**: any failure by Manage Co to comply with its obligations under clauses 62.6;
- (h) **(breach of State Project Document)**: any breach of any State Project Document by Manage Co (other than any Unavailability, a Meal Availability Failure, a Quality Failure, any other Major Default or a Default Termination Event) which is not cured within 20 Business Days (or such longer period as the State (acting reasonably) determines) of Manage Co receiving a notice of that breach from the State;
- (i) **(Change in Management)**: as a result of a Change in Management, Manage Co no longer has the same or better management skills available to it as it had prior to the Change in Management;
- (j) [Not used];
- (k) **(Probity Event)**: Manage Co fails to remedy a Probity Event in accordance with clause 63;
- (l) [Not used];
- (m) **(breach of other Project Document)**: Manage Co:
 - (i) breaches any of its obligations under any Project Document, 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 Manage Co's ability to deliver the Project; and
 - (iii) is not diligently pursuing the remedy of the breach;
- (n) **(Total Deductions)**: Manage Co has incurred Total Deductions (as calculated in accordance with section 10 of the Payment Schedule) and Charge Events (as determined under the Performance Regime) with an aggregate value greater than:
- (i) ■% of the Base Fee and Volumetric Adjustment (as calculated in accordance with the Payment Schedule) in any rolling ■ period; or
 - (ii) ■% of the Base Fee and Volumetric Adjustment (as calculated in accordance with the Payment Schedule) in any rolling ■ period; or
- (o) **(Level 2 Performance)**: Manage Co's performance falls within the Level 2 Performance Range for the same Quality Failure for ■ or more Months within a rolling period of ■ Months;
- (p) **(Charge Event)**: a Charge Event occurs;
- (q) [Not used];
- (r) **(Insurances)**: a breach by Manage Co of any its obligations under clauses 46.1, 46.5, or 47.1;
- (s) **(Accreditation)**: Manage Co fails to obtain and maintain those accreditations specified in the Contract Particulars;
- (t) **(Licences)**: Manage Co fails to obtained 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)**: the appointment of the General Manager is terminated in accordance with Law; 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.

Manage Co Act or Omission means:

- (a) a breach of this Agreement by Manage Co; or
- (b) any other act or omission of Manage 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.

Manage Co Background IP means any and all Material which is developed outside of the Project by or on behalf of Manage Co or any of its Associates and brought to the Project by Manage Co or any of its Associates, but excludes Developed IP.

Manage Co Equipment means as at the Commercial Close, those Assets identified in Schedule 35 and thereafter, those Assets which the State agrees to include in the Manage Co Equipment Register referred to in section 2.12 of the Operating Phase Plans and Reports.

Manage Co Insurances means Transition Phase Insurances and Operating Phase Insurances.

Manage Co Material means:

- (a) [Not used];
- (b) the Transition Phase Plans and the Transition Phase Reports;
- (c) the Operating Phase Plans and the Operating Phase Reports; and
- (d) all other Material which Manage 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 Agreement.

Manage Co Representative means the person identified in the Contract Particulars subject to replacement, termination or delegation in accordance with clauses 10.3 and 10.6.

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 Centre from complying with the FFP Warranty; or
- (b) Manage Co from delivering the Services in accordance with the Services Requirements.

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

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

Minor Assets means those Assets which have a single item value of less than [REDACTED] or combined item value of less than [REDACTED] (for Assets which are have more than a single item within the Site) and are not associated with the provision of Essential Services.

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

- (a) in respect of which Manage Co will not be entitled to an extension of time to the Date for Operational Readiness if it occurs during the Transition Phase; and
- (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 Variation Event has the meaning given in clause 59.3(a).

Modification means:

- (a) [Not used];
- (b) after the Date of Operational Readiness:
 - (i) a change to the Correctional Centre including any addition, increase, decrease, omission, deletion, demolition or removal to or from the Correctional Centre; or
 - (ii) the State requiring Manage Co to accommodate more than ■■■ Inmates within the Correctional Centre provided however that where Manage Co is obliged to accommodate:
 - A. between and including ■■■ and ■■■ Inmates within the Correctional Centre, Manage Co will only be entitled to the amount determined in Table 1 of Schedule 5 under the heading "Accommodation of more than ■■■ but less than ■■■ Inmates within the Correctional Centre" for accommodating those additional Inmates; and
 - B. above ■■■ Inmates within the Correctional Centre, for the avoidance of doubt, Manage Co is entitled to the amount determined in Table 1 of Schedule 5 under the heading "Modification (excluding any Minor Modification, and any Modification proposed by Manage Co and any Modification to accommodate more than ■■■ but less than ■■■ Inmates within the Correctional Centre)" for accommodating those additional Inmates; and
- (c) after the date of this Agreement, 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) [Not used];
- (e) [Not used];
- (f) [Not used];
- (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 Agreement;
- (h) Minor Modifications, subject to clauses 40.12(g) and 40.12(h); and
- (i) without limiting paragraph (b)(ii) 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 Manage 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.

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 Manage Co calculated in accordance with the Payment Schedule.

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).

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.

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 C of the Insurance Schedule.

Operating Phase Licence means the licence to be granted by the State to Manage Co in accordance with clause 28.1.

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 Manage 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 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 the later of the day after:

- (a) the Date of Operational Readiness; and
- (b) the Original Date for Operational Readiness.

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

Operational Readiness Assessment has the meaning given in section 1.1 of the Operational Readiness Schedule.

Operational Readiness Criteria means those criteria identified as such in the Operational Readiness Schedule.

Operational Readiness Outstanding Item means:

- (a) any act, matter, state of affairs or thing that is required in accordance with this Agreement to have been performed, achieved, undertaken, provided or completed by Manage Co as at Operational Readiness which has not been so performed, achieved, undertaken, provided or completed by Manage 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 Centre from complying with the FFP Warranty; or
 - (ii) Manage Co from delivering the Services in accordance with the Services Requirements; and
- (b) [Not used].

Operational Readiness Report means a report in respect of Operational Readiness Assessment required to be submitted by Manage Co in accordance with clauses 25.7 25.8 and the Operational Readiness Schedule as amended and updated in accordance with this Agreement.

Operational Readiness Schedule means Schedule 12.

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 10.6.

Original Date for Operational Readiness means the Date for Operational Readiness set out in the Contract Particulars.

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

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

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

Ownership Schedule means [Not used].

Parole Authority has the meaning given in the Corrections Act.

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

Payment Model means a financial model for the Project prepared and updated as required, in accordance with this Agreement.

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.

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.

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 Manage Co or its Associates to supply Pharmaceuticals for issue or administration to Custodial Patients and any related Pharmaceutical Related Items, Pharmaceutical Supply or Urgent Pharmaceutical Supply.

Pharmacy Costs has the meaning given in the Payment Schedule.

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 Agreement including:

- (a) the standards, codes, specifications, policies, requirements, guidelines, protocols, 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 Manage Co;
 - (ii) which is publicly available or otherwise available to Manage Co; or
 - (iii) with which Manage Co is expressly required by the terms of this Agreement, by Law or by direction of the State to comply,

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

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

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

Pre-Existing Contamination means any Contamination on, in, over, under or emanating from the Site which is in existence prior to the date of this Agreement and is not Unidentified Pre-Existing Contamination.

Pricing means the pricing set out in the Annexures to the Payment Schedule.

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 Agreement which:

- (a) has a material adverse effect on, or on the perception of, the character, integrity or honesty of a Group Member or a Relevant Person;
- (b) relates to a Group 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 or any Subcontractor 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 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) [Not used];
 - (ii) carrying out the Transition 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 Manage Co is, or may be, required to do to comply with its obligations in connection with the State Project Documents, including the Transition Phase Activities and the Services.

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

Project Documents means:

- (a) this Agreement;
- (b) [Not used];
- (c) [Not used];
- (d) [Not used];
- (e) [Not used];
- (f) [Not used];
- (g) [Not used];
- (h) [Not used];
- (i) [Not used];
- (j) each Key Subcontract;
- (k) [Not used];
- (l) [Not used];
- (m) [Not used];

- (n) each Significant Subcontract;
- (o) Handover Reviewer Deed;
- (p) [Not used];
- (q) [Not used];
- (r) [Not used]; and
- (s) any other document the parties agree is a Project Document.

Project Information means:

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

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) Manage Co; or
- (c) the Site,

and not to other projects, Entities or sites.

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

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

Quality Assurance System means a quality assurance system that covers:

- (a) the carrying out of the Transition Phase Activities;
- (b) performance of the Services; and
- (c) personnel and human resources during the Transition Phase and the Operating Phase, including recruitment, training, and occupational health and safety management of Manage 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 Transition Phase will be the period from Commercial Close until the day before the first Quarterly Date during the Transition Phase;
- (b) the last Quarter of the Transition Phase will be the period from the last Quarterly Date during the Transition Phase to the Date of Operational Readiness;
- (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.

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.

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 Manage 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.

Rectification Milestone Events has the meaning given in clause 32.1(c)(ii)D.

Rectification Milestone Amounts has the meaning given in clause 32.1(c)(ii)D.

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

Relevant Downgrade has the meaning given to that term in clause 32A(d)(i).

Relevant Infrastructure means the Correctional Centre.

Relevant Person means:

- (a) [Not used];
- (b) a director or secretary of a Group Member;
- (c) Key People; or
- (d) an officer, agent, employee or consultant of a Subcontractor who:
- (i) has the ability to exercise influence or control over the decisions or actions of the Subcontractor in relation to the Project other than solely through the exercise of voting rights at a meeting of shareholders or directors of the Subcontractor;
 - (ii) works on, or at the Correctional Centre during the Operating Phase; or
 - (iii) has access to Personal Information and any other Confidential Information which compromises the security of the Relevant Infrastructure.

Relevant Personal Property has the meaning given in clause 65(a)(i).

Relief Event means any Extension Event, Intervening Event, Change Compensation Event or other event which entitles Manage 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:

- (a) an insurance company having the Required Rating; or
- (b) the New South Wales Treasury Managed Fund.

Request for Tender means the Request for Tender for the Project issued by the State on or about 15 August 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).

Responsible Entity has the meaning given in the Corporations Act.

Retained Equipment has the meaning given in clause 37.3(f).

Review Period has the meaning given in the Review Procedures.

Review Procedures means Schedule 9.

Savings has the meaning given in the Change Compensation Principles.

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

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).

Services means:

- (a) the services referred to in the Services Requirements to be undertaken by Manage Co during the Operating Phase; and
- (b) all other things Manage Co is 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 Agreement.

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 Agreement.

Significant Subcontract means:

- (a) [Not used];
- (b) the contracts listed as such in the Contract Particulars; and
- (c) any other Subcontract:
 - (i) the term of which exceeds 5 years; or
 - (ii) relating to the Project Activities 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. [Not used]; and
 - B. during the Operating Phase, [REDACTED] per annum,
(each Indexed).

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

Site means the land on which the Correctional Centre is located and in respect of which the Services are undertaken, as identified in the Site Plans.

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 Manage Co's ability to carry out its obligations in accordance with this Agreement; and
- (i) **(Adverse Rights):** all Adverse Rights over or in connection with the Site.

Site Plan means 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 Manage Co or any of its Associates to perform any Services at the Correctional Centre.

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

Subcontract means an agreement which:

- (a) Manage Co enters into with CSI or Justice Health (whether or not that agreement is legally binding);
- (b) Manage Co enters into with another Subcontractor; or
- (c) a Subcontractor enters into with another Subcontractor,

in connection with the Project Activities.

Subcontractor means:

- (a) any person who enters into a contract in connection with the Project Activities with Manage 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 Manage 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 ■ months from the Date for Operational Readiness;
- (b) in the context of an event listed in paragraph (c) to (p) (inclusive) of the definition of Major Default which occurs during the Transition 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.

Tender means the tender proposal submitted by Manage Co in response to the Request for Tender.

Term means the term of this Agreement:

- (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 Manage Co or, failing agreement, is determined in accordance with clause 50; 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.

TMF means the NSW Government self insurance scheme operated by the NSW Self Insurance Corporation and known as the Treasury Managed Fund.

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

Transition Phase means the period beginning on the day that is 10 Business Days after the date of this Agreement and ending on and including the Date of Operational Readiness.

Transition Phase Activities means:

- (a) all things which Manage Co is, or may be, required to carry out or do in connection with the Transition Phase Activities specified in Part B of the Output Specification or specified in any Transition Phase Plan; and
- (b) all other things which Manage Co is, or may be, required to carry out or do in accordance with the State Project Documents during the Transition Phase,

but excludes the Services.

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

Transition Phase Licence means the licence granted under clause 19.1 by the State to Manage Co for Manage Co and its Associates to enter upon and occupy the Site to the extent necessary to carry out the Transition Phase Activities.

Transition Phase Payments has the meaning given in clause 36.1(a)(i).

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

Transition Phase Plans and Reports Schedule means Schedule 11.

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

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

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

Transition Plan means the Transition Phase Plan of that name.

Transition Requirements means:

- (a) [Not used];
- (b) the requirements for operational readiness set out in the Operational Readiness Schedule; and
- (c) the general transition obligations set out in section 1.1 of Part B (Project Scope) of the Output Specification and Transition Phase Activities.

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

Unidentified Pre-Existing Contamination means any Contamination on, in, over, under or emanating from the Site which is in existence prior to the date of this Agreement and which is not identified, contemplated by or reasonably ascertainable from:

- (a) the Asset Condition Report (First) or any Project Information; or
- (b) any investigations carried out by or on behalf of Manage Co or its Associates on the Site prior to the date of this Agreement.

Unidentified Pre-Existing Defect means any structural Defect in the Relevant Infrastructure or Defect in the subsurface Utility infrastructure within the Site in each case which is in existence prior to the date of this Agreement and which is not identified, contemplated by or reasonably ascertainable from the Asset Condition Report (First), Asset Condition Report (Final) or any investigation carried out by or on behalf of Manage Co or its Associates on the Site prior to the date of this Agreement but excluding any Defect which:

- (a) would cost less than ██████ (Indexed) to rectify;
- (b) would have been reasonably foreseeable or discovered or minimised as at the date of this Agreement by a prudent, experienced and competent contractor in the same circumstances as Manage Co using Best Industry Practices;
- (c) of which Manage Co or any of its Associates is aware as at the date of the Agreement; or
- (d) is a Contamination Compensation Event.

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

- (a) insurance becomes unavailable through the TMF; or
- (b) [Not Used],

provided that the uninsurability referred to in paragraphs (a) and (b) is not caused by any Manage Co Act or Omission or an act or omission of an Inmate, to the extent arising from a failure by Manage Co or its Associates to perform the Services in accordance with this Agreement.

Upgrade Works means the works and services to be performed by the State during the Transition Phase and Operations Phase solely in relation to upgrading the security of the Correctional Centre from medium to maximum security as identified in Schedule 36.

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.

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 Agreement pursuant to clause 49.2.

Voluntary Termination Payment means the payment calculated 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 Transition 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).

2. General rules of interpretation

2.1 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)**:
- (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 Agreement have the same meaning throughout this Agreement (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 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 Manage Co) 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 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) [Not used].

2.2 Composition of this Agreement and order of precedence

- (a) **(Agreement composition):** This Agreement comprises:
- (i) clauses 1 to 65;
 - (ii) Schedule 1 to Schedule 36; and
 - (iii) Annexure A to Annexure C,
- (the **Agreement**).
- (b) **(Attachments):** The Attachments do not form part of this Agreement.
- (c) **(Annexures):** Manage Co agrees that to the extent that an Annexure seeks to impose any obligations on the State, Manage 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 Agreement, 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 Manage 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 Agreement, 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 Agreement or is within a document that forms part of this Agreement but does not have a process for resolving the inconsistency, ambiguity or discrepancy, then the State will direct Manage Co to adopt the option the State requires Manage Co to proceed with, which may be the greater, more onerous to Manage 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 Manage Co is required to comply with pursuant to this Agreement, 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 Agreement and any other State Project Document, then the following order of precedence will apply:
- (i) [Not used];
 - (ii) this Agreement; 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 Manage Co's obligations, between the Corrections Legislation and this Agreement, Manage 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 Manage Co's obligations under this Agreement will give rise to a breach of its obligations under the Corrections Legislation, comply with its obligations under the Corrections Legislation, in which case, Manage Co will be deemed to have complied with this Agreement to that same extent.

2.3 Plans, Reports and Procedures

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

2.4 Version of documents with which Manage Co must comply

Where Manage 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, Manage 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 Agreement 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 Manage Co is required by this Agreement 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 Agreement, 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 Manage Co under this Agreement will not limit or exclude any other right or obligation of the State or Manage Co under this Agreement unless expressly stated.
- (b) **(Liability only excluded to the extent permitted by Law):** Any provision of this Agreement 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 [Not used]

2.9A Nature of relationship

Subject to the provisions of this Agreement and notwithstanding that the parties are not separate legal entities:

- (a) the parties intend for this Agreement to be implemented between them as though it is an arm's length contract between separate entities; and
- (b) a reference to a party is a reference to that party in the capacity described in this Agreement.

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:
 - (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), Manage Co 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 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 Manage Co 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 Manage Co (or any duty of care to Manage Co to procure that any of the Associates of the State) to:
 - (i) review Manage Co Material submitted by Manage 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 Manage Co Material by the State or its Associates;
 - (ii) inspection or review of the Project Activities or the Relevant Infrastructure by the State or its Associates; or
 - (iii) failure by (or on behalf of) the State or its Associates, to detect any non-compliance by Manage Co with its obligations in accordance with the State Project Documents or any Laws or Policies;

will:

 - (iv) relieve Manage Co 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 Manage Co whether under the State Project Documents or otherwise according to Law; or
 - (vii) constitute an approval by the State of Manage Co'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 Agreement 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

Each party must carry out its obligations under this Agreement at its own cost, unless expressly provided otherwise.

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 Agreement, howsoever those rights, obligations or Liabilities are sought to be enforced.
- (b) **(Subcontracts must exclude operation of Civil Liability Act):** Manage 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 Agreement on any basis to be "final and binding", neither party is entitled to challenge that decision, opinion or direction.

2.17 Governing Law

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

2.18 Entire Agreement

To the extent permitted by Law and in relation to their subject matter, this Agreement and the other State Project Documents:

- (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.

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 Agreement.

2.20 Manage Co and its Associates

Any obligation of Manage Co under a State Project Document is deemed to include an obligation on Manage Co to ensure that each of its Associates assume and comply with a corresponding obligation to the extent that the obligation is applicable to that Associate of Manage 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 Agreement which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Agreement will survive the rescission, termination or expiration of this Agreement, 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 Agreement;
 - (vi) the Performance Regime;
 - (vii) any limitation or exclusion of Liability; and
 - (viii) any right or obligation arising on termination of this Agreement.
- (b) **(Interpretation):** No provision of this Agreement which is expressed to survive the termination of this Agreement will prevent any other provision of this Agreement, as a matter of interpretation, also surviving the termination of this Agreement.
- (c) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction under this Agreement. All rights and obligations under this Agreement survive the execution and delivery of any transfer or other document, which implements any transaction under this Agreement.

2.22 Waiver

- (a) **(Writing):** A waiver given by a party under this Agreement 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 Agreement 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 Agreement.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

2.23 Severance

If, at any time, a provision of this Agreement 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 Agreement or any other relevant State Project Document; or
- (b) that provision under the Law of any other jurisdiction.

2.24 Counterparts

This Agreement 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 Agreement.

2.25 Moratorium legislation

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

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

(each matter referred to in paragraph (a) or (b), a "**Specified Effect**") is, to the extent only that the Law has the Specified Effect, expressly waived by Manage 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 Agreement.

Part B - Project commencement

3. Conditions Precedent

3.1 Commencement

- (a) This Agreement 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 2.9A (Nature of relationship);
 - (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 7 (Project Information);
 - (xi) clause 8.1 (Manage Co to inform itself);
 - (xii) clause 8.2 (No representations from the State);
 - (xiii) clause 8.11 (General Site undertakings);
 - (xiv) clauses 10.2 and 10.3 (Parties' representatives);
 - (xv) [Not used];
 - (xvi) clause 43 (Reduction in State liability for Relief Events);
 - (xvii) clause 45 (Indemnities and Consequential or Indirect Loss);
 - (xviii) clause 46 (Insurance);
 - (xix) clauses 50 and 51 (Dispute resolution);
 - (xx) clause 54 (Representations and warranties);
 - (xxi) clause 57 (Assignment and amendments);
 - (xxii) [Not used];
 - (xxiii) [Not used];
 - (xxiv) clause 61 (Intellectual Property Rights);

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

which will commence on the date of this Agreement.

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 Manage Co as each Condition Precedent is satisfied.
- (c) **(Manage Co to satisfy)** Manage 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 Commercial Close)** When the last Condition Precedent to be satisfied has been satisfied or waived, the State must confirm by notice to Manage 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 Agreement upon giving not less than 5 Business Days' notice to Manage Co;
- (b) **(State Project Documents terminated)** if the State terminates this Agreement in accordance with clause 3.4(a), each of the State Project Documents will be taken to have been terminated at the time this Agreement 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 [Not used]

4. Term

4.1 Commencement date

Subject to clause 3.1, this Agreement commences on the date of Commercial Close.

4.2 Expiry Date

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

4.3 Option to Extend

- (a) No later than 15 months prior to the then Final Expiry Date, the State may issue to Manage Co a notice entitled "Extension Request" which identifies that the State would like to extend the then Final Expiry Date and the period of that extension which must be no greater than 5 years (**Extension Request**).
- (b) Within 45 days after receiving that Extension Request, Manage Co must notify the State whether it:
- (i) agrees with the Extension Request without amendment;
 - (ii) agrees with the Extension Request but indicates that it wishes to amend one or more provisions of this Agreement for the period of that Extension Request; and
 - (iii) does not agree with the Extension Request,
- each an "**Extension Response**".
- If Manage Co fails to provide an Extension Response within that 45 day period, clause 4.3(b)(iii) will be deemed to apply.
- (c) Where clause 4.3(b)(i) applies, on receipt of that Extension Response, the Final Expiry Date will be deemed to be amended to the last day of the period set out in that Extension Request.
- (d) Where clause 4.3(b)(ii) applies,
- (i) if (within 90 days after the date on which the State receives that Extension Response) the State and Manage Co agree the terms of the extension, the parties must document that agreement within 45 days after the end of that 90 day period and this Agreement will be amended to reflect the terms of that agreement.
 - (ii) if the parties fail to agree the terms of the extension which is the subject of that Extension Response or fail to document that agreement within the periods specified in clause 4.3(d)(i), the Extension Request and Extension Response will lapse and (for the avoidance of doubt) the then current Final Expiry Date will continue to apply.
- (e) Where clause 4.3(b)(iii) applies or Manage Co fails to provide an Extension Response within that 45 day period, the Extension Request will lapse and (for the avoidance of doubt) the then current Final Expiry Date will continue to apply.

- (f) The State may only (but is not obliged to) issue up to one Extension Request under clause 4.3(a).

Part C - General Obligations

5. Overarching obligations

5.1 Manage Co's primary obligations

- (a) **(Deliver the Project)** Manage Co must:
- (i) carry out the Project Activities in accordance with:
 - A. the Project Documents;
 - B. all applicable Laws and Policies;
 - C. the Transition Phase Plans and the Operating Phase Plans (as applicable); and
 - D. Best Industry Practices and the Maintenance and Performance Standards;
 - (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)** Manage 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 Agreement;
 - (iii) all Modification Orders and Change Responses issued by the State in accordance with this Agreement; and
 - (iv) all directions or determinations given:
 - A. by the State or the State Representative 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 Agreement,
- whether or not Manage 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) **(Manage Co not to act):** Except as otherwise required by Law, Manage 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 Manage 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), Manage 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):** [Not used].

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 Manage Co:
 - (i) Manage Co accepts all risks (and the cost of such risks) in connection with the Project, the Site, the Site Conditions, the Correctional Centre or the Project Documents; and
 - (ii) Manage Co is not entitled to make any Claim against the State or any of its Associates in connection with the Site, the Site Conditions, the Correctional Centre, 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 Manage Co under this Agreement).
- (b) **(Liability exceptions)** Clause 5.3(a) does not:
 - (i) limit Manage Co's right to raise any defence in relation to a Claim made by the State against Manage Co;
 - (ii) exclude or limit any Liability the State or any of its Associates may have to Manage Co or any of its Associates under this Agreement or at Law in respect of Manage Co's liability to a third party in respect of death, personal injury or damage to property to the extent that the Liability of Manage Co or its Associates is a consequence of:
 - A. a breach (excluding any CSI 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 Manage Co under the State Project Documents or at Law in respect of Liability incurred by Manage Co as a result of a breach (excluding any CSI Breach) by the State of any State Project Document.
- (c) **(Manage Co acknowledgement):** Manage 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 Transition Phase Activities, including by reason of an Extension Event, a Change in Mandatory Requirements, a Contamination Compensation Event or a Modification, is limited to the amount payable by the State to Manage Co in accordance with clauses 8.6, 38.7, 38.14 and 40.10 (as applicable) and the Change Compensation Principles

- (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 Manage Co in accordance with clauses 39.6 and 39.8 (as applicable) and the Change Compensation Principles

5.4 Fit For Purpose Warranty

Manage Co warrants that at all times on and after the Operational Commencement Date until the end of the Term, the Correctional Centre will:

- (a) **(Fit for Purpose)**: subject to clause 32.1, remain Fit For Purpose during the period from the Operational Commencement Date to the end of the Term, by reference to the purposes, function, uses and requirements which are current and apply as at the Operational Commencement Date;
- (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

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

5.6 Corrections Legislation

- (a) [Not used]
- (b) **(Corrections Legislation and other Law)**: Manage 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 conferred or imposed on the Commissioner delegated to Manage 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 general manager or a correctional officer; and
 - (ii) any other Law, so far as that Law affects the Correctional Centre or the welfare of Inmates.
- (c) **(Sufficient Staff)**: Manage Co must employ sufficient Staff, including custodial and paramedical Staff, to enable Manage Co to discharge its obligations under this Agreement.
- (d) **(Reports)**: Manage Co must submit to the Commissioner periodic reports (including those reports required to be submitted by Manage Co in accordance with the Output Specification) and audited accounts in relation to the management of the Correctional Centre.

- (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 Manage Co in relation to the management of the Correctional Centre.
- (f) [Not used]

6. Approvals and consents

6.1 [Not used]

6.2 Other Approvals

- (a) **(General):** Manage Co must:
 - (i) obtain, maintain and comply with; and
 - (ii) on and after the Operational Commencement Date, 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):** Manage 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 [Not used]

6.4 [Not used]

6.5 [Not used]

6.6 [Not used]

6.7 Approvals

Where any Approval is issued with conditions which would or could have a material adverse effect on the ability of Manage Co to carry out the Project Activities under this Agreement, or otherwise affects Manage Co's ability to meet its obligations under this Agreement, Manage 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 Manage Co's detailed proposal for satisfying those Approvals in a manner that would not have a material adverse effect.

7. Project Information

7.1 No representations from the State

Subject to clause 8.2(b), Manage 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 Tender (or any part of it).

7.2 Collateral warranties for Asset Condition Report

On or about the date of Commercial Close, the State will either:

- (a) **(Assignment)**: assign to Manage Co the benefit of any warranties provided to the State by the Asset Condition Report provider; or
- (b) **(Asset Condition Report)**: procure that the Asset Condition Report providers provide Manage Co with the Asset Condition Report Warranties.

7.3 Project Information under this Agreement

Nothing in this Agreement, limits or excludes the State's liability to Manage Co under any State Project Document or for breach (excluding any CSI 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 Manage Co or its Associates, in accordance with that State Project Document.

7.4 Project Information representations and warranties by Manage Co

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

- (a) **(Entry into Agreement)**: it enters into this Agreement 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 Agreement and was provided by the State, its Associates and any Asset Condition Report provider for the information only of Manage Co;
- (d) **(Adequacy of Output Specification etc)**: it has satisfied itself that there is nothing in the Services Requirements which would prevent:
 - (i) the Correctional Centre from being Fit For Purpose; or
 - (ii) the Services being carried out in accordance with this Agreement;
- (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 Agreement or delivering the Project;

- (f) **(State entry into Agreement):** the State has entered into this Agreement relying upon the warranties, acknowledgements, representations and agreements of Manage Co as set out in this Agreement; and
- (g) **(Intellectual Property Rights):** all Intellectual Property Rights in the Project Information remain the property of the State, any of its Associates or any Asset Condition Information Report provider (as the case may be).

8. The Site

8.1 Manage Co to inform itself

Without limiting clause 7 or this clause 8 but subject to clauses 32.1 and 39, Manage 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 Manage Co exercising Best Industry Practices:

- (a) in assessing the risks regarding Site Conditions;
- (b) in ensuring that this Agreement 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) Manage Co acknowledges and agrees that, except as expressly provided by this Agreement, the State, its Associates and any Asset Condition Report provider 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 Information Report):** Nothing in clause 7.1 or 8.2(a) excludes any liability that any Asset Condition Report provider may have to Manage Co under the Asset Condition Report Warranties. Clauses 7.1, 7.4(c) or 8.2(a) do not exclude any liability that the provider of the Asset Condition Reports may have to Manage Co in respect of the Asset Condition Report.

8.3 Environmental issues

Manage 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 Agreement; 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):
 - (i) from Commercial Close up to the Operational Commencement Date, Manage Co must not (and must procure its Subcontractors do not) by any act or omission cause or contribute to any Contamination in, on, over, under or emanating from the Site; and
 - (ii) on and after the Operational Commencement Date, Manage 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)**: For any monitoring, testing or investigation of Contamination undertaken by Manage Co, Manage 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 Manage Co discovers any Contamination in, on, over, under or emanating from the Site (whether or not Manage 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)**: Manage 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)**: On and after the Operational Commencement Date, Manage 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, Manage Co or any other person; or
 - 2) the Contamination occurred before or after Manage 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 Manage 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 Manage Co is required to Remediate in accordance with clause 8.4(f), Manage 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):** Manage 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 Manage 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 Manage 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 Manage Co considers it is entitled to an:
- (i) extension to the Date for Operational Readiness or other relief from performance of the Transition Phase Activities as a result of a Contamination Compensation Event, Manage 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 Manage 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, Manage 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

Manage 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) [Not used].

8.8 Reporting Emissions and Energy Data

- (a) **(Application of this clause):** This clause 8.8 only applies if, despite the operation of 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 Manage Co, Manage Co must, upon the written request of the State, do all things reasonably necessary to transfer the Liability to Manage Co.
- (c) **(Compliance):** Manage 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):** Manage Co must:
 - (i) provide Manage 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 Manage 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 Manage Co's Emissions and Energy Data to any Authority; and
 - 2) to provide to any Authority any of Manage Co's Emissions and Energy Data concerning any greenhouse gas project;
 - (ii) keep all such Manage 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 Manage 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 Manage 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):** Manage Co acknowledges and agrees that Manage 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 Manage Co's Emissions and Energy Data concerning any greenhouse gas project.

8.9 Provision of Emissions and Energy Data to the State

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

- (iii) continue to carry out its obligations under this Agreement, 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 Agreement but without limiting this clause 8, on and from the Operational Commencement Date, Manage Co must make good, if applicable, in accordance with this Agreement, any disturbance or damage caused to any part of the Site or the Relevant Infrastructure in connection with Manage 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 Agreement but without limiting this clause 8, Manage Co:
 - (i) on and after the Operational Commencement Date, 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:
 - A. from Commercial Close up to the Operational Commencement Date, not engage in;
 - B. on and after the Operational Commencement Date, 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;
 - (iv) must ensure the safety of people and property in accordance with Best Industry Practice;
 - (v) must promptly deliver to the State a copy of every notice received by Manage Co or any of its Associates which affects the Site or any Adjoining Property;
 - (vi) on and after the Operational Commencement Date, is solely responsible for any person who enters the Site or the Correctional Centre;

- (vii) must:
 - A. from Commercial Close up to the Operational Commencement Date, not do; and
 - B. on and after the Operational Commencement Date, not do or permit to be done on any part of the Site anything which may:
 - 1) interfere with the State's or any of the State's Associate's access to the Site; or
 - 2) cause the State to breach any of its obligations in connection with any Adverse Rights to which the Transition Phase Licence or the Operating Phase 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 Centre 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 Agreement; and
- (x) on completion of any Transition Phase Activities, must remove all temporary protection or other structures or equipment erected in connection with those Transition Phase Activities as soon as practicable, and in accordance with Best Industry Practices.
- (c) **(Remedy of nuisance and interference):** If, in the reasonable opinion of the State, Manage Co has failed to meet its obligations under clause 8.11(b)(ii), 8.11(b)(iii) or 8.11(b)(iv), Manage Co must comply with any reasonable direction of the State to:
 - (i) stop or change the manner of carrying out the Project Activities; and
 - (ii) amend the applicable Operating Phase Plan to remedy the nuisance or interference and submit to the State for review in accordance with the Review Procedures.

9. Upgrade Works, Utilities Infrastructure and Utilities

9.1 Upgrade Works

- (a) **(Execution of Upgrade Works):** The parties acknowledge and agree that:
 - (i) the State may execute the Upgrade Works on the Site during the Transition Phase and Operating Phase; and
 - (ii) if the Upgrade Works are not completed by 30 June 2019 or, when completed, the Upgrade Works are not in accordance with Schedule 36 and there is a material adverse effect on Manage Co's ability to comply with its obligations under this Agreement, Manage Co may request the State to direct a Modification pursuant to clause 40.8.
- (b) **(Manage Co acknowledgements):** Manage Co acknowledges and agrees that:
 - (i) delays in carrying out the Project Activities or a failure to comply with Manage Co's other obligations under this Agreement may impact on, interfere with or delay the execution of the Upgrade Works; and

- (ii) it has taken the Upgrade Works into account in preparing the Transition Phase Program, in the Transition Phase Payments and in performing its obligations arising from or in connection with this Agreement.
- (c) **(Manage Co obligations):** Manage Co must:
 - (i) without limiting clause 20, grant the State and its Associates priority access to those parts the Sites controlled by Manage Co to the extent necessary to perform the Upgrade Works;
 - (ii) cooperate with the State and its Associates in relation to the performance of the Upgrade Works;
 - (iii) coordinate the performance of the Project Activities with the State's performance of the Upgrade Works; and
 - (iv) not do anything that will cause or contribute to the Upgrade Works being delayed or damaged.
- (d) **(State Updates):** On the Operating Commencement Date and at the end of each calendar month thereafter until the Upgrade Works are complete, the State must provide to Manage Co a written notice which sets out:
 - (i) details of the progress of the Upgrade Works;
 - (ii) the Upgrade Work which it expects the Contractor (UW) to perform over the next one and three months after receipt of that notice; and
 - (iii) the locations on the Site where those Upgrade Works will be undertaken by the Contractor (UW).
- (e) **(Additional Security Services):** Within 5 Business Days after receipt of that written notice under clause 9.1(d), Manage Co must submit a notice to the State which identifies the additional security services which it proposes it will need to implement and the time period those additional security services will be required to ensure that it is able to comply with its obligations under this Agreement having regard to the activities to be undertaken by the Contractor (UW) **(Additional Security Services)**. In providing that proposal, Manage Co must only propose the minimum Additional Security Services which a reasonable contractor in the position of Manage Co would have proposed and those Additional Security Services must not include services and resources which Manage Co requires otherwise to comply with its obligations under this Agreement including those under clauses 9.1(b) and/or 9.1(c).
- (f) Where the Upgrade Works undertaken by the Contractor (UW) differ from the notice provided by the State to Manage Co under clause 9.1(d), Manage Co must adjust the Additional Security Services it provides to reflect the increased or decreased requirements for Additional Security Services based on the principles in clause 9.1(e).
- (g) **(Claim for Additional Security Services):** At the end of each calendar month after the Operational Commencement Date, Manage Co must submit a written Claim to the State which identifies in detail (providing such additional details as the State may reasonably request by notice in writing):
 - (i) the works which the State identified the Contractor (UW) would perform in that month and the works which the Contractor (UW) actually performed;
 - (ii) the Additional Security Services which Manage Co proposed to provide for that month pursuant to clause 9.1(e) and that Additional Security

Services which Manage Co actually provided, the reason for the difference in Additional Security Services provided the works; and

- (iii) the costs for providing the Additional Security Services based on the principles set out in clauses 9.1(e) and 9.1(f) calculated by multiplying the number of hours Manage Co or its Associates spent in providing those services by the cost per hour identified in Annexure 8 of Schedule 16 as Indexed by the WPI Annual Multiplier.
- (h) **(Payment for Additional Security Services):** For the Additional Security Services provided in the relevant calendar month, the State must notify Manage Co of the amount to which Manage Co is entitled under this Agreement for the Additional Security Services which Manage Co is obliged to provide pursuant to the principles set out in clauses 9.1(e) and 9.1(f) within 10 Business Days after the State receives the Claim containing the information required by clause 9.1(g).
- (i) **(Completion of parts of the Upgrade Work):** To the extent requested by the State, Manage Co must provide input into and comment on all or part of the work undertaken by the Contractor (UW) on the terms requested by the State. That input and commentary must be provided by Manage Co to the State within 5 Business Days after Manage Co receives a request to do so by the State. For the avoidance of doubt, Manage Co will be obliged to provide the Services in relation to the part or the whole of the Upgrade Works as and from the date on which the relevant part or whole of the Upgrade Works is completed in accordance with the Schedule 36 as determined by the State.
- (j) **(Upgrade Work Defects):** Manage Co must notify the State as soon as it becomes aware of any Defect in any part of the Upgrade Works which arises in the first ■ months after the relevant part of the Upgrade Work has reached completion in accordance with Schedule 36 as determined by the State. That notice must identify the relevant Defect and identify the location of that Defect. The State may remedy that Defect, procure an Associate of the State to remedy that Defect or issue a notice to Manage Co requesting Manage Co to remedy that Defect. To the extent that the State issues such a notice to Manage Co, Manage Co must remedy that Defect as soon as reasonably practicable after receipt of that notice and the reasonable costs incurred by Manage Co will be due and payable by the State to Manage Co. Before it is entitled to Claim those reasonable costs, Manage Co must submit a notice to the State setting out the work performed to remedy that Defect and the reasonable costs claimed, each supported by written evidence. Where requested to do so by the State, Manage Co must provide additional information to the State to support that Claim.

9.2 Utilities Infrastructure and Utilities

- (a) **(No representations):** Subject to clause 29.2(h), Manage 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) **(Manage Co assumes risk):** Subject to clause 29.2(h), Manage 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) **(Manage Co obligations):** Except as expressly provided to the contrary, on and after the Operational Commencement Date, Manage 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 in a manner and in a condition which ensures that:
 - A. [Not used];
 - B. [Not used]; and
 - C. the Correctional Centre meets the FFP Warranty;
- (iii) **(Utility works):** undertake, or procure that a Utility provider undertakes, all work in connection with Utility Infrastructure within the Site which is required to ensure a continuous supply of Utilities to the Correctional Centre;
- (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 Operational Readiness (if any), or is otherwise required to be decommissioned in accordance with this Agreement;
- (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 Centre;
- (vii) **(Agreements):** [Not used];
- (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):** on and from Commercial Close, not damage or destroy Utility Infrastructure;
- (x) **(No disruption):** on and from Commercial Close, not unreasonably disrupt or interfere with any Utility Infrastructure or the supply of Utilities;
- (xi) **(Payment):** on and from the Operational Commencement Date:
 - A. review invoices received by the State and provided by the State to Manage Co, in each case in relation water, electricity and gas consumed or used at the Site or the Correctional Centre in accordance with agreements entered into by the State with those Utility provider and must provide comments on those invoices to the State; and
 - B. arrange and pay for all other Utilities consumed or used at the Site or the Correctional Centre in accordance with the agreements entered into with the Utility providers; and
- (xii) **(Efficiency):** use the Utilities provided to the Site or the Correctional Centre:
 - A. efficiently; and
 - B. solely for the provision of the Project Activities.

10. Parties, personnel and community

10.1 Authorities

Manage 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 Agreement, the State Representative is the party nominated as such in the Contract Particulars.
- (c) **(Agent of the State)**: The State Representative will administer this Agreement on behalf of the State and will exercise all rights, powers, authority and functions of the State under this Agreement 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 Manage 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 Manage 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 Manage Co of any such variation or termination.

10.3 Manage Co Representative

- (a) **(Natural person)**: Manage Co must ensure that at all times throughout the Term there is a natural person appointed by it as Manage Co Representative in respect of the Project.
- (b) **(Identity)**: As at the date of this Agreement, the Manage Co Representative is the party nominated as such in the Contract Particulars.
- (c) **(Employee)**: The Manage Co Representative must be an officer or employee of Manage Co or a Related Body Corporate of Manage Co and must be employed full time on the Project.

- (d) **(Replacement):** The Manage Co Representative is one of the Key People and can accordingly only be replaced in accordance with clause 10.6.
- (e) **(Contact):** The Manage Co Representative must act as the principal point of contact between Manage Co and the State in respect of the administration of this Agreement, and be available to the State as and when required.
- (f) **(Directions):** A direction is given to Manage Co if it is given to the Manage Co Representative.
- (g) **(Authority and skills):** Manage Co must ensure that at all times during his or her appointment, Manage Co Representative has:
 - (i) the authority to perform its role and duties and discharge its obligations under this Agreement; and
 - (ii) a detailed knowledge of the Project and sufficient experience and skills to undertake the role of Manage Co Representative.
- (h) **(Duties during the Term):** The Manage Co Representative must perform the duties of the Manage Co Representative under this Agreement, including to:
 - (i) **(spokesperson):** act as the spokesperson for Manage 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 Manage Co and manage and co-ordinate issues with any Manage Co Associate prior to presentation to the State;
 - (v) **(presence):** ensure a strong presence and consistent project management role for Manage 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 Manage Co Representative before taking any annual or other leave.

10.4 Operational Readiness Co-ordinator

- (a) **(Natural person):** Manage Co must ensure that from Commercial Close until at least 12 Months after the Date of Operational Readiness, 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 10.6.
- (c) **(Contact):** The Operational Readiness Co-ordinator must be available to the State as and when required.
- (d) **(Presence):** Manage Co must ensure that the Operational Readiness Co-ordinator is present at the Site at such times as are necessary to ensure that Manage Co is complying with its obligations under this Agreement and upon reasonable request by the State.
- (e) **(Reporting):** The Operational Readiness Co-ordinator must report directly to the Manage Co Representative.

- (f) **(Authority and skills):** Manage 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 Agreement; 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 Agreement includes the following functions:
- (i) [Not used];
 - (ii) **(Manage transition process):** manage and be heavily engaged in the process of preparing for the Correctional Centre for commencement of the Services;
 - (iii) **(Co-ordinate Subcontractors):** co-ordinate and liaise with the Subcontractors and oversee the performance by the 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 Transition Phase to the Operating Phase;
 - (vi) **(Liaison):** attend on and liaise with the persons performing the testing and commissioning of the Corrections Centre;
 - (vii) **(Co-ordinate transition):** co-ordinate the execution of the Operational Readiness Plan in order to facilitate achievement of Operational Readiness by the Date for Operational Readiness 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 Centre and be 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 Centre and the Inmates.
- (b) [Not used]
- (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):** Manage 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 Agreement.
- (f) **(Termination):** Manage Co must, if directed by the Commissioner, terminate the appointment of the General Manager.

10.6 CSI Contact Person

- (a) **(Natural person):** The State will ensure that at all times throughout the Term there is a natural person appointed by it as the CSI Contact Person for the Project.
- (b) **(Identity):** As at the date of this Agreement, the CSI Contact Person is the party nominated as such in the Contract Particulars.
- (c) **(Replacement):** The State may at any time replace the CSI Contract Person, in which event the State will appoint another person as the CSI Contract Person and notify Manage Co of that appointment.
- (d) **(Delegation):** The State may at any time delegate the exercise of any power or authority of the CSI Contract Person to a person other than the then appointed State Representative and may terminate or vary that delegation.
- (e) **(Notification of delegation):** The State will promptly notify Manage Co of the identity of each delegate, the powers and authority delegated (including any conditions applying to the delegated power).
- (f) **(Vary or terminate delegation):** The State may vary or terminate any delegated power or authority of the CSI Contract Person but must promptly notify Manage Co of any such variation or termination.

10.7 Key People

Manage 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 Manage 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 Manage Co Representative;
 - (iii) [Not used];
 - (iv) the General Manager (or a delegate of the General Manager);
 - (v) [Not used]; and
 - (vi) [Not used].
- (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 Agreement;
 - (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 Manage Co and its Subcontractors 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. fortnightly (with the first meeting to occur two weeks after the Commercial Close and from the Operational Commencement Date 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 Manage Co. Without limiting this clause 10.8(d)(i)C, Manage Co acknowledges and agrees that the State may call a meeting if the State is dissatisfied with Manage Co's performance;

unless agreed otherwise by the State and Manage Co; and
 - (ii) conduct its meetings in the manner agreed from time to time between the State and Manage Co.
- (e) **(Reports):** Manage 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:
- (i) prior to the Operational Commencement Date, the Fortnightly Transition Report for the previous Month and the latest Transition Phase Program; and

- (ii) thereafter, the Monthly Performance Report.
- (f) [Not used].
- (g) **(Subcontractors):** The State may direct Manage Co to procure the attendance of senior representatives of any of the Subcontractors (not forming part of the Project Control Group) 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 Manage Co; and
 - (ii) include any items notified to it by any other member received no later than 5 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 Agreement 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 Agreement.
- (g) **(Further information):** The State may require Manage Co to provide information on matters discussed at any Project Control Group meeting and Manage Co must provide that information in a timely manner.
- (h) **(No reliance or Claim):** Neither the State nor Manage 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 Manage Co must procure that its Associates fully

respond to any questions which the State may ask Manage Co at any meetings conducted under this Agreement within 5 Business Days.

10.10 Communications and Community Relations

- (a) **(Manage Co acknowledgement):** Manage 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):** Manage Co must manage and participate in all community relations programs and activities as:
 - (i) required by the Services Requirements;
 - (ii) required by any Approvals;
 - (iii) contained in the Communications and Community Relations Plan; and
 - (iv) reasonably requested by the State from time to time.
- (c) **(Communications approach):** Without limiting the generality of clause 10.10(a), Manage 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):** Manage 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 Hawkesbury City Council in relation to matters in connection with traffic management, staff recruitment and economic opportunities in the area.

10.11 Conflicts of Interest

Manage Co must:

- (a) **(Avoid conflict):** avoid any conflicts of interest that might arise in relation to the exercise or performance by Manage Co or any of its Associates of any power, duty or function conferred or imposed by or under this Agreement 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 Agreement.

10.12 [Not used]

10.13 Aboriginal participation (operations)

- (a) **(Submission of Aboriginal Participation Plan):** Manage Co must prepare and submit to the State Representative within the relevant time periods set out in Schedule 15, its draft and final Aboriginal Participation Plan, showing how Manage Co intends to direct the target project spend to appropriate Aboriginal education and employment opportunities during the Operating Phase, which must, as a minimum, meet the standards set out in the Contract Particulars.
- (b) **(Management of Aboriginal Participation Plan):** Manage Co must systematically manage its Aboriginal participation processes and implement its Aboriginal Participation Plan in accordance with the Aboriginal Participation Plan.
- (c) **(Reporting):** Manage Co must on an annual basis, provide to the State Representative, its Aboriginal Participation Report which explains how the Aboriginal Participation Plan has been implemented and what outcomes have been achieved.
- (d) **(Compliance):** Manage Co must demonstrate to the State, whenever requested, that it has met and is meeting at all times its obligations under clauses 10.13(a) to 10.13(d).

10.14 [Not used]

10.15 [Not used]

11. Quality Assurance

11.1 General Obligations

- (a) **(Quality Assurance System):** During the Term, Manage Co must, and must procure that its Key Subcontractors, develop, implement, maintain and comply with a Quality Assurance System.
- (b) **(Minimum standard):** Manage Co's, and the Key Subcontractor's, Quality Assurance System must, from the first anniversary of the Operational Commencement Date and for the remainder of the Term:
 - (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 and such Manage Co certification must remain current throughout the Term,provided that, in the case of Justice Health only, Justice Health's accreditation against the National Safety and Quality Health Service Standards will be taken to comply with these requirements. .
- (c) **(Subcontractors to have Quality Assurance Representative):** Manage 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 Agreement.

- (d) **(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 Manage 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 Agreement audit the performance of the relevant Project Activities against the relevant Transition Phase Quality Assurance Plan, Operating Phase Quality Assurance Plans and Quality Assurance Systems, including those of Key Subcontractors.
- (b) **(Rectification of non-conformance):** Manage Co and each Key Subcontractor must immediately rectify any non-conformance with its Transition Phase Quality Assurance Plan, Operating Phase 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 Agreement

- (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 Manage Co's compliance with the State Project Documents, including with WHS Management Plan (as applicable).
- (b) **(Notice of audit):** Where it is reasonably able to do so, the State will provide Manage Co with no less than 10 Business Days' notice of any audit under this clause 11.
- (c) **(Minimisation of disruption):** Where the State carries out or procures the carrying out of an audit under this clause 11, the State will use reasonable endeavours to minimise any disruption caused to the Project Activities.
- (d) **(Audit obligations):** Without limiting clause 28.2, Manage Co must:
 - (i) provide all Manage 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 Manage 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 any Project Activities;
 - (iii) the Accounts and Records;
 - (iv) Manage Co Material; and
 - (v) Manage Co's 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 Manage Co and its Associates and may require Manage 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 Manage Co must undertake to ensure that it addresses any failure by Manage Co 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), Manage 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 Agreement) direct Manage Co as to:
 - A. any action Manage Co must 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 Manage Co,

and Manage Co must, at its own cost, implement such actions.
- (i) **(Liability for cost of audit):** Manage Co will not be liable for any costs incurred by the State performing audits under this clause 11.2, unless an audit establishes that Manage Co is in material breach of a State Project Document, or has acted negligently or fraudulently in the performance of any of the Project Activities, in which case the State's reasonable costs of performing the audit are to be paid by Manage Co as a debt due and payable by Manage Co to the State.
- (j) **(Audit during Transition Phase):** If the State conducts an audit in accordance with this clause 11.2 during the Transition Phase, the State will, and will procure that its Associates do not unreasonably delay Manage Co in achieving Operational Readiness.
- (k) **(Determination of Dispute):** Any Dispute by Manage Co as to the accuracy of any audit report may be referred by either party for determination in accordance with clause 50.
- (l) **(Auditor-General not limited):** Without limiting this clause 11.2, the parties acknowledge and agree that, notwithstanding any provision of this Agreement 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 Agreement and each party submits to those powers and responsibilities;
 - (ii) the State or Manage Co 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), Manage Co undertakes to the State that it will, 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

Manage 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 Centre, 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 Manage 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 Manage 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)**: Manage 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)**: Manage 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 in a way that would:
 - A. have a material adverse effect on the ability of Manage 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,

without the prior consent of the State (which will not be unreasonably withheld).

(c) [Not used]

(d) **(Prescribed terms):** Manage Co must ensure that each Key Subcontract and Significant Subcontract includes a clause which provides that, if this Agreement is terminated in accordance with clause 49:

(i) in respect of each Key Subcontract:

A. any party to the Key Subcontract may terminate the Key Subcontract; and

B. Manage Co will pay to the Key Subcontractor, an early amount which is no greater than the aggregate of:

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

which amounts are due and payable under the relevant Key Subcontract but remain unpaid at the date of termination of the Key Subcontract; and

(ii) in respect of each Significant Subcontract, if the Significant Subcontract is terminated, Manage Co or the relevant Key Subcontractor (as the case may be) will pay to the Significant Subcontractor, an early termination amount which is no greater than the aggregate of:

- [Redacted]
- [Redacted]



which amounts are due and payable under the relevant Significant Subcontract but remain unpaid at the date of termination of the Significant Subcontract.

12.3 Requirements for subcontracting

- (a) **(Engagement of subcontractors):** Without limiting clause 12.2, Manage 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 Agreement; 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, 20.1, 28.2, 48, 57, 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 Manage 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 to be allowed access to the Site; or
 - C. not be given 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):** Manage 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):** Manage 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, Manage 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, Manage 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 Manage 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 Manage Co to the State. Where practicable, the State will provide prior written notice to Manage 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 Manage Co or the relevant Subcontractor does not pay such amount to that Subcontractor in accordance with that Subcontract, then, the State may pay such amount to that Subcontractor provided it has given Manage 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 Manage Co to the State.

12.5 Obligations as to Claims made on pass-through basis

Manage 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 Manage 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

Manage Co:

- (a) **(Solely responsible):** subject to clauses 38 and 39, has sole responsibility for, and must manage, all aspects of industrial relations:
 - (i) from Commercial Close up to the Operational Commencement Date, in relation to the performance of the Transition Phase Activities; and

- (ii) on and after the Operational Commencement Date, 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) Manage Co has taken or proposes to take to overcome the effects of such industrial relations issues or action.

12.7 Competence

- (a) **(Manage Co to ensure competence):** Manage 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 Manage 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 Manage 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):** Manage Co must ensure that each employee of Manage Co and each Subcontractor engaged to provide any Project Activities:
 - (i) completes the training and has the accreditations 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):** Manage Co must:
 - (i) promptly make the results of:
 - A. any Employee Checks; or
 - B. any Probity Investigation that Manage 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 Manage 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 Agreement;

- (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 Agreement, the work under this Agreement and the work under any Subcontract are taken to be part of the same 'construction project'.
- (b) **(Manage Co is principal contractor or appoints principal contractor):** Where any work under this Agreement or any Subcontract is a construction project commissioned by Manage Co, prior to the commencement of the work:
 - (i) Manage Co must notify the State of the nature of the construction project and the party who is to perform the construction work (**Relevant Entity**);
 - (ii) Manage Co must either act as the principal contractor or provide to the State an agreement from the Relevant Entity that it has been engaged to act as principal contractor for the construction project; and
 - (iii) if Manage Co is not the principal contractor, Manage Co must engage the Relevant Entity as the principal contractor in respect of that work and authorise the Relevant Entity 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) [Not used]
- (d) **(Manage Co warranty):** Manage Co warrants to the State that any party it appoints as principal contractor under this clause 13.2 is sufficiently skilled, qualified and experienced and has the appropriate safety systems to undertake the role of principal contractor having regard to the size, scale and location of the works.
- (e) **(Manage Co responsibilities):** Manage Co:
 - (i) must procure and ensure that each principal contractor it engages accepts the engagement in clause 13.2(b) and agrees to discharge the duties imposed on a principal contractor under the WHS Legislation and the State Project Documents (as applicable) and that principal contractor's WHS management plan for the construction project;
 - (ii) must not do anything which would result in any principal contractor it engages 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 any principal contractor it engages and if it believes that it is unable to do so, agree to notify and provide details to that principal contractor immediately.
- (f) [Not used]
- (g) [Not used]

- (h) **(Documents to be provided):** Without limiting Manage Co's reporting or other obligations elsewhere under this Agreement, Manage Co must procure that any principal contractor it engages will:
- (i) as soon as reasonably practicable, provide Manage 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 principal contract it engages 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 Manage Co, provide Manage Co with access to such documents or records as may be necessary to establish the compliance by each principal contractor it engages with its obligations under the State Project Documents (as applicable), the WHS Legislation and its WHS management plan; and
 - (iii) allow Manage Co to make copies of such documents or records.

Where Manage Co is the principal contractor, the obligations of the principal contractor in this clause 13.2(h) will apply to Manage 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):** Manage 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) Manage 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 Agreement 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 Agreement and the 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. Manage Co must prepare and provide a WHS Management Plan to the State:
 - A. before commencement of the Works, in relation to the Transition 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, Manage Co must take those into account and prepare an amended WHS

Management Plan. Manage 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 of which it becomes aware;
- (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 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 Manage Co about Manage Co's ongoing compliance with the WHS Legislation, to the State their obligations under this Agreement and the State Project Documents (as applicable) in relation to work health safety and rehabilitation matters, and its WHS Management Plan to the State. Manage 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 this clause 13.3(a) to 13.3(c).

- (c) **(Auditing and monitoring):** Manage Co must:
- (i) regularly audit and monitor its compliance with the WHS Legislation, the WHS Management Plan and its obligations under this Agreement 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 Agreement 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.

Manage 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) **(Manage Co Responsible):** Except in relation to the obligations of any principal contractor under the WHS Legislation appointed in accordance with this clause 13 Manage 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 Operational Commencement Date 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 Manage 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 Manage Co under this clause 13.

13.4 State may act if Manage Co fails to comply

To the extent that Manage Co fails to comply with any obligation under this clause 13, the State may, in addition to any other remedies under this Agreement or at Law, on reasonable prior notice to Manage 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 Manage Co to the State.

13.5 Long service leave levy

Before commencing construction of any building and/or construction work under the *Building and Construction Industry Long Service Payments Act 1986* (NSW), Manage 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):** Manage Co:

- (i) must obtain a National Police Certificate for all Relevant Persons who carry out Project Activities at the Correctional Centre prior to them commencing such Project Activities or will otherwise have access to Personal Information;
 - (ii) is not obliged to obtain a National Police Certificate for a Relevant Person pursuant to clause 13.6(a)(i) if Manage 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 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 Manage 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) Manage 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 Manage 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 Personal Information.
- (d) **(Ongoing notification):** Without limiting Manage Co's obligations under clause 63.1(a), it is Manage Co's responsibility to notify the State of any behaviour by any Relevant Person, or of any other circumstances, which come to Manage 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 Manage 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 Manage Co notice and Manage Co must without delay remove such person from the performance of any of the Project Activities. The State has no obligation to disclose to Manage Co the reasons for a decision made under this clause 13.6(e).

13.7 [Not used]

13.8 [Not used]

13.9 [Not used]

13A [Not used]

14. [Not used]

15. NSW Code and Guidelines

15.1 Reference

In addition to terms defined in this Agreement, 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, Manage 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**): Manage Co must notify the New South Wales Industrial Relations 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 Manage Co engages a Subcontractor or consultant, Manage 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**): Manage 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):** Manage 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):** Manage 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 Manage Co, including but not limited to the Site and the Correctional Centre;
 - (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 Manage Co, its subcontractors, consultants, and related entities.
- (c) **(Production of documents):** Manage 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) **(Manage Co not subject to a sanction):** Manage Co warrants that at the time of entering into this Agreement, 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 Manage 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 Manage 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 Manage 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):** Manage 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. Manage 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 Manage Co from responsibility to perform the Project Activities and any other obligation under this Agreement, or from Liability for any Defect in the Correctional Centre 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, Manage 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 Manage 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 Manage Co as to the course it must adopt within 10 Business Days of receiving notice.

Part D - Transition Phase obligations

16. Transition Phase Plans and Reports and Transition Phase Program

16.1 Transition Phase Plans and Reports

- (a) **(Initial Transition Phase Plans):** The parties acknowledge that the Initial Transition Phase Plans are included within the Services Proposal.
- (b) **(Preparation):** Manage Co must prepare (where there are no relevant Initial Transition Phase Plans), and otherwise update each Transition Phase Plan:
 - (i) in accordance with the Transition Phase Plans and Reports Schedule and the other requirements of this Agreement relevant to that Transition Phase Plan; and
 - (ii) to ensure each Transition Phase Plan contains complete and accurate information in respect of the relevant aspects of the Project.
- (c) **(Submission):** Manage Co must submit each Transition Phase Plan to the State for review in accordance with the Review Procedures.
- (d) **(Delivery):** Unless otherwise agreed by the State, Manage Co must carry out the Transition Phase Activities in accordance with the Transition Phase Plans.
- (e) **(Authority Approval):** If a Transition Phase Plan is required to be approved by an Authority, Manage Co must ensure that it has obtained that Approval prior to submitting the relevant Transition Phase Plan to the State for review.
- (f) **(Transition Phase Reports):** Manage Co must prepare and submit the Transition Phase Reports to the State in accordance with the Transition Phase Plans and Reports Schedule.
- (g) **(Additional information):** Manage Co must promptly provide to the State, any additional information in connection with the Transition Phase Plans and the Transition Phase Reports reasonably requested by the State.
- (h) **(Warranty):** Manage Co warrants that:
 - (i) each Transition Phase Plan and each Transition 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 Transition Phase Plan will, at all times during the Transition Phase, be fit for purpose.

16.2 Transition Phase Program

- (a) **(Initial Transition Phase Program):** The Initial Transition Phase Program is included within the Services Proposal.
- (b) **(Update):** Manage Co must update the Transition Phase Program:
 - (i) within 10 Business Days after Commercial Close to reflect the date of Commercial Close and the Original Date for Operational Readiness;
 - (ii) at least fortnightly (and no later than 5 Business Days prior to each meeting of the Project Control Group) to accurately reflect:

- A. the actual status and progress of the Transition Phase Activities; and
 - B. any other changes to the activities, times, durations or other information contained in the Transition Phase Program and any sub-programs;
- (iii) within 5 Business Days of Manage Co being:
- A. granted an extension to the Date for Operational Readiness; or
 - B. instructed to accelerate the Transition Phase Activities, in accordance with this Agreement; and
- (iv) otherwise, within 5 Business Days of:
- A. deciding to depart in a material way from the then current Transition Phase Program; or
 - B. any request by the State at any time,

and the updates must comply with the Programming Requirements and must not adjust the Date for Operational Readiness (unless an extension of time has been granted in accordance with this Agreement).

- (c) **(Departure):** Manage Co:
- (i) acknowledges and agrees that the Transition Phase Program does not form part of this Agreement;
 - (ii) must not depart from the Transition Phase Program without reasonable cause and must give notice to the State promptly upon becoming aware of any proposed or likely departure from the critical path in the Transition Phase Program, together with the reasons why it is necessary to do so to comply with this Agreement; and
 - (iii) acknowledges and agrees that any such departure does not relieve Manage Co from its obligations under this Agreement, including under clause 19.2(e) or to achieve Operational Readiness by the Date for Operational Readiness.
- (d) **(Assessing Claims):** The State is not required to use the Transition Phase Program for any purpose, including for the purpose of assessing:
- (i) the impact of any delay event or any extension of time; or
 - (ii) any Claim made by Manage Co,
- but may do so in their sole and absolute discretion.

17. [Not used]

18. [Not used]

19. Transition

19.1 Transition Phase Licence

- (a) **(Licence for Transition Phase Activities):** The State grants to Manage Co a non-exclusive licence to enter upon and access the Site:
- (i) in accordance with and at the times permitted by the Transition Phase Licence, the Transition Plan and the State's access, work, health, safety and interface protocols applicable at Site from time to time; and
 - (ii) only to the extent necessary to carry out the Transition Phase Activities and to exercise or discharge their powers, rights and obligations under the Project Documents.
- (b) **(Terms of Transition Phase Licence):** The Transition Phase Licence granted under clause 19.1(a):
- (i) commences on Commercial Close and terminates on the grant of the Operating Phase Licence in accordance with clause 28.1, or on earlier termination of this Agreement;
 - (ii) is a personal right in contract, does not create any estate or interest in the Site, does not confer exclusive possession on Manage Co or its Associates and does not create the relationship of tenant and landlord between any of them and the State; and
 - (iii) is given subject to the Adverse Rights and the rights of the State, any of its Associates and any other person authorised by it, to enter upon, access and occupy the Site, in accordance with this Agreement or any other State Project Document.
- (c) **(Other access):** Except as set out in clause 19.1(a), Manage Co is solely responsible for obtaining access to and from the Site, and to and from any land outside the Site to which access is required to carry out the Transition Phase Activities.
- (d) **(Coordination):** During the Transition Phase, Manage Co bears the risk of coordinating its access to the Site with any other person that uses the access ways to the Site. Manage Co must not interfere with or delay the operation and maintenance of the Correctional Centre or any other activity undertaken by the State during the Transition Phase.
- (e) **(No parting with interest):** Subject to clauses 19.1(f), the State and Manage Co agree that Manage Co has no right to share occupancy, deal with all or any part of its interest under the Operating Phase Licence or the Site (including by way of assignment, sub-licence (other than if the grant of a sub-licence by Manage Co of its interest in the Operating Phase Licence is to a Subcontractor approved by the State or otherwise permitted under this Agreement for the purposes of the Project), trust or the grant of any Security Interest) except to the extent allowed under this Agreement.
- (f) **(Manage Co Associates may access):** Subject to any Manage Co Associates being approved by the State in accordance with this Agreement, Manage Co may permit Manage Co Associates to access and use the Sites only at the times and for the purpose which it is entitled to access and use the Site.

19.2 Transition Phase Activities

In addition to the obligations set out in clause 5, Manage Co must:

- (a) [Not used];
- (b) **(Transition Phase Activities)**: comply with the requirements specified in section 1 of Part B of the Output Specification;
- (c) **(Site)**: meet the obligations set out in clause 8.11 in respect of that part of the Site it is accessing and otherwise keep that part of the Site it is accessing:
 - (i) safe, clean and tidy at all times; and
 - (ii) secure and free from all unauthorised access;
- (d) **(Use of Transition Phase Activities)**: not use the Site for any purpose other than the Transition Phase Activities; and
- (e) **(Progress of Transition Phase Activities)**: regularly, expeditiously and diligently carry out and progress the Transition Phase Activities to achieve Operational Readiness by the Date for Operational Readiness.

19.3 [Not used]

19.4 Corrective Action Plan

- (a) **(Review by the State)**: Manage Co acknowledges and agrees that the State will continually review the Transaction Phase Activities to ensure that Manage Co is complying with its obligations in clauses 19.2(e) and 25.1.
- (b) **(Notice of non-compliance)**: If the State forms the view that Manage Co is not complying with its obligation in clause 19.2(e), the State must give notice to Manage Co of its opinion, together with its reasons for forming that opinion.
- (c) **(Corrective action plan)**: If the State issues a notice pursuant to clause 19.4(b), Manage Co must, promptly, and in any event within 10 Business Days, issue a corrective action plan to the State 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 Manage Co must provide pursuant to clause 19.4(c) must show how Manage 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 Transition Phase Program.
- (e) **(Comments)**: The State may, within 10 Business Days of receipt of a corrective action plan, give Manage Co any comments on the corrective action plan provided that such comments are consistent with the requirements of clause 19.4(d).
- (f) **(Response)**: If the State gives Manage Co any comments under clause 19.4(e), Manage Co must amend and, within 5 Business Days of receipt of the State's comments, resubmit the corrective action plan to the State to address the State's comments, after which clause 19.4(e) and this clause 19.4(f) will re-apply until the State does not issue any further comments.
- (g) **(Compliance)**: Manage Co must comply with a corrective action plan for which the State does not issue any comments under clause 19.4(e).
- (h) **(Liability)**: Manage Co will not be relieved of any Liability or responsibility under this Agreement or otherwise at Law arising out of or in connection with:
 - (i) any comments given by the State under clause 19.4(e); or
 - (ii) the implementation of any corrective action plan in respect of which the State has or has not given comments under clause 19.4(e).

- (i) **(No claim):** Manage Co will not be entitled to make any Claim against the State arising out of or in connection with any comments by the State under clause 19.4(e) or any Loss suffered or incurred by Manage Co in preparing, or complying with, a corrective action plan.

20. Access during the Transition Phase

20.1 Rights to enter, inspect and test

- (a) [Not used]
- (b) **(State Inspection of Transition Phase Activities):** The State, any of its Associates and any other person authorised by it may during the Transition Phase inspect, observe or test any part of the Transition Phase Activities on the Site and any other site where the Transition Phase Activities are being carried out (whether or not such inspections, observations or tests are otherwise required under any State Project Document).
- (c) [Not used]

20.2 State Access

- (a) **(Access to sites):** Manage Co must allow the State, any of the State's Associates and any other person authorised by the State to any part of the Site and any other site where the Transition Phase Activities are being carried out.
- (b) [Not used].

20.3 Manage Co to assist

If requested by the State, Manage 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 Transition Phase Activities):** providing access to any part of the Transition Phase Activities and Manage Co Materials that the State requires;
- (b) **(Preparation of samples):** preparing samples of materials used in connection with the Transaction Activities 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 Agreement) 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 Manage Co in connection with any inspection or test conducted at the State's direction in accordance with this clause 20, unless:

- (a) **(Failure to comply):** the inspection or test reveals any failure of Manage Co to comply with this Agreement, save where that failure is minor in nature and will not prevent:
 - (i) the Correctional Centre from being lawfully used in accordance with its intended purpose or from otherwise meeting the FFP Warranty; or
 - (ii) Manage Co from delivering the Services in accordance with the Services Requirements;

- (b) [Not used]; or
- (c) **(Required tests)**: the inspection or test was otherwise required by this Agreement to be carried out by Manage Co, or should have been carried out by Manage Co in accordance with Best Industry Practices,

in which case Manage Co must pay its own costs and all reasonable costs incurred by the State, as a debt due and payable by Manage Co to the State.

21. Testing

21.1 Testing

- (a) **(Notice)**: Manage Co must give the State 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 Manage Co in respect of the Transition Phase Activities.
- (b) **(Postponement of test)**: Manage Co may postpone a test in respect of which it has given the State notice in accordance with clause 21.1(a).
- (c) **(Rescheduled date)**: If Manage Co postpones a test in accordance with clause 21.1(b), Manage Co must give the State 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) may, but are not obliged to attend and witness the conduct of all tests.
- (e) **(Submission of report)**: Irrespective of the outcome of the test, Manage Co must, within 10 Business Days of carrying out a test in respect of the Project Activities, submit a report to the State setting out the outcome of the test.

21.2 [Not used]

22. Quality Assurance during the Transition Phase

- (a) **(Certification of Subcontractor)**: [Not used]
- (b) **(Transition Phase Quality Assurance Plans)**: Manage Co must provide the State with the Transition Phase Quality Assurance Plans for the Transition Phase in accordance with the Transition Phase Plans and Reports Schedule.
- (c) **(Proof of accreditations)**: [Not used]

23. [Not used]

24. Transition Phase

During the period between Commercial Close and Operational Readiness, Manage Co must:

- (a) **(Transition Plan)**: comply with its obligations under the Transition Plan;
- (b) **(Commissioning Requirements)**: carry out all Transition Requirements in accordance with the Operational Readiness Schedule; and
- (c) **(Operational Readiness Criteria)**: allow 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 Transition Requirements, the Operational Readiness Criteria and any other obligations Manage Co is required to

meet during the Transition Phase have been complied with and Manage Co is ready and able to commence providing the Services in accordance with this Agreement.

25. Operational Readiness

25.1 Requirement

Manage Co must achieve Operational Readiness of the Transition Phase Activities by the Date for Operational Readiness.

25.2 Notice before Operational Readiness

(a) **(Notice timeline):** Manage Co must give the State Representative notice:

- (i) [Not used];
- (ii) [Not used];
- (iii) [Not used];
- (iv) 20 Business Days; and
- (v) 10 Business Days,

prior to the date upon which it reasonably expects to achieve Operational Readiness.

(b) **(Notice of revised date):** If, after Manage Co gives the State a notice in accordance with clause 25.2(a), the expected Date of Operational Readiness changes, Manage Co must notify the State promptly of the revised date.

25.3 [Not used]

25.4 [Not used]

25.5 [Not used]

25.6 [Not used]

25.7 Operational Readiness Report

(a) **(Report):** Manage Co must submit to the State a draft Operational Readiness Report in accordance with the Operational Readiness Schedule.

(b) [Not used].

(c) **(Compliance with directions):** Manage Co must take into account and comply with any directions reasonably given by the State (acting reasonably) in connection with preparing for Operational Readiness.

25.8 Notice of Operational Readiness

(a) **(Notice by Manage Co):** When Manage Co is of the reasonable opinion that it has achieved Operational Readiness, Manage Co must provide to the State:

- (i) notice of its opinion; and
- (ii) the final Operational Readiness Report which addresses and issues raised by the State in relation to the draft Operational Readiness Report.

- (b) **(Notice by the State):** Notwithstanding that Manage Co may not have issued a notice under clause 25.8(a), when the State considers that Manage Co has achieved Operational Readiness, the State may notify Manage Co of its opinion.

25.9 Determination of Operational Readiness

- (a) If, in the opinion of the State (acting reasonably):
 - (i) **(Issue Certificate):** Operational Readiness has been achieved, the State must issue the certificate of Operational Readiness to Manage Co within 5 Business Days after receipt of the notice under clause 25.8, which certificate must state the Date of Operational Readiness **(Certificate of Operational Readiness)**; or
 - (ii) **(Issue notice):** Operational Readiness 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 Manage Co a notice either:
 - A. containing details of the outstanding Operational Readiness Criteria that must be satisfied by Manage Co as a condition precedent to achieving Operational Readiness; or
 - B. stating that Operational Readiness 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 Manage Co must continue to expeditiously and diligently progress the Transition Phase Activities to achieve Operational Readiness.
- (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 Operational Readiness Criteria set out in the State's notice.
- (c) **(State discretion):** The State, in making its determination as to whether Operational Readiness has been achieved:
 - (i) will not be restricted by any notice, list or opinion which it previously provided to Manage Co under clause 25.9(a)(ii); and
 - (ii) is entitled to raise any other items of work as a ground for determining that Operational Readiness has not been achieved.
- (d) **(Consequence of certificate):** The issue of a Certificate of Operational Readiness in accordance with this clause 25.9 does not constitute:
 - (i) evidence that Manage Co has satisfied the FFP Warranty;
 - (ii) an approval by the State of the completion or acceptance of the Transition Phase Activities under this Agreement; or
 - (iii) evidence that all or any other obligations under this Agreement have been satisfied.

25.10 Operational Readiness Outstanding Items

- (a) **(Outstanding Items):** The State may issue a Certificate of Operational Readiness with a list of Operational Readiness Outstanding Items and the time within which they must be rectified.
- (b) [Not used].

- (c) **(Program for completion to be submitted):** Within 5 Business Days after the issue of a Certificate of Operational Readiness, Manage Co must submit to the State (for review in accordance with the Review Procedures) a program for the completion of the Operational Readiness Outstanding Items, which complies with clause 25.10(c).
- (d) **(Complete within timeframe):** Manage Co must complete or remedy each Operational Readiness 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 an Operational Readiness Outstanding Item is not completed or remedied within the timeframe determined in accordance with clause 25.10(c), this will be deemed to be a Major Default.

25.11 [Not used]

25.12 Release after Operational Readiness

On and from the date which is 6 Months after the Date of Operational Readiness, Manage 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 Transition Phase Activities which existed or occurred prior to the Date of Operational Readiness, except for any Claim notified to the State in accordance with this Agreement prior to that date.

26. [Not used]

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 within the Services Proposal.
- (b) **(Submission and Update):** Manage 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 Transition 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, Manage 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, Manage 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):** Manage 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):** Manage 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 Licence

- (a) **(Operating Phase Licence):** Subject to Operational Readiness having occurred, the State grants to Manage Co a non-exclusive licence to enter upon, and occupy the Site only to the extent necessary to carry out the Services on the terms set out in this clause 28.1 and to exercise and discharge its powers, rights and obligations under the Project Documents.
- (b) **(Terms of Operating Phase Licence):** The Operating Phase Licence granted under clause 28.1(a) is:

- (i) for a term which:
 - A. commences on the Operational Commencement Date; and
 - B. ends on the Expiry Date; and
- (ii) [Not used]
- (c) **(Personal Right):** The Operating Phase Licence granted under clause 28.1(a):
 - (i) is a personal right in contract, does not create any estate or interest in the Site, does not confer exclusive possession on Manage 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, to access and occupy the Site in accordance with this Agreement and any other State Project Document.
- (d) **(Other access):** Except as set out in clause 28.1(a), Manage Co is solely responsible for obtaining access to and from the Site, and to and from any land outside the Site to which access is required to carry out the Services.
- (e) **(Coordination):** During the Operating Phase, Manage Co bears the risk of coordinating its access to the Site with any other person that uses the access ways to the Sites. Manage Co must not interfere with or delay the operation and maintenance of the Correctional Centre or any other activity undertaken by the State during the Operating Phase.
- (f) **(Sites):** During the Operating Phase, Manage Co must keep the Site:
 - (i) safe, clean and tidy at all times; and
 - (ii) secure and free from all unauthorised access.
- (g) [Not used]
- (h) [Not used]
- (i) **(General obligations)** Manage Co must:
 - (i) meet its obligations in clause 8.11 in respect of the Site; and
 - (ii) not use the Site for any purpose other than the Project Activities.
- (j) **(No parting with interest):** Subject to clauses 28.1(k), the State and Manage Co agree that Manage Co has no right to share occupancy, deal with all or any part of its interest under the Operating Phase Licence or the Site (including by way of assignment, sub-licence (other than if the grant of a sub-licence by Manage Co of its interest in the Operating Phase Licence is to a Subcontractor approved by the State or otherwise permitted under this Agreement for the purposes of the Project), trust or the grant of any Security Interest) except to the extent allowed under this Agreement.
- (k) **(Manage Co Associates may access):** Subject to any Manage Co Associates being approved by the State in accordance with this Agreement, Manage Co may permit Manage Co Associates to access and use the Site only at the times and for the purpose which it is entitled to access and use the Site.

28.2 State access to the Correctional Centre, records and Inmates

- (a) **(Access):** At all times during the Operating Phase, Manage 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 or Policy in connection with the Correctional Centre, Inmates or Staff,
- has free and unfettered access:
- (iii) to the Correctional Centre:
 - 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 Centre;
 - D. in accordance with the Services Requirements, any Laws or any Policies;
 - E. to undertake any audits in accordance with clause 11.2; and
 - F. in connection with any matter which the State deems relevant to the performance of the Services; and
 - (iv) to all Manage Co Material or other records in respect of Inmates, including medical records;
 - (v) to all Staff (in accordance with the Output Specification, Law or Policy); and
 - (vi) to any Inmate (in accordance with the Output Specification, Law, Policy or under delegation of the State Representative or the Commissioner).
- (b) **(Right to visit):** Manage 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 Site:
- (i) where materials, plant or Assets are being manufactured, prepared or stored for use in the Correctional Centre, for the purposes of general inspection and testing; or
 - (ii) used by Manage 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 (other than any Defect identified in Schedule 32, any Defect which Manage Co is obliged to remedy as part of the Modification identified in clause 32 and any Unidentified Pre-Existing Defect) is revealed (other than a minor Defect) during the Operations Phase, Manage Co must pay as a debt due and payable by Manage Co to the State the costs and expenses of any inspection, testing or investigation which revealed that Defect (other than any Defect identified in Schedule 32, any Defect which Manage Co is obliged to remedy as part of the

Modification identified in clause 32 and any Unidentified Pre-Existing Defect); or

- (ii) in respect of any audit undertaken in accordance with clause 11.2 to which clause 11.3(i) applies.
- (d) **(Facilities)**: During the Operating Phase, Manage Co must, at its own cost, provide persons requiring access to the Correctional Centre or Inmates to perform a function contemplated by Law with the use of appropriate facilities at the Correctional Centre when required to fulfil their functions.

28.3 Access to the Correctional Centre and Inmates by third parties

Without limiting clause 28.2, during the Operating Phase, Manage Co must only permit access to the Correctional Centre and Inmates in accordance with the Correctional Centre Access Protocols to a person who is:

- (a) **(Manage Co Associate)**: a Manage Co Associate, to the extent required to discharge Manage Co's obligations under this Agreement and provided they otherwise satisfy the requirements of this Agreement;
- (b) **(Required by Law)**: a person who is required by Law to be given access to the Correctional Centre (but only in accordance with such Law);
- (c) **(Corrections Legislation)**: a Visitor entitled to have access to the Correctional Centre under the Corrections Legislation (but only in accordance with the Corrections Legislation); or
- (d) **(Required by Agreement)**: any other person Manage Co is required by this Agreement to provide with access to the Correctional Centre (but only to the extent required by and otherwise under this Agreement),

and must not permit or allow any other person access to the Correctional Centre or any Inmate.

28.4 Correctional Centre Access Protocols

- (a) **(Access Protocols requirements)**: Manage Co must:
 - (i) develop and update the Correctional Centre Access Protocols in accordance with the relevant requirements of the Operating Phase Plans and Reports Schedule, for those people entitled to access the Correctional Centre and any Inmates under this Agreement; and
 - (ii) during the Operating Phase, ensure that all people who access the Correctional Centre 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 Centre Access Protocols.
- (b) **(State access)**: Subject to any applicable Laws and the State's rights in accordance with this Agreement, if the State wishes to access the Correctional Centre or any Inmates during the Operating Phase, it must and must ensure that its Associates, does so in accordance with the Correctional Centre 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, Manage Co must continuously perform the Services in accordance with the Services Requirements.

29.2 Material Defects

- (a) **(Defects to be rectified):** Subject to clause 32.1, Manage 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 Manage Co specifying:
 - (i) the Material Defect;
 - (ii) requiring Manage Co to rectify the Material Defect; and
 - (iii) a reasonable time within which this must occur, which period must not, if the Material Defect also gives rise to a an Unavailability, a Meal Availability Failure or 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), Manage Co must rectify that Material Defect within the time specified in the State's notice.
- (d) **(State entitled to rectify):** If that Material Defect is not rectified by Manage Co within the time specified in the State's notice, then the State is entitled to rectify that Material Defect itself or engage a third party to rectify that Material Defect and the cost of any such rectification work will be a debt due and payable by Manage Co to the State.
- (e) **(Rights at Law):** Neither the State's rights, nor Manage Co's Liability, whether in accordance with this Agreement 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 Agreement; 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 Agreement in connection with Defects, limits Manage Co's obligations in respect of Unavailability, Meal Availability Failure or Quality Failure 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 Agreement must be referred for dispute resolution in accordance with clause 50.
- (h) **(Remedying Unidentified Pre-Existing Defects):** Where Manage Co remedies an Unidentified Pre-Existing Defect pursuant to clause 29.2(a), the remedying of that Unidentified Pre-Existing Defect by Manage Co, will be deemed to be a Change Compensation Event.

29.3 Applicable Laws

- (a) **(Compliance with Law):** Manage Co must:
 - (i) ensure that, where any Law requires that a right or entitlement be granted to an Inmate, Manage Co grants the right or entitlement to the Inmate; and
 - (ii) not, and must procure that none of Manage 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 Agreement, 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

Manage Co must pay:

- (a) **(False alarm):** any costs for false alarms or unnecessary attendance at the Site at any time:
 - (i) after the Operational Commencement Date for the remainder of the Term by any emergency services; and
 - (ii) from Commercial Close up to the Operational Commencement Date by any emergency services caused by Manage Co or its Associates.
- (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 Manage Co or its Associates,

and any payments made by the State in relation to such costs shall be a debt due and payable by Manage Co to the State.

29.5 Industries

- (a) **(Opportunity to work):** Throughout the Operating Phase, Manage Co must offer Inmates the opportunity to work in industries (**Correctional Industries**).
- (b) **(Draft Industries Scheme):** Manage Co must submit a draft Industries Scheme to the Commissioner for review in accordance with the Review Procedures prior to the Date of Operational Readiness.
- (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):** Manage Co must:
 - (i) account for profits derived from work performed by Inmates in accordance with the Output Specification; and
 - (ii) reinvest, and must ensure that its Associates reinvests, 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):** Manage 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):** Manage 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 Manage Co, or any of its Associates, of Inmates to provide labour at the Correctional Centre.

29.6 [Not used]

29.7 [Not used]

30. Assets during the Operating Phase

30.1 Title and responsibility for risk

- (a) [Not used]
- (b) **(Transfer of title):** To the extent not already owned by the State (or a nominee of the State), Manage Co must transfer title to each Asset (other than Manage Co Equipment) which Manage Co or its Associates:
 - (i) brings onto the Site and uses for the delivery of the Services or the performance of its other obligations under this Agreement;
 - (ii) incorporates into or attached to any other Asset on the Site; or
 - (iii) without limiting clauses 30.1(b)(i) and 30.1(b)(ii), installs, constructs or places on the Site and which is, or becomes, part of the Correctional Centre,

including any physical infrastructure, plant, equipment, machinery, furniture, fittings, fixtures, consumables, spare parts and other assets referred to in the Output Specification or Asset Management Plan, in each case,
 - (iv) during the Transition Phase, on the Operational Commencement Date;
and
 - (v) during the Operating Phase, at the time it is either brought onto the Site, incorporated or attached to any other Asset on the Site or installed, construed or placed on the Site (as applicable),

to the State (or a nominee of the State), free from any Security Interests.
- (c) **(Obligations):** Manage Co must maintain, replace and repair all of the Assets until the end of the Operating Phase in accordance with the Asset Management Plan, the Services Requirements and its other obligations under this Agreement.

30.2 Replacement

- (a) **(Asset replacement):** In addition to its obligations in clauses 5 and 29, when Manage Co is required to replace an Asset, it must do so with an Asset 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 Asset was that it is replacing at the time the replaced Asset is procured; and

- (ii) has a design life equal to or greater than the Asset it is replacing and complies with the Maintenance and Performance Standards and Asset Management Plan.
- (b) **(New Assets):** If there is a new Asset 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 equal to or greater; or
 - (v) is more technically or technologically advanced,
- than the Asset it is replacing and the new Asset:
- (vi) does not materially increase operating or maintenance costs of the State or any other costs payable by the State; and
 - (vii) has a whole of life cost to Manage Co less than or equal to ■■■% of the Indexed whole of life cost to Manage Co of the Asset it is replacing,
- Manage Co must use that new Asset to replace the relevant Asset.
- (c) **(Notification of State):** If Manage Co considers that a new Asset does not meet the requirements set out in clause 30.2(b)(vi), Manage Co must promptly notify the State in writing (giving reasons).
- (d) **(State may waive requirement):** Following receipt of a notice from Manage Co in accordance with clause 30.2(c), the State may, in its absolute discretion, elect to waive such requirement in which case, Manage Co must use that new Asset to replace the relevant Asset.

30.3 Computer requirement

- (a) During the Operating Phase, Manage Co shall maintain access to the State's corporate information system known as the Offender Integrated Management System.
- (b) During the Operating Phase, Manage Co shall:
 - (i) establish a link from Manage 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, Manage Co must continually, as appropriate, upgrade the software and systems on Manage Co's computer system.

- (d) When Manage Co undertakes a software upgrade in accordance with clause 30.3(c), Manage 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 Manage Co's computer system provided by Manage 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, Manage Co must ensure that it and all other Key Subcontractors or Significant Subcontractors engaged to perform any of the Services (other than Justice Health) are certified to AS/NZS ISO 9001 at all times from the first anniversary of the Operational Commencement Date and for the remainder of the Operating Phase.
- (b) **(Additional certification):** Manage 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. Correctional Centre and Asset Condition

32.1 Asset Condition Reports

- (a) On or before the date of this Agreement, the State provided Manage Co with the Asset Condition Report (First) and Manage Co provided the State with the Initial Rectification Schedule. The Initial Rectification Schedule as at the date of this Agreement is included as Schedule 32.
- (b) The Asset Condition Report (First) amongst other things sets out the condition of the Assets (excluding Minor Assets and Manage Co Equipment) as at the date of this Agreement and identifies those parts of the Assets (excluding Minor Assets and Manage Co Equipment) whose condition does not comply with the Maintenance and Performance Standards.
- (c) Manage Co must
 - (i) update the Initial Rectification Schedule and provide the updated version to the State at the time at which Manage Co is required to provide the Asset Management Plan to the State in accordance with the Operating Phase Plans and Reports Schedule (such time being the **Initial Rectification Schedule Update Date**); and
 - (ii) ensure that the Initial Rectification Schedule as updated:
 - A. identifies all works and services which are required as at the Initial Rectification Schedule Update Date to remedy those Assets (excluding Minor Assets and Manage Co Equipment) whose condition does not comply with the Maintenance and Performance Standards (**Initial Rectification Activities**);

- B. provides the following details in table form in relation to the Initial Rectification Activities:
- 1) Item number;
 - 2) Location;
 - 3) Asset identification number;
 - 4) Element;
 - 5) Assembly;
 - 6) Sub-Assembly;
 - 7) Component;
 - 8) Remediation details which includes specific details which define the scope and specification of the works and services required to remedy the relevant part of the Correctional Centre;
 - 9) Trade: and
 - 10) Justification as to how the Initial Rectification Activities will remedy those parts of the Correctional Centre whose condition does not comply with the Maintenance and Performance Standards;
- C. includes a program for performing those Initial Rectification Activities in as short as period as possible immediately following the Operational Commencement Date having regard to Best Industry Practice and having regard to the need to provide the Services to the maximum extent practicable;
- D. breaks down the Initial Rectification Activities into a series of clearly identified milestone events (**Rectification Milestone Events**) and separately identifies:
- 1) the fixed lump sum amounts which Manage Co requires to be paid for the performance and completion of each of those milestone events (**Rectification Milestone Amounts**);
 - 2) the total amount that Manage Co will be entitled arising from or in connection with the performance of those Initial Rectification Activities;
 - 3) the date by which Manage Co will complete each of those milestone events; and
- (iii) is otherwise consistent with and provide no lesser obligations or standards on Manage Co than Schedule 32.
- (d) Manage Co agrees that:
- (i) the Services are deemed to include the remedying of Initial Rectification Activities;
 - (ii) [Not used];

- (iii) the Asset Management Plan will assume that Manage Co will perform the Initial Rectification Activities in accordance with the Initial Rectification Schedule including the program identified in clause 32.1(c)(ii)C; and
 - (iv) clause 30.2 applies to the extent that any Asset is replaced as part of the Initial Rectification Activities.
- (e) Manage Co is entitled to relief from its obligations under this Agreement to the extent that the condition of the Assets the subject of Initial Rectification Activities as at the Operational Readiness Date result in it being in breach of this Agreement but only for the period from the Operational Commencement Date up to and including the date by which Manage Co is required to complete the Initial Rectification Activities on those Assets in accordance with the Asset Management Plan, the Initial Rectification Schedule and the program identified in clause 32.1(c)(ii)C, provided that the date by which Manage Co is required to complete those Initial Rectification Activities will be extended in accordance with any extensions of time to which Manage Co is entitled pursuant this Agreement.
- (f) On or about the date which is 20 Business Days prior to the Operational Commencement Date, the State must provide Manage Co with a draft of an updated Asset Condition Report (First) for comment. That updated Asset Condition Report (First) must (amongst other things) identify:
- (i) the condition of the Correctional Centre (excluding Manage Co Equipment and Minor Assets) as at that date; and
 - (ii) any material change in the condition of the Assets (excluding Manage Co Equipment and Minor Assets) on the Site after the date of the original Asset Condition Report (First) other than deterioration after that original Asset Condition Report (First) which was reasonably foreseeable.
- (g) Manage Co must provide any comments it has on that updated Asset Condition Report (First) to the State on or before the date which is 5 Business Days prior to the Operational Commencement Date. The parties must jointly inspect the Assets (excluding Manage Co Equipment and Minor Assets) immediately prior to the Operational Commencement Date to identify the condition of the Assets (excluding Manage Co Equipment and Minor Assets) as at that date.
- (h) Within 5 Business Days after the Operational Commencement Date, the State must provide to Manage Co the final updated Asset Condition Report (First) (**Asset Condition Report (Final)**) which must (amongst other things) identify:
- (i) the condition of the Correctional Centre (excluding Manage Co Equipment) as at the Operational Commencement Date; and
 - (ii) any material change in the condition of the Assets (excluding Manage Co Equipment) on the Site after the date of the original Asset Condition Report (First) other than deterioration after that original Asset Condition Report (First) which was reasonably foreseeable and other than any loss or damage to those Assets caused by Manage Co and/or its Associates (**Asset Condition Change**).

For the avoidance of doubt and without limitation, the Asset Condition Change will include improvement in the condition of the Assets (excluding Manage Co Equipment and Minor Assets) as a result of maintenance works and/or Asset installations/upgrades performed by the State and unforeseen deterioration of those Assets, in each case after since the date of the Asset Condition Report (First).

- (i) Where there is any Asset Condition Change, the State will be deemed to have issued a Modification Request and the details of the Modification will be deemed to be an instruction to Manage Co to remedy the Asset Condition Change so that the

Assets which are the subject of that Asset Condition Change comply with the Maintenance and Performance Standards. The State is not permitted to withdraw that Modification Request. Manage Co must update the Asset Management Plan and the Initial Rectification Schedule to reflect the terms of that Modification.

- (j) In addition to its rights set out in clause 40, as part of determining Manage Co's entitlements arising out of that Modification, Manage Co is entitled to relief from its obligations to the extent that the Asset Condition Change results in it being in breach of this Agreement but only during the period from the Operational Commencement Date up to and including the date by which Manage Co is obliged to remedy the relevant Asset Condition Change in accordance with the updated Asset Management Plan and updated Initial Rectification Schedule.

32.2 [Not used]

32.3 [Not used]

32.4 [Not used]

32A [Not used]

33. [Not used]

34. [Not used]

Part F - Payment Provisions

35. [Not used]

36. Payments Adjustments & Taxes

36.1 State's payment obligations

- (a) **(Payment obligations):** In consideration of Manage Co
- (i) performing the Transition Phase Activities, the State will only be obliged to pay Manage Co the fixed amounts as set out in the following table (**Transition Phase Payments**) and Manage Co is entitled to claim each such amount on the relevant date in that table:

| | Transition Phase Payments (\$) | Date |
|---|--------------------------------|---|
| 1 | ██████████ | End of the First Month after Commercial Close |
| 2 | ██████████ | End of the Second Month after Commercial Close |
| 3 | ██████████ | End of the Third Month after the Commercial Close |
| 4 | ██████████ | Operational Commencement Date |

- (ii) performing the Initial Rectification Activities, the State will only be obliged to pay Manage Co the Rectification Milestone Amounts;
- (iii) providing the Services (other than the Initial Rectification Activities), the State will pay Manage Co the Monthly Service Payment:
- A. calculated in accordance with the Payment Schedule; and
- B. in arrears,
- during the Operating Phase from the end of the first Month of the Operating Phase,
- in each case in accordance with the procedures identified in this clause 36;
- (b) **(Other payments):** Other than the Transition Payments, the Rectification Milestone Amounts and Monthly Service Payments, the State will pay any payment that is due and payable to Manage Co, and Manage Co must pay any payment that is due and payable to the State:
- (i) at the time specified in this Agreement 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 Manage Co:

- 1) during the Transition 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 Manage Co after the relevant amount becomes due and payable and a written demand is made for payment of the amount; and
- B. by Manage 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 Transition Phase Payments, Rectification Milestone Amounts and Monthly Service Payments

- (a) **(Payment Claims):** Within 5 Business Days after:
- (i) the each of the relevant dates set out in the table in clause 36.1(a)(i) for the Transition Phase Payments;
 - (ii) the date on which Manage Co achieves completion of a Rectification Milestone Amount for the relevant Rectification Milestone Amounts; and
 - (iii) at the end of each Month during the Operating Phase for any other amounts due and payable by the State to Manage Co or by Manage Co to the State under this Agreement,

Manage Co must prepare and provide to the State a Payment Claim for:

- (iv) the Transition Phase Payment, Rectification Milestone Amount or Monthly Service Payment (as applicable) for that Month; and
 - (v) any other amounts then due and payable by the State to Manage Co or by Manage Co to the State under this Agreement.
- (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) during the Operating Phase only, 5 Business Days after receipt by the State of the relevant Monthly Performance Report,

provide to Manage Co a statement (**Payment Statement**) stating the amount payable to or by Manage 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 Manage 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 Manage Co.
- (d) **(Registered):** Each of the State and Manage 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 Agreement and that each party will notify the other party if it (or the relevant entity) ceases to be registered.
- (e) **(Tax Invoice):** Without limiting Manage Co's right to dispute the amount for payment stated in the Payment Statement, Manage 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 Manage Co or the State (as applicable) fails to provide a Tax Invoice in the time required, the State or Manage Co (as the case may be) may prepare the Tax Invoice on behalf of Manage Co or the State (as applicable) and provide that Tax Invoice to Manage 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 Manage Co in the Payment Statement will be made by the State to Manage Co or by Manage 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 Transition Phase Payments, Rectification Milestone Amount nor the Monthly Service Payments by the State to Manage Co nor the issuing of any Payment Statement is:
 - (i) evidence that the Project Activities have been carried out by Manage 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 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 Manage 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 Manage 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 Agreement 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 Manage Co to the State.
- (c) **(Manage Co acknowledgements):** Manage 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) and the Performance Regime and the Payment Schedule will not limit Manage Co's Liability to the State under this Agreement 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 Manage 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 Agreement or at Law (other than, subject to this clause 36.3(e), for monetary compensation for an Unavailability, Meal Availability Failure or a 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 a 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) [Not used];
 - (v) the State's rights under this Agreement or any other State Project Document in respect of the event that caused or contributed to the Unavailability, Meal Availability Failure or a Quality Failure (as opposed to the Unavailability, Meal Availability Failure or a Quality Failure itself);
 - (vi) any payment on termination of this Agreement (including a Termination Payment); or
 - (vii) any Liability of Manage 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 Manage 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 Manage Co, or Manage 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 Agreement,

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 Payment 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 Agreement, 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 Manage 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 Manage Co with reasonable details of the basis on which it is setting off any amount pursuant to clause 36.6(a).
- (c) **(Manage Co's payments):** Manage 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 Manage 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) **(Manage Co to Indemnify):** Subject to clause 36.8, Manage 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 Agreement or any other Project Document;

- (ii) the transactions that this Agreement or any other Project Document contemplates; and
 - (iii) any amendment to, or any consent, approval, waiver, release or discharge of or under, this Agreement or any other Project Document.
- (b) Manage Co must:
- (i) **(Timely lodgement)**: attend to the timely lodgement for stamping of the State Project 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 or any transaction contemplated by any of them, within 5 Business Days after Manage Co receives the relevant correspondence, notices or assessments.
- (c) **(State to indemnify)**: The State will pay and indemnify Manage Co against, and reimburse Manage Co for, all Duty (including any penalty, fine, charge or interest payable in respect of Duty) in respect of the State Project 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 Manage Co for any Duty, penalty, fine, charge or interest payable in respect of Duty:
- (i) which results from any failure or any delay by Manage Co:
 - 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 Manage 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 change in the equity interest of Manage Co or a Group Member.
- (d) **(Available funds)**: Without limiting clause 36.7(c), the State must put Manage 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 Manage Co must pay the amount of the Duty Estimate to the NSW Office of State Revenue by the Lodgement Due Date. Manage 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), Manage Co must promptly notify the State and the State must put Manage 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 Manage 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, Manage 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 Manage Co, and indemnify Manage Co against, all Rates and land tax, if any, in respect of the Site until the end of the Term.
- (h) **(Prompt notice):** Manage 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 Manage 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 Manage Co in providing any co-operation or assistance);
 - (iii) subject to the State complying with its obligations under this clause 36.7(i), Manage 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 Manage 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 Manage Co an indemnity in a form agreed to by Manage 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 Manage Co in connection with the conduct of the Tax Proceedings; and
 - (viii) the State will liaise with and keep Manage Co informed of its negotiations, and provide copies of all relevant correspondence to Manage 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 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 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 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 36.8(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 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 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 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 Agreement.

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), Manage 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. █ Months before the Final Expiry Date; or
 - B. where Manage Co is given less than █ 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 any part of the Relevant Infrastructure (as delivered by or on behalf of Manage Co to the State or as modified by Manage Co), as will enable the State or its nominee to deliver the Project to the standards specified in, and in accordance with, this Agreement;
- (ix) assisting in the transfer of any employees of Manage 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 Manage Co under this Agreement 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 Agreement, with minimum disruption.
- (b) **(Expiry Date):** Where the Expiry Date is prior to the Final Expiry Date, Manage 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 Manage Co has received of the Expiry Date, in which case, Manage Co must meet such requirements as soon as practicable after the Expiry Date.
 - (c) **(Adjustments and payments):** Where any employees of Manage Co or a Subcontractor are to be transferred, to the State or its nominee, unless otherwise agreed, Manage 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 Out Person

Without limiting its obligations under clause 37.1:

- (a) **(Expiry of Project):** for not less than ■ 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 Manage Co is given less than ■ Months' notice of the Expiry Date, during the relevant notice period,

Manage 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 clauses 37.3(b) to 37.3(g) (inclusive), by the Expiry Date, Manage Co must have:
 - (i) **(Handover of Relevant Infrastructure and Site):** handed over the Relevant Infrastructure (excluding Manage Co Equipment) and the Site (including all rights, title and interest in them) to the State or its nominee free from any Security Interests 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 Operating Phase Plans and Reports Schedule, the Output Specification and any other requirements of this Agreement);
 - (iii) **(Transfer of rights):** transferred to the State or its nominee, all rights, title and interest, free from any Security Interests, in any Assets (excluding Manage Co Equipment) used by Manage 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 Manage Co under this Agreement;

- (iv) **(Delivery of information):** delivered to the State or its nominee, all Manage 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 Manage Co has received from any Insurances for the reinstatement or replacement of the Relevant Infrastructure (excluding Manage Co Equipment) to the extent not already reinstated or replaced, and assigned to the State any rights available to Manage Co under the Insurances in respect of the reinstatement or replacement of the Relevant Infrastructure (excluding Manage Co Equipment); 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, Manage 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 Manage Co has received of the Expiry Date, in which case Manage Co must meet such requirements as soon as practicable after the Expiry Date.
- (c) **(Remove Manage Co Equipment):** Within 20 Business Days after the Expiry Date, Manage Co must remove from the Correctional Centre all of Manage Co Equipment (other than the Retained Equipment).
- (d) **(Consequences of Failure to Remove):** If Manage Co fails to remove from the Correctional Centre any item of Manage Co Equipment (other than the Retained Equipment) within that 20 Business Day period, that Manage Co Equipment will be deemed to have been abandoned by Manage Co and:
- (i) will become the property of the State; and
 - (ii) the State may elect to:
 - A. retain the abandoned property; or
 - B. dispose of that property as the State thinks fit, and retain any amount that the State may receive in respect of any such disposal.
- (e) **(Make Good Damage):** Manage Co shall make good any damage caused to the Correctional Centre by Manage Co removing any of Manage Co Equipment to the State's satisfaction.
- (f) **(Retained Equipment):** By notice to Manage Co provided no less than 20 Business Days prior to the Expiry Date, the State may identify any item of Manage Co Equipment which the State wants to own and retain (**Retained Equipment**). Manage Co must transfer title to all Retained Equipment to the State on the Expiry Date free from any Security Interest.
- (g) **(Payment for Retained Equipment):** The State must pay to Manage Co as full and final compensation for the Retained Equipment an amount:
- (i) as agreed by the State and Manage Co; or
 - (ii) if the parties do not agree, an amount determined by an independent valuer appointed by the President of the Arbitrators Australia New South Wales Branch on the application of either party.

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), Manage Co and the State must meet to determine the identity of a Handover Reviewer to be engaged jointly by Manage Co and the State to perform the tasks identified in clause 37.5.
- (b) **(State Representative to appoint):** If Manage 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 Manage Co will jointly engage the Handover Reviewer, provided that the Handover Reviewer to be engaged must:
- (i) be reasonably acceptable to the State and Manage 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) [Not used]
- (d) **(Appointment):** The State will appoint, and the State and Manage Co must jointly engage, the Handover Reviewer to act as handover reviewer:
- (i) in accordance with the terms of this Agreement and the Handover Reviewer Deed; and
 - (ii) independent and not as agent of either party.
- (e) **(Costs):**
- (i) The costs and expenses of the Handover Reviewer (including the Handover Reviewer's professional fees and costs incurred in exercising or purporting to perform its obligations under the Handover Reviewer Deed but not including any payment due to the Handover Reviewer in respect of any functions not associated with this Agreement) will be paid by the State to the Handover Reviewer.
 - (ii) Subject to clause 37.4(e)(iii), Manage Co must pay to the State, on demand, from time to time, ■■■% of the costs and expenses of the Handover Reviewer paid by the State under clause 37.4(e)(i).
 - (iii) To the extent that the Handover Reviewer considers that the parties (as a result of their respective conduct) have a proportionate responsibility for the costs and expenses of the Handover Reviewer paid by the State under clause 37.4(e)(i), Manage Co must pay to the State, on demand, the relevant proportion of the costs and expenses of the Handover Reviewer paid by the State under clause 37.4(e)(i) as stated in a notice from the Handover Reviewer to the parties.
- (f) **(Role):** The role, functions, rights and liabilities of the Handover Reviewer and the parties' rights and obligations in connection with the Handover Reviewer are set out in the Handover Reviewer Deed.

37.5 Handover Reviewer Role

- (a) **(Joint inspection):** Manage Co, the State and the Handover Reviewer appointed under clause 37.4 must carry out joint inspections of the Relevant Infrastructure (excluding Manage Co Equipment):

- (i) at least:
 - A. 2 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 Manage Co a written report specifying:

- (i) the details of the maintenance and repair work (if any) required to be carried out by Manage 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 Manage 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 Manage 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 Manage 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 determination in accordance with clause 50.

37.6 State election

- (a) **(State discretion)**: Notwithstanding the terms of this clause 37, the State may, by giving notice to Manage Co:
 - (i) adjust any Condition Review Date to an alternative date which may not be earlier than 2years before the Final Expiry Date;

- (ii) relieve Manage 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 (excluding Manage Co Equipment), 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 Agreement 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 under clause 50.

37.7 Implementing Final Refurbishment Works

- (a) **(Operating Phase Plans):** Manage 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 Manage 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 Manage 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 Manage Co to the State.

37.8 [Not used]

37.9 [Not used]

37.10 [Not used]

Part H - Change in Circumstances

38. Transition Phase - delay

38.1 Delay to Operational Readiness

- (a) **(Early Warning)** If Manage Co becomes aware of and Extension Event or any other matter which will, or is likely to:
 - (i) give rise to a delay in achieving Operational Readiness; or
 - (ii) prevent Manage Co from performing the Transition Phase Activities,it must promptly give the State notice of the matter and the delay or effect it is likely to cause **(Early Warning (TP))**.
- (b) **(Prevent):** Subject to this clause 38, 'prevent' or 'prevented' does not mean that Manage Co is permanently prevented from performing its obligations.

38.2 Entitlement to Claim

If, during the Transition Phase, Manage Co:

- (a) has been or will be delayed in achieving Operational Readiness; or
 - (b) is otherwise prevented from performing the Transition Phase Activities,
- by an Extension Event, Manage Co will be entitled to claim:
- (c) an extension of time to the relevant Date for Operational Readiness for the period of delay; and
 - (d) relief from any of its other Transition Phase Activities it is prevented from performing.

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 Operational Readiness or relief from its other Transition Phase Activities (or both), Manage Co must submit a Change Notice (with reference to the Early Warning (TP), if relevant) which includes the estimated period of time of the delay, within 10 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 Manage Co wants to claim relief or an extension of time in respect of the further delay or relief from its other Transition Phase Activities (or both), Manage Co must notify the State and, once the consequences of the Extension Event have ceased, promptly (and in any event, within 5 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 Operational Readiness; or
 - (ii) relief from its other Transition Phase Activities,(or both) for an Extension Event which is:

- (iii) a Contamination Compensation Event, Manage 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, Manage Co must submit its initial Change Notice under the Change Compensation Principles and clause 40.11.

38.4 Conditions precedent to extension of time or relief

Subject to clause 38.6, it is a condition precedent to Manage Co's entitlement to an extension of time or relief from its other Transition Phase Activities (or both):

- (a) **(Change Notices):** Manage Co submits to the State for the extension of time claimed, 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, Manage 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 Operational Readiness; and
 - (ii) the Extension Event has caused or will cause activities on the critical path contained and shown in the then current Transition Phase Program to be delayed; and
- (c) **(Relief):** with respect to a claim for relief from its other Transition Phase Activities, Manage Co's performance of all or any part of the Transition Phase Activities is actually prevented by the relevant Extension Event; and
- (d) **(Transition Phase Program):** Manage Co is, at the time it submits the relevant Change Notice and any updated Change Notice, complying with its obligations in connection with the Transition Phase Program in accordance with clause 16.2(b)(ii).

38.5 Extension of time and relief determined by State

- (a) [Not used]
- (b) **(State determination):** If the conditions precedent in clause 38.4 have been satisfied, the State will:
 - (i) with respect to a claim for an extension of time, extend the relevant Date for Operational Readiness by a reasonable period of time; or
 - (ii) with respect to a claim for relief from Manage Co's other Transition Phase Activities, grant Manage Co such other reasonable relief from the Transition Phase Activities; or
 - (iii) with respect to a claim for an extension of time and for relief from Manage Co's other Transition Phase Activities, extend the Date for Operational Readiness by a reasonable period of time and grant Manage Co such other reasonable relief from the Transition Phase Activities,

taking into account all relevant evidence presented by the parties but subject to clause 16.2(d).
- (c) **(Notice of determination):** The State must provide notice of its determination under clause 38.5(a) to Manage Co and the State within 10 Business Days after the later of:

- (i) the date on which Manage Co submits its Change Notice pursuant to clause 38.3(a); and
 - (ii) where any updated Change Notice in accordance with clause 38.3(b), the date on which that updated Change Notice is submitted.
- (d) **(Interim determinations):** In the circumstances contemplated by clause 38.5(c)(ii), the State may, in its absolute discretion, give interim determinations of Manage 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 Manage 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 Manage Co, unilaterally extend any Date for Operational Readiness 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 Manage 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 Operational Readiness caused by a Compensable Extension Event for which Manage Co is entitled to an extension of time in accordance with this Agreement, the State must pay compensation to Manage 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 Manage Co is granted an extension of time to the Date for Operational Readiness under clause 38.5(b)(i) or 38.6, for a Compensable Extension Event, the State will pay Manage 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 32 provided that Manage Co has complied and continues to comply with the requirements under clause 38.4.
- (b) **(Relief from obligations):** If the Date for Operational Readiness is not extended under clause 38.5(b)(i) but Manage Co is granted relief from its other Transition Phase obligations in accordance with clause 38.5, Manage Co will not be entitled to any compensation, including Prolongation Costs.
- (c) **(Agreed Uninsurable Risk):** If the Compensable Extension Event for which Manage 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 occurs on or after the Operational Commencement Date; and
 - (ii) in all other circumstances but excluding any loss or damage to the Relevant Infrastructure which occurs before the Operational Commencement Date, 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 Sole remedy

Subject to clause 5.3(b) and 5.3(c):

- (a) **(Delay during the Transition Phase):** Manage Co's sole remedy for a delay or disruption during the Transition Phase is as set out in this clause 38; and
- (b) **(State Liability):** Manage Co will not be entitled to make, and the State will have no liability for, any Claim made by Manage Co (including for damages for breach), for any delay during the Transition Phase (including any delay to Operational Readiness) other than:
 - (i) a claim for an extension of time;
 - (ii) a claim for relief from Manage Co's other Transition Phase Activities; and
 - (iii) a claim for Prolongation Costs,

each of which is determined in accordance with this clause 38.

38.9 Concurrent delays

Manage Co is not entitled to an extension of time under clause 38.5 or compensation under clause 38.7 in respect of a delay to Operational Readiness caused by an Extension Event to the extent that an event which is not an Extension Event causes a delay to Operational Readiness contemporaneous, concurrent or overlapping with the delay to Operational Readiness caused by the relevant Extension Event.

38.10 Acceleration by Manage Co

If Manage Co chooses to compress the Transition 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 Manage 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) **(Transition Phase Activities):** Whether or not Manage Co makes a claim under clause 38.3, if:
 - (i) any part or the whole of the Transition Phase Activities are delayed by an Extension Event; and
 - (ii) Manage Co would have been entitled to an extension of time to a Date for Operational Readiness for the cause of delay in accordance with this clause 38,

the State may direct Manage Co to submit a Change Notice setting out the estimated time and cost consequences of accelerating any part, or the whole of, the Transition Phase Activities to overcome or minimise the extent and effect of some or all of the delay including, if required, in order to achieve Operational Readiness by the relevant Date for Operational Readiness.

- (b) **(Submission of Change Notice):** Manage Co must submit a Change Notice within 5 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 Manage 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 Manage Co a Change Response to accelerate in response to a Change Notice submitted by Manage Co under clause 38.11:

- (a) **(Accelerate as directed):** Manage Co must accelerate the Transition Phase Activities as directed;
- (b) **(Extra actual costs):** if Manage Co would, but for the direction, have been entitled to an extension of time to the Date for Operational Readiness for the cause of the delay, the State must pay Manage Co the amount calculated in accordance with the Change Compensation Principles in respect of those extra costs properly and reasonably incurred by Manage Co and directly attributable to accelerating the Transition Phase Activities; and
- (c) **(Delay not subject to State's direction):** Manage 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 Transition Phase

- (a) **(Manage Co's obligations):** If:
 - (i) an Extension Event is a Force Majeure Event,
 - (ii) the Force Majeure Event prevents Manage Co from performing the Transition Phase Obligations; and
 - (iii) Manage Co has been granted relief from its obligation to perform the relevant Transition Phase Activities under clause 38.5,

obligations of Manage Co under this Agreement 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 Manage Co has been granted relief from its obligation to perform the relevant Transition Phase Activities under clause 38.5.

- (b) **(State's obligations)** The obligations of the State under this Agreement 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 Agreement.
- (c) **(Party not in breach):** A party's failure to perform its obligations under this Agreement which are suspended under clause 38.14(a) or 38.14(b) (as the case may be) will not be a breach of this Agreement, a Major Default or a Default Termination Event during that period of suspension.
- (d) [Not used]

- (e) [Not used]

38.15 Time not at large

None of:

- (a) **(Breach)**: a breach of this Agreement 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)**: any other act or omission of the State or any of the State's Associates;
- (d) **(Failure to grant extension)**: a failure by the State 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)**: any operation of any time bar, including clause 38.4(a); or
- (g) **(Other default)**: any other default, act or omission of the State or any of the State's Associates,

sets the Date for Operational Readiness, or any other time, at large.

38.16 Sole remedy

- (a) **(Monthly Service Payment)**: Except if the State elects to terminate this Agreement, the State acknowledges and agrees that the State's sole financial remedy, and Manage Co's sole financial Liability, for failure to achieve Operational Readiness by the Date for Operational Readiness is limited to the delay in the payment of the final Transition Phase Payment and amount of the Monthly Service Payment not required to be paid by the State in those circumstances.
- (b) **(Acknowledgement)**: Manage Co acknowledges and agrees that nothing in clause 38.16(a) limits the State's right with respect to an event giving rise to delay or the consequences of such event.

39. Operating Phase – Intervening Events

39.1 Intervening Events entitling Claim

- (a) **(Notification)**: If Manage 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 Agreement, Manage Co must promptly notify the State of that Intervening Event, its then current effect, and any likely further effect (**Early Warning (Services)**).
- (b) **(Prevent)**: In this clause 39, 'prevent' or 'prevented' does not mean that Manage Co is permanently prevented from performing its obligations.
- (c) **(Relief)**: If, during the Operating Phase, an Intervening Event prevents Manage Co from meeting any of the Services Requirements in accordance with this Agreement, Manage 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, Manage 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 Manage Co is prevented from performing any of the Services in accordance with this Agreement, extends beyond the period of time specified in the Change Notice submitted in accordance with clause 39.1(d); and
 - (ii) Manage Co wants to claim relief from performance in respect of that further period,

Manage 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 Manage Co having any entitlement in connection with an Intervening Event that:

- (a) **(Change Notice):** Manage 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):** Manage Co's performance of all or any part of the Services under this Agreement 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 Manage Co from meeting any of the Services Requirements in accordance with this Agreement; and
 - (b) the conditions precedent in clause 39.2 have been satisfied,
- then:
- (c) the relevant obligation of Manage Co will be suspended; and
 - (d) the failure to perform the affected Services will not be a breach of this Agreement by Manage Co, a Manage 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 Manage Co or any of its Associates not failed to do any of the things contemplated by clause 43.1(b)(ii).

39.4 Continue to provide Services

Subject to clause 39.5, if an Intervening Event prevents Manage Co from meeting any of the Services Requirements in accordance with this Agreement, then Manage Co:

- (a) **(Perform obligations)**: must, subject to clause 39.3 and unless it is actually or practically impossible to do so at the Correctional Centre given the nature of the Intervening Event, continue to provide the Services and otherwise perform its obligations under this Agreement;
- (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 Industry Practices)**: must perform the Services in accordance with Best Industry Practices.

39.5 Essential Services

Notwithstanding the occurrence of an Intervening Event, Manage Co must continue to perform the Essential Services.

39.6 Intervening Events other than Insured Risks or Force Majeure Events

- (a) **(Payment of Monthly Service Payment)**: Subject to clauses 39.6(c) and 39.8, notwithstanding that Manage 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 Manage 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 Manage Co because the obligation to carry out the relevant Services has been suspended,

provided that Manage Co has complied and continues to comply with clause 39.2.

- (b) **(Compensation for Costs)**: If Manage 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 Manage Co an amount calculated in accordance with the Change Compensation Principles, other than in connection with any costs of repairing or rebuilding the Correctional Centre which will be determined under clause 44 provided that Manage Co has complied and continues to comply with the requirements under clause 39.2.
- (c) **(Agreed Uninsurable Risk)**: If the Intervening Event for which Manage 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 Not used

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 Manage 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 Agreement.
- (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 Manage 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 Manage Co:
 - (i) [Not used];
 - (ii) Manage Co not receiving the Lifecycle Change for the relevant Month that otherwise would have been due and payable to Manage Co by the State; or
 - (iii) not receiving the amount of the Monthly Service Payment referable to the Services that Manage Co continues to deliver under this Agreement, notwithstanding the Force Majeure Event,

then Manage Co will be entitled to payment of an amount calculated in accordance with the Change Compensation Principles, provided that Manage Co has complied and continues to comply with the requirements under clause 39.2.
- (d) **(Agreed Uninsurable Risk):** If the Intervening Event for which Manage 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 clause 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):** 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 Manage Co, and without the State incurring any Liability to Manage Co in respect of those alternative arrangements; or

- (ii) direct Manage 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 Manage Co to do so.
- (b) **(Payment):** If the State requires Manage Co to perform those Services by an alternative method or 'work around' in accordance with clause 39.9(a)(ii), the State must pay Manage Co an amount calculated in accordance with the Change Compensation Principles in respect of such alternative method or 'work around'.
- (c) **(Consistent performance):** When exercising its rights under clause 39.9(a)(i), the State must use its reasonable endeavours to ensure that the relevant Services are performed 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.

39.10 Cessation of Intervening Event

Manage 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 Manage Co is prevented from performing the Services in accordance with this Agreement as a consequence of an Intervening Event, Manage Co's sole remedy during the Operating Phase is as set out in this clause 39; and
- (b) **(Relief and compensation):** Manage Co will not be entitled to make any Claim, and the State will have no Liability for, any Claim made by Manage Co (including for damages for breach) for Manage Co being prevented from providing the Services in accordance with this Agreement 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 after the Date of Operational Readiness (but not before) issue to Manage Co a notice entitled "Modification Request" which must include details of:

- (a) **(Proposed Modification):** the proposed Modification which the State is considering;
- (b) [Not used]; and
- (c) **(Specific information):** any specific information that the State requires Manage 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 Manage Co needs to engage a third party 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, Manage 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, Manage 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 Manage Co

If:

- (a) Manage 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 Manage Co in preparing the Modification Proposal, capped at the price provided by Manage 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), Manage 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 Manage 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 Manage 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)**: Manage 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) Manage Co has issued a Modification Proposal under clause 40.3,

the State may at any time instruct Manage 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), Manage Co must implement the Modification on the terms set out in that Modification Order.

40.8 Modifications proposed by Manage Co

- (a) **(Manage Co may propose a Modification):** Manage 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 Manage Co to proceed with the Modification proposed by Manage Co under clause 40.8(a).
- (c) **(Manage Co to bear risks of costs):** Unless otherwise agreed in writing by the State, Manage Co will:
 - (i) bear all risks and costs associated with a Modification proposed by Manage 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 Manage Co,

including where the State issues a Modification Order requiring Manage 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 Manage Co under clause 40.8(a) and the Modification will give rise to a Saving, the State and Manage Co will share any Saving between the parties as determined in accordance with the Change Compensation Principles.

40.9 Directions

- (a) **(State direction):** If Manage 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 Manage Co intends to make a Claim that the direction is a Modification, Manage 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 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 Manage Co must not comply with the direction; or
 - (iii) informing Manage Co that, in the State's view, the direction does not constitute or involve a Modification in which case Manage 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 Manage Co claim):** Manage 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):** Manage Co must provide to the State a notice within 5 Business Days after becoming aware of any Change in Mandatory Requirements.
- (b) **(Manage Co action):** If a Change in Mandatory Requirements occurs, Manage 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 Manage Co as to whether or not it requires Manage Co to comply with the relevant Change in Mandatory Requirements, provided that the State must direct Manage Co to comply with the relevant Change in Mandatory Requirements if a failure to comply with that Change in Mandatory Requirements would result in Manage Co being in breach of Legislation or any Approval;

- (ii) if the State directs that it requires Manage 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 Manage Co not to comply with the relevant Change in Mandatory Requirements under clause 40.10(c)(i), reimburse Manage Co the reasonable third party costs of the type described in clause 40.2 incurred by Manage Co in preparing the Change Notice, capped at the amount of any estimate provided by Manage Co for the Change Notice under clause 40.2 (or such higher amount as the State may approve).
- (d) **(Conditions for Manage Co claim):** Manage 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 Manage Co considers that it has been delayed in achieving Operational Readiness or has otherwise been prevented in performing the Transition Phase Activities as a consequence of a Modification or a Change in Mandatory Requirements then Manage 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 Manage 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 Manage Co may agree:
- (i) that Manage 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 Manage Co's Change Notice, in which case the agreed extension of time or other form of relief will apply and be included in the Change Response.
- (c) **(Failure to agree on extension of time):** Where Manage Co has claimed an extension of time in accordance with clause 40.11(a) and the State and Manage Co cannot agree that Manage 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):** Manage 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 Manage Co and the State in the implementation of Minor Modifications,

and Manage 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, Manage Co or the State may propose a Modification which is a Minor Modification by issuing a notice entitled "Minor Modification Proposal".
- (c) **(Accumulation):** Manage 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 Manage 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 Manage 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 Manage 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 Manage 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 Manage 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 Manage 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 Manage 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, Manage 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 Manage Co must implement the Modification in accordance with the terms of the Modification Order.

41. [Not used]

42. [Not used]

43. Relief Events

43.1 Reduction in State liability for Relief Events

The State's Liability and Manage Co's entitlements in connection with any Relief Event will be reduced:

- (a) **(Caused by Manage Co):** to the extent that the Relief Event is:
- (i) within the reasonable control of Manage Co and its Associates;
 - (ii) caused or contributed to by any breach of another Project Document by Manage Co or any of its Associates who is a counterparty to the Project Document; or
 - (iii) caused or contributed to by a Manage Co Act or Omission or an act or omission of an Inmate, to the extent arising from a failure by Manage Co or its Associates to perform the Services in accordance with this Agreement;
- (b) **(Failure to mitigate):** to the extent Manage 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 Manage Co or the relevant Associate of Manage 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 Manage Co, or any of its Associates, in respect of any Insurances; or
 - (ii) which would have been payable to Manage Co or any of its Associates in accordance with any Insurances but for a failure by Manage Co to comply with this Agreement or a failure by Manage 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, to the extent Manage Co ought reasonably to have become aware of the occurrence of the Extension Event prior to 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) Manage Co may reasonably take in order to avoid or mitigate the effects of the Relief Event (including any steps Manage Co has taken or is proposing to take to make a claim under the Insurances);
- (c) **(Mitigation)**: the extent to which Manage 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, on and from the Operational Commencement Date, Manage 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

On and from the Operational Commencement Date:

- (a) **(Notification):** Manage 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; and
- (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 Manage Co:
 - (iii) whether or not it requires Manage Co to repair or rebuild any Relevant Infrastructure for which Manage Co retains the risk of loss or damage; or
 - (iv) that clause 44.7(b)(i) applies.

44.3 Repairing and rebuilding

- (a) **(Manage Co to repair or rebuild):** If the State notifies Manage Co that it requires Manage Co to repair or rebuild the Relevant Infrastructure in accordance with clause 44.2(b), Manage 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 Agreement; and
 - B. ensure that the repaired or rebuilt Relevant Infrastructure complies with the requirements of this Agreement;
 - (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 Manage Co the proceeds of any Insurance received by the State for the purpose of repairing or rebuilding the Relevant Infrastructure other than where the State has issued a notice under clause 44.7(b)(i) and in such case:
- (i) the State may retain such Insurance proceeds; and
- (ii) Manage Co must make available to the State the proceeds of any Insurance received by Manage Co for the purpose of repairing or rebuilding the Relevant Infrastructure.
- (c) **(Cost impact on Relevant Infrastructure):** If:
- (i) the State directs Manage Co that the Relevant Infrastructure is to be repaired or rebuilt by Manage Co to a design specification and standards which is different to that of the lost or damaged Relevant Infrastructure as at the date on which the loss or damage occurred; and
- (ii) the incremental cost of repairing or rebuilding by Manage Co according to the different specifications exceeds the total cost of repairing or rebuilding the Relevant Infrastructure in accordance with design specification and standards of the lost or damaged Relevant Infrastructure as at the date on which the loss or damage occurred **(Current 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 Current Design Requirements.
- (d) **(Cost impact on Project Activities):** If the repairing or rebuilding by Manage Co (or the State pursuant to clause 44.7(b)) of the Relevant Infrastructure to different specifications to the Current 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 (excluding any CSI 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 Manage Co which is over and above the Insurance proceeds received by Manage Co in respect of the repairing or rebuilding (or which would have been received by Manage Co but for any breach by Manage Co or any of its Associates of this Agreement 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 Centre 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 Manage Co or its Associates, Manage 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 Manage 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 Manage Co to carry out the Project Activities,

then Manage Co must rectify that damage (at its own cost).

44.6 Consequences of State election not to repair or rebuild

If the State notifies Manage Co not to repair or rebuild the Relevant Infrastructure and clause 44.7(b) does not apply, 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 Manage Co or an Inmate, this will be deemed to be a Default Termination Event and the State must issue a notice to terminate this Agreement 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 Agreement 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 Agreement for Force Majeure in accordance with clause 49.3.

44.7 State may repair or reinstate

- (a) Without limiting any other provision of this Agreement, if Manage Co does not repair or rebuild the Relevant Infrastructure where required to do so in accordance with clause 44.3:
- (i) **(Notification)**: the State may notify Manage 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
 - (ii) **(Failure to comply)**: if Manage Co does not comply with its obligations under clause 44.3 within 14 days after the date of the State's notice, 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 Manage Co to the State.
- (b) Without limiting any other provision of this Agreement, if the Relevant Infrastructure has been wholly destroyed or substantially damaged:
- (i) **(Notification)**: the State may notify Manage 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);
 - (ii) **(Failure to comply)**: if the costs and expenses incurred by the State to remedy or repair any destruction, loss or damage, or replace or reinstate the Relevant Infrastructure (or procure a third party to do so) will be paid for by the State; and
 - (iii) **(Modification)**: if the repairing or rebuilding of the Relevant Infrastructure by the State 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.

44.8 Damage to third party property

- (a) **(Manage Co interference)**: Other than in accordance with its obligations under this Agreement, Manage Co must not interfere with, obstruct, damage or destroy any property on, under, over, in, or in the vicinity of, the Site.
- (b) **(Manage Co to rectify and compensate)**: If Manage 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 Agreement, Manage 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 Manage Co has a legal liability to do so.

45. Indemnities and Consequential or Indirect Loss

45.1 Indemnity for Manage Co breach

Subject to clauses 38.16 and 36.3(d), Manage 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 Agreement)** any breach by Manage Co of this Agreement; or
- (b) **(Breach State Project Document):** any breach by Manage Co or any of its Associates of any State Project Document.

45.2 General indemnity

Manage Co indemnifies the Indemnified Persons from and against any Claim (including Claim 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 Manage Co or any of its Associates in connection with the Project or the Project Activities.

45.3 Corrections Act Indemnity

Manage 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 Centre and any associated public property in the possession or under the control of Manage 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 Centre or an Inmate (or former Inmate) during the Operating Phase.

45.4 Project Information

Manage 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 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 Manage Co, an Associate of Manage Co or any other person to whom the Project Information is disclosed by Manage Co, an Associate of Manage Co or any person on Manage 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 Manage Co, an Associate of Manage Co or any other person to whom the Project Information is disclosed by Manage Co, an Associate of Manage Co or any person on Manage 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 Manage 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):** Manage 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 rights of any person 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 Manage Co as referred to in clause 61.3(c);
 - (iv) any Use of other Manage Co Material, Manage Co Background IP or part of the Relevant Infrastructure as delivered by or on behalf of Manage Co to the State or as modified by Manage Co; or
 - (v) any other Use of other Manage Co Material, Manage Co Background IP or any part of the Relevant Infrastructure (as delivered by or on behalf of Manage Co to the State or as modified by Manage Co) by the State, its Associates or any person nominated or authorised by the State as permitted or contemplated by this Agreement.
- (b) **(Manage 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 Manage Co Material, Manage Co Background IP or any part of the Relevant Infrastructure (as delivered by or on behalf of Manage Co to the State or as modified by Manage Co), Manage 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 Manage Co Material, Manage Co Background IP or that 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 Manage Co Material, Manage Co Background IP or that Relevant Infrastructure in accordance with the Project Documents;
 - (ii) without additional charge to the State, modify the Developed IP, other Manage Co Material, Manage Co Background IP or that Relevant Infrastructure to overcome the infringement without materially impeding functionality or performance or rendering it non-compliant with any relevant requirements for that Material, Manage Co Background IP or that 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 Manage Co Material, Manage Co Background IP or that Relevant Infrastructure (as applicable) and pay any additional fee required for that licence.
- (c) **(No limitation):** Neither the State's rights nor Manage Co's Liabilities or obligations, whether under this Agreement or otherwise according to Law, in connection with Intellectual Property Rights, are limited by the terms of this clause 45.3.

45.6 Privacy indemnity

Manage 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 Manage Co or any Associate of Manage 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

Manage 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 Manage Co or any of its Associates in connection with the Project or the Project Activities.

45.8 Limits on Manage Co liability to indemnify and release

Manage Co's Liability to indemnify and release the Indemnified Persons or the Indemnified IP Parties in accordance with this Agreement will be reduced to the extent that any such Claim or Liability is caused or contributed to by:

- (a) **(Breach):** any breach (excluding any CSI 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 Manage Co's Liability to indemnify or release is agreed by the parties in accordance with the Change Compensation Principles (if at all),

other than to the extent that Manage 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 Manage Co or any of its Associates of this Agreement 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 Manage Co is required to indemnify the relevant Indemnified Person or Indemnified IP Party in accordance with this Agreement, to the extent that the State's insurers in connection with such a Claim agree, the State must:
 - (i) as soon as is reasonably practicable after it becomes aware of the Claim:
 - A. notify Manage Co of the alleged Claim;
 - B. give Manage Co the option to defend the Claim; and
 - C. provide Manage Co (at Manage 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 Manage Co (which cannot be unreasonably withheld or delayed), and Manage Co will be deemed to be acting reasonably if Manage 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 Manage 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 Manage Co with respect to such Claim.

- (d) **(Management of Claims by the State):** If the State is managing a Claim for which Manage Co is required to indemnify an Indemnified Person or an Indemnified IP Party, the State must:
 - (i) give Manage Co prior notice before agreeing to any compromise or settlement of that Claim; and
 - (ii) use reasonable endeavours to consult in good faith with Manage Co prior to agreeing to any such compromise or settlement.
- (e) **(Management of Claims by Manage Co):** If Manage Co is managing a Claim in accordance with clause 45.9(a)(i)B, Manage 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 Agreement 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 Agreement.
- (c) **(Payment):** A party must pay on demand any amount it must pay under an indemnity in this Agreement.

45.11 Exclusion of Consequential or Indirect Loss – Manage Co

- (a) **(No liability of Manage Co):** Subject to clause 45.11(b), neither Manage 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 Manage Co or any of its Associates; or
 - (ii) due to any breach of a State Project Document by Manage Co or any of its Associates.
- (b) **(Exceptions to no Manage Co liability):** The exclusion of Liability of Manage Co and its Associates under clause 45.11(a) does not apply to Liability:
 - (i) for which Manage Co or its Associates are insured under any Insurances that have been effected and maintained as required by this Agreement or Liability for which Manage Co or its Associates would have been insured under such Insurances if:
 - A. this clause 45.11 did not exist; and

- B. Manage Co and its Associates had:
- 1) effected and maintained the relevant Insurances as required by this Agreement;
 - 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 Manage Co recovers pursuant to an indemnity under any Project Documents;
- (iii) arising from any criminal act or fraud on the part of Manage Co or any of its Associates;
- (iv) arising from any wilful misconduct on the part of Manage 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 Agreement;
- (viii) expressly imposed on Manage Co or any of its Associates under any of the Project Documents to pay the State any of the following amounts:
- A. [Not used];
 - B. any interest under clause 36.5;
 - C. any amounts payable under clause 36.4 ;
 - D. any amounts expressly stated to be payable as a debt due and payable under the State Project Documents;
 - E. any amounts payable by Manage Co to an Indemnified IP Party under clause 45.5;
 - F. without limiting clause 45.11(b)(v), any amounts payable by Manage 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 Manage 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 Manage Co or any of its Associates;
- (xi) arising from abandonment of the whole or a substantial part of the Transition Phase Activities or the Services by Manage Co or any of its Associates; or
- (xii) in respect of costs incurred by the State in rectifying Defects for which Manage Co is liable under this Agreement.

45.12 Exclusion of Consequential or Indirect Loss – State

- (a) **(No liability of State):** Subject to clause 45.12(b), neither the State nor any of its Associates has any Liability to Manage 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 Manage 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 under any State Project Document on the part of the State or its Associates;
 - (iii) Liability arising from any loss of or damage to property or any 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 Manage Co any of the following amounts:
 - A. any Transition Phase Payment, Rectification Milestone Amount or 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 Prolongation Costs); or
 - D. any amounts payable in accordance with the Termination Payments Schedule;
 - (v) Liability imposed on the State under clause 40.8(d) to pay or allow Manage Co any share of Savings; or
 - (vi) [Not used].

46. Insurance

46.1 Insurances

Manage Co must effect and maintain, or cause to be effected and maintained:

- (a) **(Insurance Schedule):** the Manage Co 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

Manage Co must:

- (a) **(Reputable Insurers):** effect all Manage Co Insurances with Reputable Insurers;
- (b) **(Premiums):** punctually pay all premiums and other amounts payable in connection with the Manage Co 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 Manage Co Insurance, or allow any such Insurance to lapse, where this would result in the relevant Insurance not meeting the requirements of this Agreement, 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 Manage Co becoming aware of the amendment or cancellation..

46.3 [Not used]

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 Agreement or generally.
- (b) **(Manage Co's obligations not affected):** Other than as expressly stated in this Agreement, Manage Co is not relieved from, and remains fully responsible for, its obligations under this Agreement, 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

Manage Co must:

- (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 [Not used]

46.7 [Not used]

46.8 [Not used]

46.9 [Not used]

46.10 [Not used]

46.11 Application of Insurance proceeds

All proceeds of any Insurance 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 [Not used]

47. Uninsurable Risks

47.1 Risks become Uninsurable

- (a) **(Uninsurable Risk):** If Manage Co considers that a risk has, or is likely during the Term to, become an Uninsurable Risk:
 - (i) Manage Co must notify the State within 5 Business Days of when Manage 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 Manage 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 determination in accordance with clause 50.

- (b) **(Parties to meet):** If it is agreed by the parties that a risk is an Uninsurable Risk, then the parties must meet to discuss the means by which the Uninsurable Risk should be managed.

47.2 No obligation to insure

If the parties agree or it is determined in accordance with clause 50, 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, the relevant party is not required to procure insurance against that risk; and
- (b) [Not used].

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 on or after the Operational Commencement Date, 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 require Manage Co to repair or rebuild the Relevant Infrastructure this will be a Change Compensation Event; or
 - (ii) where the State elects not to require Manage Co 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 Manage 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 Manage 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 Agreed Uninsurable Risk no longer uninsurable

- (a) [Not used]
- (b) **(Procurement of insurance):** If an Agreed Uninsurable Risk is no longer uninsurable, then Manage Co will promptly procure the insurance in connection with that risk in accordance with the other provisions of clause 46 and that risk will no longer be an Agreed Uninsurable 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) [Not used]; and
 - (ii) paragraph (b) (late Operational Readiness).

48.2 Notice of Major Default

- (a) **(Manage Co's obligations):** Manage 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) Manage 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 Manage 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 Manage 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 any Key Subcontractor, in which case the time to remedy must not exceed 1 Month;

B. is not capable of remedy, stating any reasonable requirements of the State in connection with that Major Default and a date by which Manage 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 Manage 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 relevant Key Subcontractor, if:

- (i) the relevant Key Subcontractor is responsible for the Major Default; and
- (ii) the cure period under the relevant Key Subcontract has expired,

and Manage 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 Agreement.

(d) **(Unreasonable requirements):** If Manage 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 Manage 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 Manage Co's notice under clause 48.2(c) and (acting reasonably):

- (i) make any changes to the Major Default Notice that it considers reasonable as a consequence of Manage Co's notice; and
- (ii) notify Manage Co of those changes (if any).

(f) **(Major Default not capable of remedy or cure):** If after considering Manage Co's notice under clause 48.2(c), the State maintains the view (acting reasonably) that there are no reasonable requirements that can be met by Manage Co to overcome the consequences of, or compensate the State for, the Major Default, the State must notify Manage Co of this determination and the Major Default will be deemed to be a Default Termination Event.

(g) **(Manage Co not satisfied):** If Manage 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) Manage Co may refer the matter to determination in accordance with clause 50; 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 in accordance with clause 50,

and Manage Co must act in accordance with the Major Default Notice while the matter is being determined in accordance with clause 50.

48.3 Manage Co to provide remedy program and comply with Major Default Notice

- (a) **(Remedy program):** If the State gives a Major Default Notice to Manage Co, then notwithstanding its rights under clause 48.2(c) to 48.2(g), Manage 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(c) to 48.2(g), Manage 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 clause 48.4(a), the maximum period of time (including any extension under clause 48.4(b)) which Manage Co may be given to remedy a Major Default will be:
 - (i) where the applicable Major Default occurs during the Transition 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 Manage Co is prevented from carrying out its obligations in accordance with clause 48.3(c) as a direct result of a Relief Event for which Manage Co is entitled to an extension of time or relief (as applicable) in accordance with this Agreement, 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 Manage Co is prevented from carrying out its obligations in accordance with the remedy program by that Relief Event; or
 - (ii) without limiting clause 45, 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 Transition Phase, the period of extension of time granted under with 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) Manage Co demonstrates to the State's satisfaction (acting reasonably) that Manage 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 Manage 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) Manage 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),

Manage 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 Manage 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 Manage 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)**: Manage 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 Agreement.
- (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 Agreement or any other State Project Document or otherwise at Law, and whether against Manage 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 Agreement 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 Agreement or any rights Manage Co has at Law or otherwise but for this clause 49.1(c), Manage Co acknowledges that it has no right under this Agreement, at Law, or otherwise, to terminate this Agreement.

49.2 Voluntary Termination

- (a) **(Voluntary termination notice)**: The State may:
 - (i) at any time and in its sole and absolute discretion, terminate this Agreement by giving Manage 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 Agreement 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 Agreement by giving notice to the other party.
- (b) **(Date of termination)**: Termination of this Agreement 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):** Manage Co is not entitled to terminate this Agreement under clause 49.3(a) during the period Manage Co is able to recover (or, but for any breach by Manage Co or any of its Associates of a State Project Document or the relevant Insurances, would have been able to recover) under any advance loss of profits Insurance (applicable to the Correctional Centre) or consequential loss cover 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 Agreement or at Law (other than rights of termination), elect to:
- (i) terminate this Agreement by giving written notice to Manage Co; or
 - (ii) [Not used].
- (b) **(Date of termination):** Termination of this Agreement for a Default Termination Event will take effect upon the date specified in the notice given under clause 49.4(a)(i).

49.5 Assistance

Manage 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(c), if the State has terminated this Agreement 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 Manage Co; and
 - (ii) where the Termination Payment is a negative amount, Manage Co must pay to the State:
- as a debt due and payable, the absolute value of 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) **(Manage Co obligations):** The State's obligation to pay a Termination Payment under clause 49.6(a) is subject to Manage Co having delivered up the vacated Site and the Relevant Infrastructure to the State in accordance with clause 37 and this clause 49.6.
- (c) **(State's rights):** If the State is not satisfied that Manage Co has satisfied its obligations in clause 49.6(b), Manage 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 Manage 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 Transition Phase Payments, Rectification Milestone Amount and Monthly Service Payment will cease.

49.7 [Not used]

49.8 Waiver

If this Agreement is terminated in accordance with this Agreement, then:

- (a) **(Liability):** subject to clause 49.8(b):
- (i) Manage 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 Manage 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;
- (b) **(Exclusive entitlement):** Manage Co's sole and exclusive entitlement to make a Claim against the State following termination of this Agreement will be in connection with its rights to a Termination Payment; and
- (c) **(Wrongful termination):** if the State terminates this Agreement for a Default Termination Event and it is subsequently determined that such termination was wrongful (including if the State has terminated this Agreement 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 Agreement 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 Manage 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 Agreement 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 Manage Co arising in connection with:
- (i) any State Project Document or the Project Activities (including questions concerning this Agreement's existence, meaning, validity or termination); or
 - (ii) any decision of or report of the Handover Reviewer which is not stated in this Agreement to be final and binding on the parties,
- (each a **Dispute**) must be resolved in accordance with this clause 50 and clause 51.
- (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; and
- (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 the parties may agree that the Dispute will be referred to the Commissioner or a delegate of the Commissioner that is a senior ranking officer of Corrective Services – NSW Department of Justice and, in either case, the Commissioner or his delegate may (without any obligation) seek relevant expert advice to assist in making a determination.

50.2 Selection of resolution process

Where this Agreement provides that either party 'may' refer a Dispute to determination in accordance with clause 50:

- (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 50.1(b)(ii);
- (b) **(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 50.1(b)(ii); and
- (c) **(No Arbitration)**: if a party has referred a Dispute for determination in accordance with clause 50.1(b)(ii), neither party may refer the Dispute to arbitration, or take any steps to enjoin or otherwise restrain the referral of the Dispute to the Commissioner or its delegate.

50.3 Continue to perform

Notwithstanding the existence of a Dispute, each party must continue to perform its obligations in accordance with the State Project Documents.

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 senior representatives of the State and Manage 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 20 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 binding on the parties.

52. [Not used]

53. [Not used]

Part K - Corporate obligations

54. Representations and warranties

54.1 State's representations and warranties

The State represents and warrants for the benefit of Manage 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 Manage Co's representations and warranties

Manage Co represents and warrants for the benefit of the State that:

- (a) [Not used];
- (b) [Not used];
- (c) [Not used];
- (d) [Not used];
- (e) [Not used];
- (f) [Not used];
- (g) [Not used];
- (h) [Not used];
- (i) [Not used];
- (j) [Not used];
- (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 Manage 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 Agreement with Manage Co;
- (l) **(No other security interests):** none of its assets are subject to any Security Interest;
- (m) [Not used];
- (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 Agreement, 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 Agreement or providing its proposal for the Project.

54.3 Repetition of representation and warranties

Each representation and warranty given by Manage Co under this Agreement:

- (a) **(Date of Agreement)**: is made on the date of this Agreement; 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 Agreement 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 Manage Co under this Agreement 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 Agreement 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) **(Manage Co acknowledgement)**: Manage 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 Agreement.

56. Manage Co general undertakings

- (a) Manage Co must:
- (i) **(Dispute proceedings)**: immediately upon becoming aware that any litigation, arbitration, administration, adjudication or mediation proceedings, which may adversely affect the Project or Manage 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) [Not used].
- (b) [Not used]

57. Assignment and amendments

57.1 Assignment, amendments and other dealings by Manage Co

- (a) **(Restrictions on Manage Co):** Except as expressly permitted by this Agreement, Manage Co must not:
- (i) [Not used];
 - (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) [Not used];
 - (ii) [Not used];
 - (iii) [Not used]; or
 - (iv) a Key Subcontract or Significant Subcontract.
- (c) **(Notice of intended Amendment):** If Manage Co requires an Amendment, it 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 Manage Co's request.
- (d) **(State to advise):** Subject to clause 57.1(f), the State must advise Manage Co, within:
- (i) 15 Business Days of receiving its request under clause 57.1(c) if it requires further information from Manage Co regarding the proposed Amendment, in which case Manage 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) in relation to a proposed Amendment in respect of a Project Document, which is not a State Project Document, Manage 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 Manage Co 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) **(Manage 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 Manage Co.
- (b) **(No consent required):** The State may sell, transfer or assign or otherwise dispose of all or any part of its interest in the State Project Documents without Manage Co's consent, if the proposed transferee is the NSW Government or an entity described in paragraph (a) of the definition of 'Authority':
 - (i) which is an agent of the NSW Government; or
 - (ii) [Not used],

(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(a):
 - (i) Manage Co consents to that sale, transfer, assignment or disposal;
 - (ii) Manage Co must 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 Agreement will be deemed to include reference to the State Nominee in place of the State.

57.4 [Not used]

57.5 [Not used]

58. [Not used]

59. Payment Model

59.1 Development of the Payment Model

- (a) [Not Used]
- (b) **(Draft Payment Model)**: Not later than 20 Business Days prior the Date for Operational Readiness, the State will prepare a draft of the Payment Model and provide that draft model to Manage Co for comment.
- (c) **(Manage Co to review draft Payment Model)**: After the State provides the draft Payment Model in accordance with clause 59.1(b):
 - (i) Manage Co may review the draft Payment Model and must provide any comments on the draft Payment Model to the State within 5 Business Days of receipt of the draft Payment Model from the State;
 - (ii) the draft Payment Model will be updated by the State, at the State's discretion, in accordance with any comments provided by Manage Co and will then become the Payment Model for the purposes of this Agreement.

59.2 Status of the Payment Model

The parties acknowledge and agree that:

- (a) **(Not actual performance)**: the Payment Model:
 - (i) may not reflect the actual financial performance or the projected performance or budgets of the Project or Manage Co; and
 - (ii) is purely a tool to be used by the State in order to:
 - A. input relevant variables and calculate the amount of Service Payments in accordance with the Payment Schedule, the Performance Regime and the remainder of this Agreement ; and
 - B. provide a convenient ongoing record of payments made under this Agreement during the Term.
- (b) **(Errors or omissions)**: neither party must be adversely affected by any ambiguities, discrepancies, inconsistencies, conflicts, errors or omissions in the Payment Model.

59.3 Varying the Payment Model

- (a) The State will vary the Payment Model in accordance with this clause 59 upon the occurrence of any of the following events (each a **Model Variation Event**):

- (i) [Not Used];
 - (ii) [Not Used];
 - (iii) **(Change Compensation Event)**: a Change Compensation Event which results in a permanent adjustment to the Monthly Service Payment in accordance with this Agreement (a CCE Model Variation Event);
 - (iv) [Not Used] ; and
 - (v) **(Agreed Events)**: any other event which Manage Co and the State agree to be a Model Variation Event.
- (b) [Not Used].

59.4 Principles for variations to the Payment Model

When a Model Variation Event occurs, the State will vary the Payment Model, as necessary, by taking into account only the amounts:

- (a) **(Agreement)**: determined in accordance with this Agreement;
- (b) **(As agreed)**: agreed between the State and Manage Co; or
- (c) **(Dispute resolution)**: determined in accordance with clause 50.

59.5 Procedures for variations to the Payment Model

Any variations to the Payment Model to take account of a Model Variation Event must be made as follows:

- (a) **(Change Response)**: The State will prepare the relevant variation to the Payment Model as part of a Change Response required under this Agreement, giving:
 - (i) a draft varied Payment Model incorporating all adjustments relevant to the Model Variation Event and details of the assumptions and calculations used;
 - (ii) [Not Used];
 - (iii) [Not Used];
 - (iv) [Not Used]; and
 - (v) [Not Used]; and
- (b) **(Review)**: Within 5 Business Days of receipt of the draft varied Payment Model from the State in accordance with clause 59.5(a)(i), Manage Co may the review the draft varied Payment Model and may provide any comments on the draft varied Payment Model to the State;
- (c) [Not Used];
- (d) **(Varied Payment Model)**: The draft varied Payment Model will be:
 - (i) updated by the State, at the State's discretion, in accordance with any comments provided by Manage Co; and
 - (ii) will then become the Payment Model for the purposes of this Agreement.
- (e) [Not Used] ; and

- (f) [Not Used].

59.6 Access to information

Without limiting clause 59.5(a), Manage Co must provide the State and any other authorised representatives of the State with:

- (a) [Not Used];
- (b) [Not Used] ;
- (c) [Not Used] ; and
- (d) **(Other information)**: any information reasonably requested by the State, for a Model Variation Event.

59.7 Custody of Payment Model

The Payment Model will be held for the Term by the State on the basis that it must be released to Manage Co for the purposes of:

- (a) [Not Used];
- (b) [Not Used]; and
- (c) the determination of any Dispute in accordance with clauses 50 to 51.

60. Records and Accounts

60.1 Accounting records

- (a) **(Proper books of account)**: Manage 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 and each Key Subcontractor does likewise.
- (b) [Not used].
- (c) **(Accounting principles)**: Manage Co must ensure that its Accounts and Records are prepared in accordance with generally accepted Australian accounting principles and practices consistently applied, and fairly represent its operations and financial condition.
- (d) **(Availability of accounting records)**: Manage 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 Agreement is terminated)**: Without limiting its obligations in accordance with clause 37, if this Agreement is terminated, Manage 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 Manage 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 [Not used]

60.3 Financial statements

- (a) **(Financial statements)**: As soon as practicable (and in any event not later than 120 days) after the close of each Financial Year, Manage Co must give to the State certified copies of the unconsolidated financial statements for the previous Financial Year for Manage Co.
- (b) **(Cashflow and profit and loss statements)**: Not later than 30 days after the end of each Quarter, Manage Co must give to the State certified copies of cashflow and profit and loss statements.

60.4 Records

- (a) **(General)**: Manage Co must keep and maintain Records including but not limited to 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)**: Manage Co shall make all Records available to the State for inspection, audit, copying or any other purpose.

60.5 Other information

Manage 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) [Not Used];
- (c) **(Material changes)**: details of any material change in the financial condition of Manage Co (since its incorporation) or any other Group Member or a Key Subcontractor (since the date of their last audited accounts) which would prejudice the ability of Manage Co 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 Centre, the Inmates and other users of the Services (including former Inmates)).

60.6 Manage Co Material

Manage Co must maintain a document management system for all Manage Co Material and Project Information that:

- (a) **(Requirements)**: is in accordance with any requirements set out in the 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 Manage Co Material; and
- (d) **(Distribution)**: tracks the distribution of all Manage Co Material.

61. Intellectual Property Rights

61.1 Warranties

Manage 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 Manage Co Material, Manage Co Background IP or any part of the Relevant Infrastructure (as delivered by or on behalf of Manage Co to the State or as modified by Manage Co) as permitted or contemplated by this Agreement,

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 Manage 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 Manage Co Material, Manage Co Background IP or any part of the Relevant Infrastructure (as delivered by or on behalf of Manage Co to the State or as modified by Manage Co) by the State, its Associates or any person nominated or authorised by the State as permitted or contemplated by this Agreement; or
 - (iii) the possession of any of that Manage 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, Manage Co Background IP or other Manage Co Material.

61.2 Background IP

- (a) Manage 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 Manage Co nor any of its Associates has (under this Agreement 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):** Manage Co, its Associates or their respective head licensors (as the case may be) are and remain the owner of all Manage Co Background IP; and
- (ii) **(Rights):** neither the State nor any of its Associates has (under this Agreement or otherwise) any title, entitlement to, or rights in relation to, any Manage Co Background IP or the Intellectual Property Rights in any Manage 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 Manage 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):** Manage 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 Manage 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 Personal Information is disclosed; and
 - B. 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 Centre or any information that may disclose the identity of Inmates or other users of the Services (including former Inmates),

(subject always to Manage Co's obligations of confidence in clause 62 unless otherwise agreed by the State in writing).

- (d) **(Sub-licence)**: The licence granted to Manage Co under clause 61.3(c) includes the right on the part of Manage Co to grant a sub-licence to each of its Associates engaged in the performance of the Project Activities.
- (e) **(Patent)**: Manage 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 Manage Co licence for Manage Co Background IP

Manage Co:

- (a) hereby grants to the State and its Associates;
- (b) without limiting Manage 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 Manage Co Background IP for the purposes of any of the following:

- (d) the Project (including, where this Agreement is terminated, to complete any Project Activities which have not been carried out, or 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;
- (f) the operation, maintenance, repair and alteration of the Relevant Infrastructure on and from the Expiry Date; and
- (g) for any purpose arising out of or in connection with the Site.

61.5 Third Party Materials

- (a) **(Obligation)**: Notwithstanding this clause 61, to the extent that any item of Manage Co Material is commercially available off-the-shelf third party software, the obligation of Manage Co is to (at the State's option):
 - (i) license that item of Manage Co Material to the State and the State's Associates, if Manage Co is legally able to do so, and on the terms of the licence granted to Manage Co or its Associates by the third party licensor (and Manage 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 Manage 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, Manage Co is unable to license (or, if applicable, procure a licence of) any Manage Co Material owned by a third party to the State and the State's Associates, as required under clause 61.5(a), Manage 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 Manage Co Material and Relevant Infrastructure

Without limiting Manage Co's other obligations under this Agreement with respect to the delivery of any Manage Co Material, Manage Co Background IP or the Relevant Infrastructure, Manage 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 Manage Co Material, Manage Co Background IP and any part of the Relevant Infrastructure (as delivered by or on behalf of Manage Co to the State or as modified by Manage Co).

61.7 Use of State Background IP

- (a) **(Licence):** The State grants to Manage 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 Agreement.
- (b) **(No sub-licence):** The licence granted by the State under clause 61.5(a) is not sub-licensable to any third party, except where that third party is an Associate of Manage 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, Manage Co must immediately deliver the original and all copies of State Background IP to the State.

61.8 Moral rights

Manage 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 Manage 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), Manage 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 [Not used]

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 in accordance with:
- (i) 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 Services Requirements, for the purpose of conducting any tender process required by the terms of this Agreement.

62.2 Confidential Information and disclosure by Manage Co

- (a) **(Confidentiality obligation):** Subject to clauses 62.2(b) and clause 62.4(b), Manage Co 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 Manage Co's obligation under clause 62.2(a) and subject to clause 62.2(c), Manage Co may disclose Confidential Information:
- (i) to its Associates to the extent necessary for the purpose of undertaking the Project;
 - (ii) to any prospective 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, Manage Co must ensure that the person to whom the information is disclosed enters into a confidentiality deed with Manage Co to keep the Confidential Information, confidential in accordance with this clause 62.
- (d) **(Permitted disclosure):** Manage 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 Manage 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. Manage 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 Manage Co

Subject to clause 62.2(d), Manage Co must:

- (a) **(State's prior consent)**: 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 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 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 Manage 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 Manage 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 Manage Co in accordance with clause 62.5(b)(ii),Manage Co objects to disclosure of some or all of the Commercially Sensitive Information, Manage Co must provide details of any such objection within five Business Days after the date Manage 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 Manage Co pursuant to clause 62.5(b)(iii) in determining whether the Commercially Sensitive Information identified by Manage 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

Manage Co must:

- (a) **(Collection)**: not collect any Personal Information except in accordance with the Services Requirements, all Laws and Policies;
- (b) **(Disclosure)**: 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 Services Requirements, all Laws and Policies; and
- (c) **(Retention)**: keep, and make available to the State on request, records detailing the recipient of any Personal Information that Manage Co has disclosed, the date of disclosure and the Personal Information that has been disclosed.

62.7 [Not used]

62.8 Privacy

Without limiting any obligations in respect of privacy set out in the Services Requirements, Manage Co agrees 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 Agreement 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):** Manage 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 Manage 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):** Manage 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 Manage Co fail to agree to a course of action in accordance with clause 63.1(c) (including where Manage Co fails to meet with the State in accordance with clause 63.1(c)), Manage 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):** Manage Co agrees that the State may, or may require Manage Co at any time to, conduct a Probity Investigation in respect of a Relevant Person, a Group Member or any person who is proposed to become a Relevant Person or a Group Member.
- (b) **(Promptly):** Where the State requires Manage Co to conduct a Probity Investigation in accordance with clause 63.2(a), Manage Co must conduct the Probity Investigation promptly.
- (c) **(Consents required for Probity Investigation):** Manage Co must procure all consents necessary to enable Manage Co or the State to conduct any Probity Investigation.
- (d) **(No appointment without consent):** Manage 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), Manage 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) **(Manage Co not liable):** Manage 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 Agreement:

- (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; and
- (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 seventh 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 Manage Co is entitled to make against the State or its Associates; and
 - (ii) Manage 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 Manage 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 Agreement 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 Manage Co is entitled to make against the State or its Associates; and
 - (ii) Manage 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 Agreement, or any other Project Document, entitling Manage Co to make a Claim against the State or its Associates apply, unless Manage 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 Manage Co in which Manage 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 Manage Co first became aware; and
 - (iv) the date on which Manage Co ought reasonably to have become aware,
- of the event on which the Claim is based; and
- (b) **(Claim)**: a formal written notice from Manage 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, Manage 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 [Not used]

64.6 [Not used]

65. PPSA

Manage 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 Agreement, the State may at Manage 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) **(Manage Co's Associates to assist the State)**: it will do, and ensure that each Manage 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 Manage 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, Manage Co and the State agree, and Manage Co will ensure that each Manage 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 Manage Co Associate does not, disclose the contents of this Agreement, 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) **(Manage 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 Manage Co is the grantor (but only where the interest does not secure payment or performance of an obligation) it must immediately notify the State if Manage Co or Manage 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 Manage 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.

Schedules List

| | |
|-------------|---|
| Schedule 1 | Contract Particulars |
| Schedule 2 | Conditions Precedent Schedule |
| Schedule 3 | Output Specification |
| Schedule 4 | Transition Phase Program |
| Schedule 5 | Change Compensation Principles |
| Schedule 6 | Site Plans |
| Schedule 7 | [Not used] |
| Schedule 8 | [Not used] |
| Schedule 9 | Review Procedures |
| Schedule 10 | Moral Rights Consent |
| Schedule 11 | Transition Phase Plans and Reports Schedule |
| Schedule 12 | Operational Readiness Schedule |
| Schedule 13 | [Not used] |
| Schedule 14 | [Not used] |
| Schedule 15 | Operating Phase Plans and Reports Schedule |
| Schedule 16 | Payment Schedule |
| Schedule 17 | Performance Regime |
| Schedule 18 | [Not used] |
| Schedule 19 | [Not used] |
| Schedule 20 | [Not used] |
| Schedule 21 | [Not used] |
| Schedule 22 | Insurance Schedule |
| Schedule 23 | Commercially Sensitive Information Schedule |
| Schedule 24 | Termination Payments Schedule |
| Schedule 25 | Handover Reviewer Deed |
| Schedule 26 | [Not used] |
| Schedule 27 | [Not used] |
| Schedule 28 | [Not used] |
| Schedule 29 | [Not used] |
| Schedule 30 | [Not used] |
| Schedule 31 | [Not used] |
| Schedule 32 | Initial Rectification Schedule |
| Schedule 33 | Food and Laundry Services |
| Schedule 34 | [Not used] |
| Schedule 35 | Manage Co Equipment |
| Schedule 36 | Upgrade Works |

Signing Page

Signed by the Minister for Corrections for and on behalf of the Crown in right of the State of New South Wales in the presence of

[Redacted signature]

Signature of witness

[Redacted signature]

The Honourable [Redacted] MP, Minister for Corrections

[Redacted name]

Name of witness (print)

Signed by the Commissioner of Corrective Services and the Assistant Commissioner Custodial Corrections for and on behalf of the administrative business unit of Corrective Services NSW, Department of Justice, formed for the purposes of operating and managing the Correctional Centre, in its capacity as Manage Co (ABN 32 980 170 687), in the presence of

[Redacted signature]

Signature of witness

[Redacted signature]

[Redacted] Commissioner of Corrective Services

[Redacted name]

Name of witness (print)

[Redacted signature]

Signature of witness

[Redacted signature]

[Redacted] Assistant Commissioner Custodial Corrections

[Redacted name]

Name of witness (print)






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. | Asset Condition Report (First) (<i>Definition of 'Asset Condition Report (First)'</i>) | The report entitled "Asset Condition Survey Report (First)", John Morony Correctional Centre issued by MBMpl Pty Ltd dated on or about 12 August 2016. |
| 4. | Condition Precedent Deadline (<i>Definition of 'Condition Precedent Deadline'</i>) | 10 Business days from the date of execution of this Agreement |
| 5. | [Not used] | [Not used] |
| 6. | Date for Operational Readiness (<i>Definition of 'Date for Operational Readiness'</i>) | 27 November 2017 |
| 7. | [Not used] | [Not used] |
| 8. | [Not used] | [Not used] |
| 9. | [Not used] | [Not used] |
| 10. | Employee Checks (<i>Definition of 'Employee Checks'</i>) | Refer to section 4.3 of Part C (Services Specification) of the Output Specification. |
| 11. | Employee Requirements (<i>Definition of 'Employee Requirements'</i>) | Refer to the Output Specification. |

| Item | Subject | Particulars |
|------|--|--|
| 12. | Key People (<i>Definition of 'Key People'</i>) | <p>Role: Governor</p> <p>Name: [REDACTED]</p> <p>Address: John Morony Correctional Complex 2 The Northern Road, Berkshire Park</p> <p>Phone: [REDACTED]</p> <p>Email: [REDACTED]</p> <hr/> <p>Role: Principal Functional Structured Day/Rosters</p> <p>Name: [REDACTED]</p> <p>Address: John Morony Correctional Complex 2 The Northern Road, Berkshire Park</p> <p>Phone: [REDACTED]</p> <p>Email: [REDACTED]</p> |
| | | <p>Role: Principal Functional - Accommodation</p> <p>Name: [REDACTED]</p> <p>Address: John Morony Correctional Complex 2 The Northern Road, Berkshire Park</p> <p>Phone: [REDACTED]</p> <p>Email: [REDACTED]</p> |
| | | <p>Role: Principal Functional - Security</p> <p>Name: [REDACTED]</p> <p>Address: John Morony Correctional Complex 2 The Northern Road, Berkshire Park</p> <p>Phone: [REDACTED]</p> <p>Email: [REDACTED]</p> |
| | | <p>Role: Chief Support - Case Management</p> <p>Name: [REDACTED]</p> <p>Address: John Morony Correctional Complex</p> |

| Item | Subject | Particulars |
|------|---------|--|
| | | <p>2 The Northern Road, Berkshire Park</p> <p>Phone: [REDACTED]</p> <p>Email: [REDACTED]</p> |
| | | <p>Role: Chief Support – Intelligence/ RAIT</p> <p>Name: [REDACTED]</p> <p>Address: John Morony Correctional Complex 2 The Northern Road, Berkshire Park</p> <p>Phone: [REDACTED]</p> <p>Email: [REDACTED]</p> |
| | | <p>Role: Manager of Service and Programs – Training and Community Partnerships</p> <p>Name: [REDACTED]</p> <p>Address: John Morony Correctional Complex 2 The Northern Road, Berkshire Park</p> <p>Phone: [REDACTED]</p> <p>Email: [REDACTED]</p> |
| | | <p>Role: Quality Assurance and Performance Manager</p> <p>Name: [REDACTED]</p> <p>Address: John Morony Correctional Complex 2 The Northern Road, Berkshire Park</p> <p>Phone: [REDACTED]</p> <p>Email: [REDACTED]</p> |
| | | <p>Role: Business Manager</p> <p>Name: [REDACTED]</p> <p>Address: John Morony Correctional Complex 2 The Northern Road, Berkshire Park</p> |

| Item | Subject | Particulars |
|------|--|---|
| | | Phone: [REDACTED] Email: [REDACTED] |
| | | Role: Nursing Unit Manager (JHFMHN) Name: [REDACTED] Address: John Morony Correctional Complex 2 The Northern Road, Berkshire Park Phone: [REDACTED] Email: [REDACTED] |
| | | Role: Manager of Industries Name: [REDACTED] Address: John Morony Correctional Complex 2 The Northern Road, Berkshire Park Phone: [REDACTED] Email: [REDACTED] |
| 13. | [Not used] | [Not used] |
| 14. | Key Subcontracts and Key Subcontractors <i>(Definitions of 'Key Subcontracts' and 'Key Subcontractors')</i> | Role: Health Services Provider Name: The Crown in right of the State of New South Wales acting through NSW Health, Justice Health and Forensic Mental Health Network (ABN 70 194 595 506) Address: 1300 ANZAC Parade Malabar NSW 2036 Phone: [REDACTED] Email: [REDACTED] |
| | | Role: Industries Provider Name: The Crown in right of the State of New South Wales acting through the Department of Justice, Corrective Services NSW, Corrective Services Industries (ABN 32 980 170 687) |

| Item | Subject | Particulars |
|------|---|---|
| | | Address: 20 Lee Street Sydney NSW 2000 Phone:  Email:  |
| 15. | Accreditations which if Manage 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 • 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 Manage 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: John Morony Correctional Complex 2 The Northern Road, Berkshire Park Phone:  Email:  |
| 18. | [Not used] | [Not used] |
| 19. | [Not Used] | [Not Used] |
| 20. | [Not Used] | [Not used] |

| Item | Subject | Particulars |
|------|--|---|
| 21. | Manage Co Representative (<i>Definition of 'Manage Co Representative'</i>) | <p>Name: [REDACTED]</p> <p>Address: Corrective Services NSW 20 Lee Street Sydney NSW 2000</p> <p>Phone: [REDACTED]</p> <p>Email: [REDACTED]</p> |
| 22. | Project Objectives (<i>Definition of 'Project Objectives'</i>) | <p>The Project will:</p> <ol style="list-style-type: none"> 1. ensure decency and respect in the treatment and management of Inmates; 2. optimise the reintegration and rehabilitation of Inmates; 3. ensure that the Correctional Centre is safe and secure; 4. ensure professionalism and accountability in the delivery of the Services; 5. provide Health Services which reflect the needs of Custodial Patients; 6. provide Facilities Management Services that support the uninterrupted availability of the Correctional Centre through a whole-of-life Asset management approach; and 7. deliver value for money to the State and transparency for outcomes. |
| 23. | [Not used] | [Not used] |
| 24. | Significant Subcontracts (<i>Paragraph (b) of the definition of 'Significant Subcontract'</i>) | <p>Role: Health Services Provider</p> <p>Name: The Crown in right of the State of New South Wales acting through NSW Health, Justice Health and Forensic Mental Health Network (ABN 70 194 595 506)</p> <p>Address: 1300 ANZAC Parade Malabar NSW 2036</p> <p>Phone: [REDACTED]</p> <p>Email: [REDACTED]</p> |

| Item | Subject | Particulars |
|------|--|---|
| | | <p>Role: Industries Provider</p> <p>Name: The Crown in right of the State of New South Wales acting through the Department of Justice, Corrective Services NSW, Corrective Services Industries (ABN 32 980 170 687)</p> <p>Address: 20 Lee Street Sydney NSW 2000</p> <p>Phone: 02 45822420</p> <p>Email: [REDACTED]</p> |
| 25. | CSI Contact Person (<i>Definition of 'CSI Contact Person'</i>) | <p>For Laundry:</p> <p>Name: [REDACTED]</p> <p>Address: John Morony Correctional Complex 2 The Northern Road, Berkshire Park</p> <p>Phone: [REDACTED]</p> <p>Email: [REDACTED]</p> <p>For Food Services:</p> <p>Name: [REDACTED]</p> <p>Address: John Morony Correctional Complex 2 The Northern Road, Berkshire Park</p> <p>Phone: [REDACTED]</p> <p>Email: [REDACTED]</p> |
| 26. | State Representative (<i>Definition of 'State Representative'</i>) | <p>During the Transition Phase:</p> <p>Name: [REDACTED]</p> <p>Address: Henry Deane Building, 20 Lee Street Sydney NSW 2000</p> <p>Phone: [REDACTED]</p> <p>Email: [REDACTED]</p> <hr/> <p>During the Operating phase:</p> <p>Name: [REDACTED]</p> <p>Address: Henry Deane Building, 20 Lee Street Sydney NSW 2000</p> <p>Phone : [REDACTED]</p> |

| Item | Subject | Particulars |
|--|---------------------------|--|
| | | Email: [REDACTED] |
| [Not used] | | |
| 27. | [Not used] | [Not used] |
| Clause 10.13 - Aboriginal participation | | |
| 28. | Standard of participation | That the Operator seek and continue to enable or facilitate employment opportunities for people who identify as Aboriginal and Torres Strait Islander up to the number required under the NSW Department of Justice <i>Aboriginal and Torres Strait Islander Employment Strategy 2015-2018</i> , in connection with the Project. |
| [Not used] | | |
| 29. | [Not used] | [Not used] |
| Clause 64.1 - Notices | | |
| 30. | Addresses | Must be addressed to the State Representative or the Manage Co Representative (as the case may be at the addresses set out respectively in items 21 and 26). |

Schedule 2 — Conditions Precedent Schedule

| | Condition Precedent | Benefiting Party | Party to satisfy |
|-----|---|------------------|------------------|
| 1. | State Project Documents 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. | State | Manage Co |
| 2. | Other Project Documents 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). | State | Manage Co |
| 3. | [Not used] | [Not used] | [Not used] |
| 4. | [Not used] | [Not used] | [Not used] |
| 5. | [Not used] | [Not used] | [Not used] |
| 6. | Authorised Officers The State receiving names and specimen signatures of the authorised officers of Manage Co, including the Manage Co Representative and any other person authorised to take action or give notices for or on behalf of Manage Co under the State Project Documents. | State | Manage Co |
| 7. | [Not used] | [Not used] | [Not used] |
| 8. | [Not used] | [Not used] | [Not used] |
| 9. | [Not used] | [Not used] | [Not used] |
| 10. | [Not used] | [Not used] | [Not used] |
| 10A | [Not used] | [Not used] | [Not used] |
| 11. | [Not used] | [Not used] | [Not used] |

| | Condition Precedent | Benefiting Party | Party to satisfy |
|-----|---|-------------------------|-------------------------|
| 12. | [Not used] | [Not used] | [Not used] |
| 13. | Other requirements Manage Co delivering to the State any other opinion, certificate or other document that the State reasonably requests. | State | Manage Co |
| 14. | [Not used] | [Not used] | [Not used] |
| 15. | [Not used] | [Not used] | [Not used] |

Schedule 3 — Output Specification

REDACTED

Schedule 4 — Transition Phase Program 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. Transition Phase Program

2.1 Form of the Transition Phase Program

At the time of submitting the Transition Plan, Manage Co must also submit its proposed Transition Phase Program to the State for review in accordance with the Review Procedures.

2.2 Content of the Transition Phase Program

The Transition Phase Program must comply with each of the following requirements:

- (a) **(consistent with Initial Transition Phase Program)**: be consistent with and provide no lesser obligations or standards on Manage Co than the Initial Transition Phase Program;
- (b) **(single point of reference)**: identify and be a single point of reference for all activities that comprise the Transition Phase Activities;

- (c) (**other information**): contain the information specified in and otherwise satisfy the requirements of this Agreement;
- (d) (**computer software**): be prepared using recognised specialist proprietary programming computer software system which has been approved in advance by the State. Without limiting the general nature of this section 2.2, 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
 - (i) "Microsoft Project" (2010 or higher), produced by Microsoft Corporation.
- (e) (**consistent with Transition Plan**): reflect the requirements of the Transition Plan;
- (f) (**actual progress**): at all times reflect the actual progress of the Transition Phase Activities being undertaken;
- (g) (**Transition Phase Activities**): identify the Transition Phase Activities and the planned timing of the staging of those activities;
- (h) (**State dates**): identify all Transition Phase Activities that involve the State, including the dates for:
 - (i) any submission of documents or other items to the State by Manage Co (including any revisions or resubmissions); and
 - (ii) any review, comment, outcomes or actions required to be performed by the State or Manage Co,each of which must be consistent with the terms of the Project Documents;
- (i) (**clear and sufficient detail**): be clear and sufficiently detailed for the State to easily identify:
 - (i) the Critical Path for the execution of the Transition Phase Activities;
 - (ii) the duration of and number of Activities;
 - (iii) the party responsible for each Activity and Milestone in connection with the Transition Phase Activities or the Services;
 - (vi) all Activities or Milestones that are dependent on external third party events (**Precursor Events**); and
 - (vii) the nature of, time for completion of, and the identity of any third party responsible for completing, each Precursor Event;
- (j) (**Milestone**): contain a single overall start Milestone and a single overall finish Milestone;
- (k) (**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;
- (l) (**days as Planning Unit**): use days as its Planning Unit (or such other period of time approved in writing by the State);
- (m) (**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;
- (n) (**Activities Logically Linked**): demonstrate that all Activities, apart from the start and finish Milestones, are Logically Linked;
- (o) (**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 Transition Phase;
 - (iv) the contingency allowed within the Transition Phase Program for potential delays; and

- (v) any other matters which may have a material effect on the time required to achieve Operational Commencement Acceptance;
- (p) **(other information)**: contain all other information reasonably requested by the State;
- (q) **(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 █████ 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); and
- (r) **(electronic format)**: be provided in electronic format including as a portable document format (.pdf) and in the format of the software in which the Transition Phase Program 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 Transition Phase Program.

3. Updating the Transition Phase Program

Manage Co must also provide regular updates to the Transition Phase Program as required by clause 16.2 of the Agreement and such updates must be submitted to the State for review in accordance with the Review Procedures. In addition to the requirements stipulated in section 2.2 and clause 16.2 of the Agreement:

- (a) Manage Co must submit to the State the updated Transition Phase Program in the following forms:
 - (i) two original 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 Activities);
 - (ii) one electronic version in .pdf format; and
 - (iii) one electronic version in original, executable Microsoft Project or Primavera file format or other software agreed by the State.
- (b) the updated Transition Phase Program must:
 - (i) comply with this Agreement;
 - (ii) clearly identify the Percent Complete and the Remaining Duration of each Activity;
 - (iii) 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;
 - (iv) be updated to the end of the previous reporting period using the software to record Actual Dates and the Percent Complete of Activities;
 - (v) identify whether Project Co will not achieve Completion until after any Date for Completion; and

- (vi) incorporate and display the version of the Transition Phase Program produced at the end of the previous reporting period as a baseline reflecting the actual status and progress of the Transition Phase Activities; and
- (c) with each update of any Transition Phase Program, Project Co must submit to the State a written report reconciling the updated Transition Phase Program with the version of the Transition Phase Program produced for the previous reporting period. That report must as a minimum:
 - (i) summarise the changes made to the Transition Phase Program and any impacts those changes may have on key Transition Phase Activities;
 - (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 and the Operational Readiness Date;
 - (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; and
 - (vi) contain any other information reasonably requested by the State.

Schedule 5 — Change Compensation Principles

1. Definitions

In this Schedule:

Agreed Margin means the Delivery Margin, the Operating Margin and the Manage Co Margin.

Base Costs means the Delivery Costs, Operating Costs and Manage Co Costs in each case that are directly attributable to the relevant Change Compensation Event, but excluding all:

- (a) Prolongation Costs;
- (b) [Not used];
- (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 Annexures 1 to 6 of Schedule 16; 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 net incremental Costs of:

- (a) [Not used]; or
- (b) any Delivery Subcontractor,

that are directly attributable to the relevant Change Compensation Event including scaffolding and craneage, but excluding all Agreed Margin, Prolongation Costs, Operating Costs and Manage Co Costs.

Delivery Margin means:

- (a) during the Transition Phase, the percentage that any Delivery Subcontractor (to the extent it is performing Transition Phase Activities) may charge in accordance with Table 2 in Section 3.1 as Margin; and
- (b) during the Operating Phase:
 - (i) [Not used]; and

- (ii) the percentage that any Delivery Subcontractor may charge, as Margin, as determined through a competitive tender process in accordance with Section 4.

Delivery Subcontractor means any Subcontractor engaged by Manage Co to carry out capital works the subject of a Change Compensation Event.

Manage Co Costs means the net incremental Costs incurred by Manage Co that are directly attributable to implementing the relevant Change Compensation Event, but excluding all Agreed Margin, Prolongation Costs, costs of project management services provided by Manage Co, Delivery Costs and Operating Costs.

Manage Co Margin means the percentage that Manage Co may charge in accordance with Tables 2 or Table 3 in Section 3.1 (as applicable), as Margin.

Margin means an amount on account of:

- (a) off-site overheads and administrative, corporate and other like costs and profit; and
- (b) on-site overheads (including cost of project management services).

Notification Period means:

- (a) within the time specified in this Agreement; or
- (b) if no time is specified in this Agreement, 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.

Operating Costs means the net incremental Costs of the Operating Subcontractor that are directly attributable to implementing the operating, maintenance or 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, Delivery Costs and Manage Co Costs.

Operating Margin means the percentage that the Operating Subcontractor may charge in accordance with Table 2 or Table 3 in Section 3.1 (as applicable) on its Delivery Costs or Operating Costs (as applicable), as Margin.

Operating Subcontractor means any Subcontractor engaged by Manage Co to implement the operating, maintenance or recurrent elements of the relevant Change Compensation Event during the Operating Phase.

Prolongation Costs means the net incremental Costs incurred, or which will be incurred, by Manage Co or a Subcontractor that are directly attributable to a delay to the achievement of Operational Readiness 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 Manage Co to repair or rebuild the Relevant Infrastructure under clauses 44.3(e) or 47.3(a)(i),

but excluding all Base 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 Manage Co or a Subcontractor, together with the relevant Agreed Margin and Margin avoided or otherwise reduced in accordance with this Schedule arising in connection with a Change Compensation Event.

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 |
|---|---|---|---|
| Contamination Compensation Event | Clause 8.6 (<i>Manage Co's entitlement to compensation for Remediation</i>) | Agreed Margins (other than Manage Co Margin) are applicable | Section 3.1 (for remediation costs) Section 3.2 (for Prolongation Costs) |
| Remedying of Unidentified Pre-Existing Defect | Clause 29 (<i>Material Defects</i>) | No Agreed Margins are applicable | Section 3.1 (for remediation costs) less [REDACTED] (Indexed) for each Unidentified Pre-Existing Defect and not more than [REDACTED] in the aggregate for all Unidentified pre-Existing Defects |
| Manage Co initiated Modification sharing of Saving | Clause 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) |
| Compensable Extension Event (other than Contamination Compensation Event) | Clause 38.7 (<i>Entitlement to Costs</i>) | No Agreed Margins are applicable | Section 3.1 (for services costs or Savings (as applicable)) Section 3.2 (for Prolongation Costs) |
| Acceleration | Clause 38.13 (<i>Acceleration</i>) | No Agreed Margins are applicable | Section 3.1 (for acceleration costs) |

| Change Compensation Event | Clause | Agreed Margin entitlement | Relevant Sections for calculating compensation |
|--|--|--|---|
| 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 Manage 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, any Modification proposed by Manage Co and any Modification to accommodate more than 441 but less than 551 Inmates within the Correctional Centre) | 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) |
| Accommodation of more than 441 but less than 551 Inmates within the Correctional Centre | Definition of Modifications and Clause 40 (<i>Modifications</i>) | Agreed Margins for Section 3.1 No Agreed Margins for additional costs of operations and maintenance because they are included in the calculation of the Volumetric Adjustment | The aggregate of: Section 3.1 (for works costs or Savings (as applicable)); and the Volumetric Adjustment determined in accordance with section 5.1 of Schedule 16 (for additional costs and margins of operations and maintenance (including Operating Costs, Operating Margins, Manage Co Costs and Manage Co Margins). |

| Change Compensation Event | Clause | Agreed Margin entitlement | Relevant Sections for calculating compensation |
|--|---|----------------------------------|--|
| 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 a Project-Specific 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 Works, Correctional Complex or the Services) Section 3.2 (for Prolongation 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) |
| Minor Modification | Clause 40.12 (<i>Minor Modifications</i>) | No Agreed Margins are applicable | Section 3.1 (for works or services) |
| [Not used] | [Not used] | [Not used] | [Not used] |
| 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) |
| 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) |
| 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 Agreement, 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 Manage 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 Manage Co in accordance with this Schedule;
- D** = the amount of any Savings including (in order to increase the amounts of the Savings) the applicable Agreed Margins on the Costs saved; 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, Manage Co or any of its Associates in respect of the relevant Change Compensation Event but for any failure by Manage 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 Agreement, or to make or pursue a claim under any Insurances or to comply with any Project Documents or insurance policy.
- (b) (**Transition Phase Activities and capital works**): To the extent that Change Compensation Events involve Transition 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 Delivery Subcontractor or Operating Subcontractor (as applicable), in each case multiplied by its respective Delivery Costs;
- D** = Manage Co Costs; and
- E** = the applicable Manage Co Margin multiplied by "A".

Table 2: Agreed Margins for Transition Phase Activities and capital works

| Component | Agreed Margin |
|-----------|---------------|
|-----------|---------------|

| | [REDACTED] (Delivery Cost) | > [REDACTED] (Delivery Cost) | > [REDACTED] (Delivery Cost) |
|--|-------------------------------|---------------------------------|---------------------------------|
| Manage Co Margin (during the Transition Phase) | [REDACTED] | | |
| Manage Co Margin (during the Operating Phase) | | | |
| Delivery Margin for the Delivery Subcontractor | | | |
| Delivery Margin for the Operating Subcontractor | | | |
| 1. The above dollar thresholds are at Commercial 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 Operating Costs;

B = the applicable Operating Margin multiplied by "A";

D = Manage Co Costs; and

E = the applicable Manage Co Margin multiplied by "A".

Table 3: Agreed Margins for recurrent works or services

| Component | Agreed Margin | | |
|---|----------------------------|----------------------------|----------------------------|
| | (Operating Cost per annum) | (Operating Cost per annum) | (Operating Cost per annum) |
| Manage Co Margin | [REDACTED] | | |
| Operating Margin | [REDACTED] | | |
| 1. The above dollar thresholds are as at Commercial Close and will be Indexed | | | |

thereafter.

3.2 Compensation for Prolongation Costs

Subject to the specific requirements and restrictions otherwise set out in this Agreement, Manage Co's entitlement to Prolongation Costs on the occurrence of those Change Compensation Events listed in Table 1 in Section 2.1 as entitling Manage Co to compensation under this Section 3.2 and which Manage Co is granted an extension of time will be calculated as follows:

$$P = A + B - I$$

where:

- P** = the amount payable to Manage Co;
- A** = Prolongation Costs for each day for which Manage Co is granted an extension of time to the Date for Operational Readiness for the relevant Change Compensation Event in accordance with this Agreement;
- B** = [Not used]; 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, Manage Co or any of its Associates in respect of the relevant Change Compensation Event but for any failure by Manage 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 Agreement, 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 39.8(c) (*Minimum Payment*) of this Agreement applies, subject to the specific requirements and restrictions otherwise set out in this Agreement, Manage 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 Manage Co;
- F** = [Not used];
- 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 Manage Co continues to carry out under this Agreement 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 Manage 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, Manage Co or any of its Associates in

respect of the relevant Change Compensation Event but for any failure by Manage 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 Agreement;
- (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 Agreement 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) [Not used];
- (b) a Modification pursuant to clause 40.8(d) (*Sharing of Savings*) of this Agreement; or
- (c) [Not used],

will be as agreed between the parties at the time, or if the parties are unable to agree within 20 Business Days of:

- (d) [Not used];
- (e) Manage Co issuing the relevant Manage Co Modification Proposal pursuant to clause 40.8(d) (*Sharing of Savings*) of this Agreement; or
- (f) [Not used],

(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 Manage Co is entitled to relief in accordance with this Agreement; and
- (b) [Not used],

(**Changed Reviewable Service**) then, the amount payable to Manage 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 end of the Term.

4. Tender process during Operating Phase

- (a) The State may require Manage 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 Manage Co that it does not accept or rejects a Change Notice issued by Manage Co and that it requires Manage 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)**: Manage 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)**: Manage 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)**: Manage 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 Agreement;
 - (iv) **(Subcontracting requirements)**: the Subcontractor must meet the requirements in respect of Subcontractors set out in this Agreement; 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 Manage 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 Agreement, direct Manage Co not to proceed with the relevant Change Compensation Event; or
 - C. instruct Manage 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 Agreement):

- (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 Manage 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 Manage 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)**: Manage 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 Agreement and make an accurate assessment of Costs and Savings;
- (f) **Open Book Basis** will include Manage Co and its Key Subcontractors providing a breakdown of the calculation of all relevant preliminaries, labour, equipment, materials, subcontract, finance and other Costs and Margins of Manage 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 Manage Co is expressly entitled to be paid an Agreed Margin, the State will not pay or otherwise compensate Manage 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 Manage Co to the State, the State will deduct such amount from the Monthly Service Payments payable to Manage Co after the relevant Change Compensation Event, or if there are insufficient subsequent Monthly Service Payments payable to Manage Co to cover the amount of the Change Compensation Event or if the Change Compensation Event occurs during the Transition Phase, such amount will be a debt due and payable by Manage Co to the State;
 - (ii) results in an amount owing from the State to Manage Co, the State will pay such amount to Manage Co:
 - A. subject to paragraph B and C, 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. [Not used]; or
 - C. [Not used].
- (b) [Not used]
- (c) (**Unable to obtain funds**): Where Manage 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).

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 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, Manage 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 Manage 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 Agreement.

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 Agreement to be a Change Compensation Event (other than a Minor Modification);
 - (ii) Manage Co is entitled or required to submit a Change Notice to the State in accordance with this Agreement 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, Manage Co must prepare and submit to the State Representative (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, Manage 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 Agreement.
- (d) [Not used]

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 Manage Co is entitled or required to submit a Change Notice has occurred; and
 - (ii) Manage Co has not submitted a Change Notice,the State may in a notice entitled "Change Notice Request", request that Manage Co prepare and submit a Change Notice in respect of the particular event (a **Change Notice Request**).
- (b) Manage 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 Agreement:
 - (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 Transition Phase, the effect which the proposed Modification will have on the Transition Phase Program (including any extension of time required to the Date for Operational Readiness); and

- (III) any relief which is required from Manage Co's obligations under this Agreement; and
 - B. assume that funding for the Modification will be provided by the State unless the parties otherwise agree;
 - (ii) Manage 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 for determination in accordance with clause 50.1(b)(ii) of this Agreement.

9. Change Response

9.1 State to issue a Change Response

- (a) Unless otherwise expressly stated in this Agreement, within 20 Business Days after receipt of a Change Notice (or such longer period as the State, or any other person to whom the Change Notice is required to be given under this Agreement, 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 a determination of an amount calculated by Manage Co in the Change Notice), the Change Notice Recipient:
- (i) may request from Manage 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 Manage Co of all such further information reasonably requested;
 - (ii) must advise Manage 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 Manage Co*) or 40.9 (*Directions*) of this Agreement, the Change Response must be entitled 'Modification Order', in which case Manage Co will, subject to Manage Co complying with the other requirements of this Agreement (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 (*Manage Co's entitlement to compensation for Remediation*), 38 (*Transition Phase – delay*), 39 (*Operating Phase – Intervening Events*), 40.10 (*Change in Mandatory Requirements*) or 40.11 (*Extension of time*) (as applicable) of this Agreement, 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 Manage 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 Agreement to the extent the Change Notice is accepted in the relevant Change Response, with effect from the date of receipt by Manage Co of that Change Response, or such other date specified in that Change Response.
- (c) Whether or not Manage 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 Agreement 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 Agreement) will entitle Manage 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 Manage Co to:
 - (i) have any amount that is not an Agreed Margin determined in accordance with clause 50.1(b)(ii) of this Agreement;
 - (ii) during the Operating Phase, it must conduct or procure that any Operating Subcontractor conducts a tender process for any part of the work the subject of the Change Compensation Event that will not be carried out by Manage Co, in accordance with Section 4;
- (b) amend any aspect of the Change Notice in the Change Response to reflect Manage 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 Manage Co is entitled to submit a Change Notice under the Project Documents.

9.3 Manage 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) Manage Co must proceed with the Project Activities in accordance with this Agreement and the Change Response; and
- (b) Manage 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) agree to refer any Dispute in relation to all or any part of the Change Response for determination in accordance with clause 50.1(b)(ii) of this Agreement within 20 Business Days (or such other period as agreed with the relevant Change Notice Recipient) after Manage Co's receipt of the Change Response.

9.4 Dispute resolution

If the State does not accept or rejects an amount as calculated by Manage Co in any Change Notice (such amount not being a fixed or specified amount under this Schedule), the State may have the amounts determined in accordance with clause 50.1(b)(ii) of this Agreement, 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 Manage Co in accordance with this Schedule; and
 - (ii) the amount determined in accordance with clause 50.1(b)(ii) of this Agreement; 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 Manage Co in accordance with this Schedule; and
 - (ii) the amount determined in accordance with clause 50.1(b)(ii) of this Agreement,
- and the State will update any Change Response provided under Section 9.1 promptly following the determination in accordance with clause 50.1(b)(ii) of this Agreement.

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 Agreement in respect of a particular Change Notice Event or required by the Change Notice Recipient;
- (b) be signed by the Manage Co Representative;
- (c) attach copies of any required changes to the Site Plan, the Transition Phase Program, the Transition 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 Operational Readiness and results in an amount owing from Manage Co to the State, details of the form and timing of compensation Manage Co proposes, including:
 - (i) a debt due and payable by Manage 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 Manage Co to the State; and
- (g) in respect of a Relief Event, describe the reduction in Manage Co's liability to indemnify or release the State and its Associates in accordance with this Agreement.

10.2 Mitigating factors

In each Change Notice, Manage Co must describe the actions Manage Co and its Associates have taken (and any further action Manage 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, Manage 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 Manage 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 Manage Co in this Agreement or by a Key Subcontractor or Significant Subcontractor in its Subcontract;
 - (vii) any other relevant part of this Agreement (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 Centre 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 Manage 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 Operational Readiness or any likely Date of Operational Readiness and any impact on activities on the critical path contained in the then current Transition 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 Operational Readiness) and the latest date by which the State could accept the Change Notice with no impact upon the Date for Operational Readiness; and
 - (iii) any revised Date for Operational Readiness;
- (d) where Manage Co claims as a consequence of a Change Notice Event:
 - (i) an extension of time to a Date for Operational Readiness, 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 Manage Co has satisfied the conditions relevant to its extension of time claim as referred to in clause 38 (*Transition Phase – delay*) of this Agreement; or

- (ii) relief from any other its other obligations under this Agreement, the basis on which that Manage 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 Manage 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 Agreement.

10.4 Warranty by Manage 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 Manage 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 Operational Readiness; 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 Agreement, 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 Manage 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 Agreement, 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 Manage Co in other clauses of this Agreement, except to the extent that it is agreed between the parties or determined in accordance with this Agreement that the proposed Modification will have an adverse effect on the matters referred to in section 10.3; and
- (b) contain a warranty by Manage 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 Manage Co's entitlement under this Agreement to the extent it is able to be known at the time.

Schedule 6 — Site Plan

Site Plan is attached

Redacted

Schedule 7 — Not Used

[Not used]

Schedule 8 — Not Used

[Not used]

Schedule 9 — Review Procedures

1. Submission and review

1.1 Submission

- (a) Manage Co must submit all Manage 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 or the State Representative (as applicable) (**Reviewing Party**) for review or approval in accordance with this Schedule.
- (c) With each Submitted Document, Manage 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 Manage Co in accordance with this Schedule within the Review Period. If the Reviewing Party provides comments or conditions on the Submitted Documents, Section 1.2(c) will apply.
- (b) **Review Period** means 15 Business Days for all Submitted Documents, except for:
 - (i) the final version of the Transition Phase Plans for which the Review Period means 10 Business Days;
 - (ii) the 1st draft of the Operating Phase Plans for which the Review Period means 15 Business Days;
 - (iii) the final version of the Operating Phase Plans for which the Review Period means 10 Business Days; and
 - (iv) the draft Operational Readiness Report for which the Review Period means 5 Business Days.
- (c) Subject to Section 1.2(a), the Reviewing Party and Manage 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.

2. Further information

Manage 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 Manage 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 or as otherwise agreed by the State Representative, Manage Co must provide:
 - (i) three original paper copies;
 - (ii) one electronic version in PDF format; and
 - (iii) if requested by the State, 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) [Not used].
- (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

Manage 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 must be submitted for review and the review completed in accordance with this Schedule before any subsequent stage may be submitted for review.
- (b) If for any reason any stage is reviewed out of sequence as a consequence of any Manage 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, Manage Co may proceed in accordance with the Submitted Document.
- (c) Without limiting Section 1.2(c), if the Reviewing Party provides 'comments' in respect of the Submitted Document in accordance with Section 7, Manage Co may not proceed with the Submitted Document unless it has addressed the 'comments' in accordance with Section 5.3.

- (d) Without limiting Section 1.2(c), if the Reviewing Party provides 'conditions' in respect of the Submitted Document in accordance with Section 7, Manage Co may proceed on the basis of the Submitted Document but must also address the conditions provided in respect of the Submitted Document accordingly.

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 within the Review Period in accordance with this Schedule, then the Reviewing Party will be deemed to have returned the Submitted Document to Manage 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) If the Reviewing Party 'comments' on a Submitted Document in accordance with Section 7, Manage Co must:
 - (i) amend 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 Document; and
 - (B) the issues identified in accordance with Section 7 are addressed; and
 - (ii) resubmit the revised Submitted Document to the Reviewing Party (**Resubmitted Document**), and the provisions of Sections 1 to 5 will reapply to the amended Submitted Document until such time as:
 - (A) the Submitted Document is returned to Manage Co without any comment;
 - (B) the Submitted Document is deemed to have been returned with 'no comment'; or
 - (C) the Reviewing Party only provides conditions in respect of the Resubmitted Document.

5.4 Submitted Document with Conditions

- (a) If the Reviewing Party considers that Manage 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) If the Reviewing Party specifies that certain 'conditions' must be satisfied in respect of the Submitted Document in accordance with Section 7, Manage Co may proceed with the Project Activities in accordance with the Submitted Document but must otherwise satisfy the conditions within the time specified by the Reviewing Party (acting reasonably) (or if no time is specified, promptly).

5.5 Substantiate comments or conditions

If the Reviewing Party provides Manage Co with comments or conditions in connection with the Submitted Document in accordance with Section 7, the Reviewing Party must provide sufficient detail to Manage Co to substantiate those comments or conditions.

6. Right to Proceed

6.1 Submitted Document with 'no comments'

- (a) Manage Co may not proceed with the Project Activities the subject of a Submitted Document unless:

- (i) the Submitted Document is returned with 'no comments' or is deemed to be returned with 'no comment'; or
 - (ii) the Submitted Document includes 'conditions' and is not the subject of comments and those conditions state that Manage Co may proceed with the Project Activities the subject of that Submitted Document.
- (b) If Manage Co is entitled to proceed with the Project Activities the subject of the Submitted Document, Manage Co must deliver the Project in accordance with the Submitted Document, 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 Manage Co must update the Submitted Document accordingly and the provisions of Sections 1 to 5 shall apply to such re-submission.

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 Manage 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 Transition Phase Program

If the Submitted Document is the Transition 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 Transition Phase Program and Manage Co must amend the Transition Phase Program accordingly if:

- (a) the Transition Phase Program is inconsistent with, or is otherwise not in accordance with, the Programming Requirements; or
- (b) compliance with the Transition Phase Program would mean that Operational Readiness would not be achieved by the relevant Date for Operational Readiness.

7.3 [Not used]

7.4 Transition Plan

If the Submitted Document is the Transition 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) [Not used];
- (c) the Submitted Document does not adequately take into account the comments or concerns of the State; or
- (d) the Reviewing Party (acting reasonably) considers that Manage Co will not be ready to deliver the Services at the Date for Operational Readiness.

8. [Not used]

9. No limitation on obligations

- (a) The Reviewing Party does not owe any duty of care to Manage 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 Agreement 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 Manage Co from, or alter, affect or reduce, the obligations and Liabilities of Manage 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 Manage 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 Transition Phase Activities or Services have been or will be undertaken or performed in accordance with the State Project Documents.
- (d) Manage Co agrees that:
 - (i) Manage Co will not be entitled to make any Claim against any Reviewing Party, whether under this Agreement or at Law, for any Liabilities incurred by Manage 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), Manage 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 The Commissioner of Corrective Services (ABN 11 005 693 553), employed in the New South Wales public service under the *Government Sector Employment Act 2013*;

and

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

(together the **State**)

and

[Insert Manage Co's name] (ABN [Insert]) of [Insert address] (**Manage Co**)

WHEREAS:

- A The State has contracted out, or proposes to contract out, the Project (as that term is defined in the Operating Agreement) (**Project**).
- B Manage Co is responsible for the Project under the deed entitled '*John Morony Correctional Centre - Operating Agreement*' between the State and Manage Co dated [insert date] (**Operating Agreement**).
- 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 Manage Co paying the Author [REDACTED] (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 Manage Co;
 - (b) any contractor which the State or Manage Co engages;
 - (c) any third party to whom the State or Manage 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 Manage 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 – Transition Phase Plans and Reports Schedule

The purpose of this Schedule is to set out Manage Co's obligations in respect of the Transition Phase Plans and the Transition Phase Reports.

In this Schedule, each individual plan, program, protocol, report or notification forming part of the Transition Phase Plans and Reports is referred to as a "Plan".

1. Reports

Table 1: Transition Phase Reports

| Report | Content | Time for provision |
|---|---|--|
| <p>A. Fortnightly Transition Report</p> | <p>The Fortnightly Transition Report must comprise the following information:</p> <ol style="list-style-type: none"> 1) (Transition Phase Activities): details of the progress of the Transition Phase Activities and compliance with the Transition Phase Program, including: <ol style="list-style-type: none"> a) (Transition Phase Activities completed): details of Transition Phase Activities completed in the previous month; and b) (Transition Phase Activities underway): details of Transition Phase Activities scheduled for the current month; 2) (updated Transition Phase Program): a copy of the Transition Phase Program updated in accordance with this Agreement; 3) (operational readiness preparation): a report on the activities associated with Operational Readiness. This report must include Manage Co's proposed program, process, agenda and required State attendees for the Operational Readiness Assessment (as defined under the Operational Readiness Schedule); 4) (Claims and Disputes): details of any outstanding or unresolved Claims and Disputes; 5) (Modifications): the progress of any Modifications or information relating to any proposed Modifications; 6) (quality assurance issues): details of any quality assurance issues; 7) (environmental issues): details of any Environmental issues; 8) (work health and safety): details of Manage Co performance in respect of work health and safety including details of any safety incidents; and | <p>5 Business Days prior to each Project Control Group meeting during the Transition Phase</p> |

| Report | Content | Time for provision |
|-----------------------------|---|--|
| | 9) (other information) : such other information reasonably requested by the State Representative. | |
| B. Transition Phase Program | The Initial Transition Phase Program is contained in Annexure B to the Agreement. Manage Co must update the Transition Phase Program so it meets the requirements of Schedule 4 and clause 16.2 of this Agreement. | As required in accordance with Schedule 4 and clause 16.2 of this Agreement. |

2. Transition Phase Plans

2.1 Overview

The minimum requirements for Transition Phase Plans for the Project are detailed in this Schedule 11.

Transition Phase Plans must be consistent with and provide no lesser obligations or standards on Manage Co than the corresponding Initial Transition Phase Plans contained in Annexure B to this Agreement.

To avoid repetition of content across multiple Transition Phase Plans, Manage Co may use cross-references.

The Transition 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 Transition Phase Activities;
 - (ii) other related Plans; and
 - (iii) the Plans as requested by the State Representative under this Agreement.

Table 2 —Transition Phase Plans

| Plan | Plan submission date (Final Version) | Frequency of updates |
|--|---|--|
| Transition Plan | Final Version 10 Business Days after the date of this Agreement | As above in accordance with this section 2.1 |
| Transition Phase Quality Assurance Plan | | |
| Transition Phase Recruitment and Training Plan | | |
| Transition Phase Risk Management Plan | | |
| Transition Phase WHS Management Plan | | |
| Transition Phase Environmental Management Plan | | |

2.2 Transition Plan

- (a) Manage Co must develop, implement and update the Transition Plan so that it includes:
- (i) strategy for the management and delivery of the Transition Phase Activities, including governance, organisational structure and Key People;
 - (ii) details and methodology for the completion of:
 - A. the Transition Phase Activities specified in section 1.2 of Part B of the Output Specification; and
 - B. any other acts, matters or things which Manage Co will implement to achieve the General Transition Obligations specified in section 1.1 of Part B of the Output Specification.

2.3 Transition Phase Recruitment and Training Plan

- (a) Manage Co must develop, implement and update the Transition Phase Recruitment and Training Plan for the recruitment and training of Manage Co Staff and Associates during the Transition Phase in order to achieve Operational Readiness, so that it includes:
- (i) the organisational structure identifying Manage Co's Key People with Transition Phase recruitment and training responsibilities and accountabilities, including:
 - A. lines of communication and interfaces with Manage Co's overall organisational structure; and
 - B. minimum skill levels required;
 - (ii) the interfaces of the Transition Phase Recruitment and Training Plan with other Plans;
 - (iii) Manage Co's strategy for the recruitment of Staff and Associates during the Transition Phase for the delivery of the Services;
 - (iv) Manage Co's strategy for the employment of CSNSW Employees, including:
 - A. the proposed process to implement the transfer of any CSNSW Employees prior to the Date for Operational Readiness, which should comply with clause 13 of this Agreement and be based on the indicative process described in the table below.

| Step | Description | Approximate timing |
|------|--|--|
| 1 | Following Commercial Close, CSNSW Employees will be given an opportunity to meet Manage Co in presentations and question and answer sessions. | On or around the start of the Transition Phase |
| 2 | The State will send CSNSW Employees an invitation to apply for available positions with Manage Co. Interested CSNSW Employees will be asked to make an application directly to Manage Co. CSNSW Employees will be provided with information by the State about the consequences of not submitting an application to Manage Co. | 2 -3 weeks after the start of the Transition Phase |
| 3 | Manage Co will conduct interviews, or otherwise obtains information about CSNSW Employees' skills and experience. Following interviews or another selection | 6 weeks after the start of the Transition Phase |

| | | |
|---|--|--|
| | process, Manage Co will make offers of employment. Employees will be given a reasonable period to accept or decline the offer of employment. | |
| 4 | CSNSW Employees who accept an offer will continue to be employed by CSNSW throughout the remainder of the Transition Phase, and continue to undertake existing work commitments as directed by CSNSW until transfer. | For the remainder of the Transition Phase or until the date of transfer |
| 5 | CSNSW Employees who accept an offer of employment from Manage Co will transfer to Manage Co on a date agreed during the Transition Phase. CSNSW Employees who do not receive, or receive and do not accept, an offer of employment with Manage Co will be managed by the State in accordance with the applicable Government policies. | At the end of the Transition Phase or otherwise at a date agreed by the State and Manage Co. |

- B. demonstration of compliance with respect to the transfer of CSNSW Employee entitlements as required by Government policy and the *Fair Work Act*; and
- C. [Not used];
- (v) Manage Co's industrial relations strategy (including any engagement with unions) which identifies and mitigates potential industrial and employee issues that may arise at the Correctional Centre during the Transition Phase; and
- (vi) Manage Co's strategy for the training of Staff and Associates during the Transition Phase in readiness for the delivery of the Services on the Operational Commencement Date.

2.4 Transition Phase Quality Assurance Plan

- (a) Manage Co must develop, implement and update the Transition Phase Quality Assurance Plan for the Transition Phase Activities so that it complies with the requirements of this Agreement.
- (b) The Transition Phase Quality Assurance Plan must include the:
 - (i) organisational structure identifying Manage Co's Key People with quality management responsibilities and accountabilities during the Transition Phase, including:
 - A. lines of communication and interfaces with Manage Co's overall organisational structure; and
 - B. minimum skill levels required;
 - (ii) interfaces of the Transition Phase Quality Assurance Plan with other Plans;
 - (iii) Quality Assurance Systems to be implemented;
 - (iv) schedule of any 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) auditing procedures for the Transition Phase Quality Assurance Plan;
- (vii) process for developing and managing quality records;
- (viii) procedures for rectifying non-conformances and managing improvement opportunities, corrective action and preventative action to prevent recurrence; and
- (ix) reporting requirements.

2.5 Transition Phase Risk Management Plan

- (a) Manage Co must develop, implement and update the Transition Phase Risk Management Plan so that it complies with the requirements of this Agreement.
- (b) The Transition Phase Risk Management Plan must include:
 - (i) organisational structure identifying Manage Co's Key People with risk management responsibilities and accountabilities during the Transition Phase, including:
 - A. lines of communication and interfaces with Manage Co's overall organisational structure; and
 - B. minimum skill levels required;
 - (ii) interfaces of the Transition Phase Risk Management Plan with other Plans;
 - (iii) details of Manage 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 Transition Phase risks;
 - (v) a risk register, including risks, hazards, risk owners, mitigation strategies and residual risk assessment for all risks associated with Transition Requirements, including risks to the State's interests;
 - (vi) timing and details of Manage Co's risk review processes, compliance, and audit related activities;
 - (vii) specific measures to minimise risks relating to:
 - A. industrial relations;
 - B. the disturbance of Inmates;
 - C. disruption to the normal operations of the Correctional Centre; and
 - D. stakeholders, including third party stakeholderswhich may arise during the Transition Phase;
 - (viii) contingency measures to be implemented in the event that risks eventuate; and
 - (ix) reporting procedures.

2.6 Transition Phase WHS Management Plan

- (a) Manage Co must develop, implement and update the Transition Phase WHS Management Plan so that it complies with the requirements of this Agreement.

- (b) The Transition Phase WHS Management Plan must include:
 - (i) arrangements in relation to work activity based health and safety training and site specific health and safety training;
 - (ii) arrangements for employees, agents and contractors of Manage Co to be made aware of the content of the Transition Phase WHS Management Plan;
 - (iii) arrangements for review of the Transition Phase WHS Management Plan as Transition Phase Activities change;
 - (iv) a statement that the Transition Phase 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).

2.7 Transition Phase Environmental Management Plan

- (a) Manage Co must develop, implement and update the Transition Phase Environmental Management Plan so that it complies with the requirements of this Agreement.
- (b) The Transition Phase Environmental Management must include:
 - (i) organisational structure identifying Manage Co's Key People with environmental management responsibilities and accountabilities during the Transition Phase, including:
 - A. key environmental management personnel;
 - B. lines of communication and interfaces with Manage Co's overall organisational structure; and
 - C. minimum skill levels for each role;
 - (ii) interfaces of the Transition Phase Environmental Management Plan with other Plans;
 - (iii) strategies to encourage a positive environmental and sustainable culture and work practices during Transition Phase Activities; and
 - (iv) approach to dealing with, reporting and identifying potential environmental incidents.

Schedule 12 — Operational Readiness Schedule

1. Purpose of this Schedule

The purpose of this Schedule is to set out in detail Manage Co's obligations in respect of the Operational Readiness Criteria which must be completed to the satisfaction of the State to achieve Operational Readiness.

1.1 Operational Readiness Assessment

- (a) At a period no later than 15 Business Days prior to the planned Date for Operational Readiness, Manage Co must complete an Operational Readiness assessment which must involve key stakeholders from the State and must cover those items set out in section 1.1(b) (**Operational Readiness Assessment**). The purpose of the Operational Readiness Assessment is to demonstrate that Manage Co has successfully performed the Transition Phase Activities such that the State is satisfied that Manage Co will be ready to commence the Services on the Operational Commencement Date.
- (b) The Operational Readiness Assessment must cover and assess, without limitation:
- (i) whether Manage Co has obtained the Approvals and accreditation necessary for the Services;
 - (ii) completion of the recruitment process;
 - (iii) completion of inductions and training for Staff and Associates;
 - (iv) completion of Operating Phase Plans (in accordance with the requirements of Schedule 15);
 - (v) systems, processes and procedures put in place for the Services;
 - (vi) engagement of Subcontractors to provide Services, where appropriate;
 - (vii) the Assets which Manage Co has to perform the Services (including Manage Co Equipment);
 - (viii) the Asset Information System;
 - (ix) the agreed interface protocols with key stakeholders; and
 - (x) any other aspects required to demonstrate readiness to perform the Services or as reasonably requested by the State.
- (c) Manage Co must prepare and provide to the State a draft Operational Readiness Report within 2 Business Days of the completion of the Operational Readiness Assessment for review by the State in accordance with the Review Procedures.
- That draft report must document the outcome of the Operational Readiness Assessment and identify any issue, event, matter or thing which needs to be completed or remedied, and Manage Co's action plan and timeframe to complete and remedy those issues, events, matters or things. That draft report must clearly identify those issues, events, matters or things which it proposes to be Operational Readiness Outstanding Items.
- (d) Manage Co must issue the final Operational Readiness Report in accordance with clause 25.10.

1.2 Operational Readiness Criteria

- (a) Manage Co must complete the following Operational Readiness Criteria to achieve Operational Readiness:
 - (i) demonstrate to the satisfaction of the State (acting reasonably) that all outstanding issues, events, matters or things identified in the Operational Readiness Assessment have been completed or remedied (other than those which are Operational Readiness Outstanding Items);
 - (ii) demonstrate to the satisfaction of the State (acting reasonably), that all Transition Phase Activities specified in Part B (Project Scope) of the Output Specification have been completed (other than those which are Operational Readiness Outstanding Items); and
 - (iii) demonstrate to the satisfaction of the State (acting reasonably) that Manage Co has in place all things necessary to commence performance of the Services in accordance with this Agreement.

Schedule 13 — Not Used

[Not used]

Schedule 14 — Not Used

[Not used]

Schedule 15 — Operating Phase Plans and Reports Schedule

The purpose of this Schedule is to set out in detail Manage 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 | Manage Co must provide the State with continuous read and print access to all information, reports and performance data used by Manage 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 (as defined in Schedule 16 of this Agreement) including a breakdown of the location of any vacant Available Inmate Places within each Correctional Centre. A template will be provided by the State to Manage Co and Manage Co must use that template as the basis for this report. | 12.01 am daily from the first day of the Operating Phase |

TABLE 3: MONTHLY PERFORMANCE REPORT

The Monthly Performance Report must contain the information set out in Table 3 below.

| Report | Content of report | Time for provision |
|-----------------------|---|---|
| A. Performance report | The Performance Report is to contain: 1) a holistic overview of the performance of Manage Co in relation to the delivery of Services for the | Within 5 Business Days before the end of the relevant |

| Report | Content of report | Time for provision |
|---|---|--------------------|
| | <p>previous Month;</p> <p>2) information relating to Manage Co's performance in delivering the Services in relation to the Month against all Key Performance Indicators in the Performance Regime; and</p> <p>3) details of any stakeholder or communication matters, including complaints or concerns raised by the public or Project stakeholders and the status of Manage Co's stakeholder and community involvement activities against the Communications and Community Relations Plan.</p> | Month |
| B. Pharmaceuticals Reporting Spreadsheet | Manage Co must complete and submit a Pharmaceuticals Reporting Spreadsheet in the form of Attachment 1 to this Schedule 15 (as updated by the State from time to time). | |
| C. Case management programs and reintegration services update | <p>Manage Co must enter all information in relation to case planning, reintegration services and programs and interventions as specified in the Output Specification into the CSNSW Offender Integrated Management System (OIMS), including the following:</p> <p>1) the details and results of all assessments completed;</p> <p>2) formulated plans (as required in the Output Specification);</p> <p>3) details of every intervention offered to Inmates, including:</p> <ul style="list-style-type: none"> a) date of offer; b) Inmate acceptance or non-acceptance of intervention; and c) reasons for Inmate non-acceptance of intervention; <p>4) details of all interventions, including:</p> <ul style="list-style-type: none"> a) date of session attendances; b) duration of sessions; c) date of intervention completion; and d) reasons for non-completion of any intervention; <p>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</p> | |

| Report | Content of report | Time for provision |
|------------------------------|--|--|
| | <p>Inmates who commenced the program, expressed as percentage;</p> <p>6) average daily number of Inmates waiting for each of the program types listed in paragraph 5 above; and</p> <p>7) the total number of individual Inmate interventions provided by program type.</p> | |
| D. Health Services update | <p>Manage Co must provide a report to Justice Health and Forensic Mental Health Network in relation to Health Services that includes the following:</p> <p>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</p> <p>2) non-admitted Custodial Patient occasions of service for the relevant Month.</p> | |
| E. Staff deployment | <p>Provide end of month Staff full time equivalent information, reconciling inward and outward movements in Staff numbers to the previous Month.</p> | |
| F. FM Services update report | <p>Manage Co must provide details of any activation of the security systems (including false alarms and nuisance alarms) of any nominated alarm.</p> <p>Manage Co must provide an Asset management report detailing as a minimum:</p> <p>1) works not completed in accordance with the Planned Maintenance Schedule and Annual Asset Works Schedule in the Asset Management Plan (see section 2.12 below);</p> <p>2) the number, type and location of unscheduled maintenance activities; and</p> <p>3) inspections, statutory and regulatory tests undertaken.</p> <p>Manage Co must provide a waste management and disposal update detailing, by waste stream, the volumes of all waste removed from the Site during the previous month and for the year in total.</p> <p>Manage Co must provide a grounds maintenance report detailing planned and unscheduled work undertaken during the previous month and for the year in total.</p> <p>Manage Co must provide a pest control report detailing</p> | <p>Within 5 Business Days before the end of the relevant Month for the first 24 Months of the Operating Phase only (unless otherwise directed by the State Representative)</p> |

| Report | Content of report | Time for provision |
|--------|---|--------------------|
| | <p>the number, type and location of infestations reported and the actions taken to rid the area of pests and minimise re-infestation.</p> <p>Manage Co must provide a cleaning services update detailing planned and unscheduled work undertaken during the previous month and for the year in total.</p> | |

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 with this Agreement; 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 Agreement); 3) include a summary of the items that have been addressed and remediated since the Quality Assurance Plan submitted in the last Quarter; 4) include a summary of the overall performance of the Quality Assurance Systems; 5) include Health Services specific reports including: <ol style="list-style-type: none"> a) Quarterly performance indicators for: <ol style="list-style-type: none"> i) mental health including: <ol style="list-style-type: none"> (1) percentage of Custodial Patients discharged from an acute mental health setting to the Correctional Centre who are seen within 7 days by a mental health clinician; and (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); ii) oral health including number of Dental | Within 5 Business Days of the end of each Quarter |

| Report | Content of report | Time for provision |
|--------|---|--------------------|
| | <p>Weighted Activity Units (DWAUs);</p> <p>iii) drug and alcohol including:</p> <p>(1) Percentage of new Custodial Patients in this reporting period coming into the 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 relation to clients under the <i>Crimes (High Risk Offenders) Act 2006</i>;</p> <p>iv) population health, including:</p> <p>(1) Number of initiations onto hepatitis C related services;</p> <p>(2) Proportion of Custodial Patients initiated onto hepatitis C related services who are Aboriginal; and</p> <p>(3) Number of Custodial Patients accepting influenza vaccination as part of a winter immunisation program;</p> <p>v) Aboriginal health including percentage of new Aboriginal Custodial Patients accessing a targeted Aboriginal chronic care program; and</p> <p>b) Auditing requirements including:</p> <p>i) monthly audits including:</p> <p>(1) Accountable drug registers (schedule 8 and schedule 4 declared drugs);</p> <p>(2) End of Month vaccine refrigerator temperature monitoring (twice daily checks);</p> <p>(3) Needle and syringe register checks (including dental room); and</p> <p>(4) Maintenance checks of glucometers, INR machines, HbA1C machines;</p> <p>ii) Every 2nd month audits including:</p> <p>(1) work health and safety workplace inspection of all clinical areas;</p> <p>(2) Therapeutic diet certificate audit; and</p> | |

| Report | Content of report | Time for provision |
|--------|---|--------------------|
| | <p>(3) health record audits - 10 files per Correctional Centre;</p> <p>iii) Quarterly report on results of audits including:</p> <p>(1) environmental cleaning audits of the health centre(s) and all satellite health centre(s);</p> <p>(2) medication charts (long stay medication charts) for ■% of the population; and</p> <p>(3) Imprest Stock; and</p> <p>iv) annual audits including:</p> <p>(1) Biomedical equipment testing.</p> | |

TABLE 5: [Not Used]

TABLE 6: ANNUAL REPORT

| Report | Content | Time for provision |
|------------------|---|---|
| B. Annual Report | <p>Manage Co must provide an annual report on Manage Co's activities and performance for each Service bundle under this Agreement for the previous calendar year or part calendar year for any part calendar year at the end of the Term.</p> <p>The annual report will include:</p> <p>1) Annualised Key Performance Indicators in relation to the Key Performance Indicators in the Services Linked Fee component;</p> <p>2) Annualised information in relation to the number of Inmate Places that met the Available Inmate Place (as defined in Schedule 16 of this Agreement) standard on each day of the year;</p> <p>3) Information required to be included by the Department of Justice in its annual report, which information will be notified to Manage Co from time to time;</p> <p>4) annual financial statements for:</p> <p>a) Manage Co;</p> <p>b) [Not used]; and</p> <p>c) Any other Key Subcontractor, Significant</p> | 60 Business Days after the end of each calendar year during the Operating Phase and on the last day of the Term |

| Report | Content | Time for provision |
|---|--|--|
| | <p>Subcontractor or member of Manage Co as requested by the State;</p> <p>5) an annualised Pharmaceuticals Reporting Spreadsheet; and</p> <p>6) annual report on Health Services accreditation status.</p> | |
| <p>C. Aboriginal Participation Report</p> | <p>The Aboriginal Participation Report must be in accordance with clause 10.13(c) and 10.13(d) under this Agreement.</p> | <p>Annually, as required in accordance with the Agreement.</p> |
| <p>D. Health professional registration checks</p> | <p>Health professional registration checks with AHPRA.</p> | <p>Annually on 31 May</p> |
| <p>E. Condition Assessment</p> | <p>Manage Co must undertake annually a Condition Assessment of the Correctional Centre which must:</p> <ol style="list-style-type: none"> 1) assess the performance, condition and the remaining serviceable life of each Asset (with the exception of Minor Assets); 2) detail any Asset's which were identified as failed, defective or otherwise not in a satisfactory operational condition and the reason why Planned Preventative Maintenance (PPM) or unscheduled repairs did not address such condition and why the Assets are not subject to replacement and refurbishment; 3) identify any Asset that does not comply, or is at any stage within the two years following the undertaking of Condition Assessment unlikely to comply with the requirements of the Maintenance and Performance Standards; 4) identify any updates which Manage Co would like to make to the Manage Co Equipment Register referred to in section 2.12 of the Operating Phase Plans and Reports; 5) identify any Asset which was programmed to have maintenance or refurbishment undertaken and/or to be replaced in the two year period preceding the Condition Assessment and which has not been maintained, refurbished or replaced (as applicable); 6) provide a brief scope of work required to bring the Asset in line with the requirements of the Maintenance and Performance Standards, including the nature of and timing of the | <p>30 Business Days after the end of each calendar year during the Operating Phase</p> |

| Report | Content | Time for provision |
|--------|---|--------------------|
| | <p>maintenance, refurbishment or replacement (as applicable) required to be undertaken; and</p> <p>7) include a detailed justification of any proposed changes to the Asset Management Plan to improve the performance of the Assets and the Correctional Centre. The justification shall include a business case setting out:</p> <ul style="list-style-type: none">a) the cost, quality and time implications and any other effect on the Services of undertaking the proposed change; andb) the cost, quality and time implications and any other effect on the Services if the proposed change is not undertaken; <p>Manage Co must invite the State Representative to attend the Condition Assessment surveys and investigations, and must permit the State Representative to observe surveys and investigations at the sole discretion of the State.</p> | |

2. Operating Phase Plans

2.1 Overview

The minimum requirements for Operating Phase Plans for the Project are detailed in this Schedule 15.

Each 1st draft of an Operating Phase Plan must:

- (a) if Annexure B to this Agreement contains a corresponding Initial Operating Phase Plan, be consistent with and provide no lesser obligations or standards on Manage Co than that corresponding Initial Operating Phase Plan; or
- (b) otherwise, be to the satisfaction of the State.

To avoid repetition of content across multiple Operating Phase Plans, Operations Phase Plans, Manage Co may use cross-references.

The Operating Phase Plans detailed in this Schedule 15 must be submitted:

- (c) in accordance with Table 7;
- (d) as required by the State Representative or any Authority; and
- (e) to align with changes in:
 - (i) the management and operations of the Correctional Centre;
 - (ii) other related Plans; and
 - (iii) the Plans as requested by the State Representative under this Agreement.

The Operating Phase Plans detailed in this Schedule 15 must be updated:

- (f) in accordance with Table 7;
- (g) as required by the State Representative or any Authority; and
- (h) to align with changes in:
 - (i) the operations of the Correctional Centre;
 - (ii) other related Plans; and
 - (iii) the Plans as requested by the State Representative under this Agreement; and
- (i) 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 |
|-------------------------------------|--|---|
| Safety and Security Plan | 1st draft | Annually (20 Business Days prior to the end of each calendar year) |
| Emergency Management Plan | 55 Business Days before the Date for Operational Readiness | |
| Staff Recruitment and Training Plan | Final version 35 Business Days before the Date for Operational | |

| Plan | Plan submission date | Update frequency |
|---|--|------------------|
| Staff Deployment Plan | Readiness | |
| Health Services Plan | | |
| Operating Manuals | | |
| Business Continuity Plan | | |
| Rehabilitation Plan | 1st draft | |
| Reintegration Plan | 40 Business Days before the Date for Operational Readiness | |
| Inmate Needs and Services Plan | Final version | |
| Governance and Administration Plan | 20 Business Days before the Date for Operational Readiness | |
| FM Services Plan | | |
| Asset Management Plan | | |
| Quality Assurance Plan | | |
| WHS Management Plan | | |
| Environmental Management Plan | 1st draft | |
| Performance Monitoring Program | 25 Business Days before the Date for Operational Readiness | |
| Correctional Centre Access Protocols | Final version | |
| Aboriginal Participation Plan | 5 Business Days before the Date for Operational Readiness | |
| Local Industry Participation Plan | 1st draft | |
| Communications and Community Relations Plan | 10 Business Days after the Operational Commencement Date | |
| Handover Package | Final version | |
| Disengagement Plan | 30 Business Days after the Operational Commencement Date | |
| | 12 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 Agreement. | |

2.2 Rehabilitation Plan

- (a) Manage Co is to provide a Rehabilitation Plan in accordance with outcome 1 (Rehabilitation and Reintegration) of Part C of the Output Specification that sets out its detailed plans and activities.
- (b) As a minimum, this plan must contain:
 - (i) details on the services and reintegration services and programs 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) Manage Co is to provide a Reintegration Plan in accordance with outcome 1 (Rehabilitation and Reintegration) of Part C 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 life skills programs and delivery methodology and timetables; and
 - (ii) details of services provided for remand Inmates.

2.4 Safety and Security Plan

- (a) Manage Co is to provide a Safety and Security Plan in accordance with outcome 2 (Safety and Security) of Part C 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;
 - (vi) work health and safety;
 - (vii) Searching (Inmates, Staff, Visitors, vehicles and Correctional Centre) including regimes and matrices;
 - (viii) contraband detection, prevention, management and disposal;
 - (ix) intelligence systems, function and strategies;
 - (x) use of force and security response;
 - (xi) Firearms and security equipment including serviceability and accountability;
 - (xii) humane reception of Inmates;
 - (xiii) Inmate classification and placement;
 - (xiv) Inmate discipline;
 - (xv) drug and alcohol testing regime; and
 - (xvi) external escorts.

2.5 Emergency Management Plan

- (a) Manage 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) Manage Co must develop, implement and maintain an Inmate Needs and Services Plan in accordance with outcome 3 (Decency and Respect) of Part C 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) including:
 - (A) the process which will be implemented by Manage Co to interface with and monitor the performance of the State or Corrective Services Industries (CSI) on behalf of the State in relation to the State's obligations under section 1 of Schedule 33;
 - (B) the actions which will be undertaken by Manage Co in the event that the State fails to (or CSI on behalf of the State does not) comply with the State's obligations under section 1 of Schedule 33; and

- (C) the process to be implemented by Manage Co to ensure it complies with this Agreement in the event that the State fails to (or CSI on behalf of the State does not) comply with the State's obligations under Schedule 33. Manage Co must include actions it will take to ensure that Manage Co provides each of Meals (as defined under Schedule 33) (in accordance with the Services Specification and Schedule 33) in the short term (less than 2 days), medium term (2-10 days) and long term (greater than 10 days);
- (xi) clothing, bedding and hygiene requirements including:
 - (A) the process which will be implemented by Manage Co to interface with and monitor the performance of the State or Corrective Services Industries (CSI) on behalf of the State in relation to the State's obligations under sections 2 and 3 of Schedule 33,
 - (B) the actions which will be undertaken by Manage Co in the event that the State fails to (or CSI on behalf of the State does not) comply with the State's obligations under sections 2 and 3 of Schedule 33; and
 - (C) the process which will be implemented by Manage Co to ensure it complies with the Agreement in the event that CSI fails to (or CSI on behalf of the State does not) comply with the State's obligations under sections 2 and 3 of Schedule 33. Manage Co must include actions it will take to ensure that it provides the Laundry Services (as defined in Schedule 33) in accordance with the Services Specification and Schedule 33) in the short term (less than 2 days), medium term (2-10 days) and long term (greater than 10 days);
- (xii) Inmate communication via telephone and mail (all Inmate cohorts);
- (xiii) Inmate private property;
- (xiv) Inmate cash and purchasing of goods;
- (xv) library facilities and access to computers, newspapers and magazines; and
- (xvi) legal service including access to in person and telephone/video legal conferencing.

2.7 Governance and Administration Plan

- (a) Manage Co must develop, implement and maintain a Governance and Administration Plan in accordance with outcome 4 (Professionalism and Accountability) of Part C 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 Recruitment and Training Plan

- (a) Manage Co must develop, implement and maintain a Staff Recruitment and Training Plan in accordance with outcome 4 (Professionalism and Accountability) of Part C of the Output Specification detailing staff training plans and activities for the next year.
- (b) As a minimum this plan must cover:
 - (i) process and methodology for selection of staff with appropriate aptitude and capability to perform the duties of a Custodial Officer;
 - (ii) 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;
 - (iii) 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 (or equivalent at time of recruitment and/or training);
 - (iv) annual Staff training and development plans / matrices;
 - (v) course content for any training plan or activity submitted annually for endorsement by the State;
 - (vi) Staff skills and qualifications audit;
 - (vii) records of Staff training activities / programs conducted over the previous year; and
 - (viii) recruitment processes for appropriately qualified & credentialed health staff including medical & dental officers through the Justice Health & Forensic Mental Health Network Dental Appointment Advisory Committee (MADAAC).

2.9 Staff Deployment Plan

- (a) Manage 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;
 - (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) Manage Co is to provide a Health Services Plan in accordance with outcome 5 (Health Services) of Part C 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 Health Service activities.

2.11 Facilities Management (FM) Services Plan

- (a) Manage 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 Attachment C.1 to Part C of the Output Specification;
 - (B) a Utilities Management Plan that provides the methodology, mechanisms and procedures to address the requirements of section 2.3 of Attachment C.1 to Part C of the Output Specification;
 - (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 Attachment C.1 to Part C of the Output Specification;
 - (D) a Grounds Maintenance Plan that provides the methodology, mechanisms and procedures to address the requirements of section 2.5 of Attachment C.1 to Part C of the Output Specification;
 - (E) a Pest Control Plan that provides the methodology, mechanisms and procedures to address the requirements of section 2.6 of Attachment C.1 to Part C of the Output Specification; 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 Attachment C.1 to Part C of the Output Specification.

2.12 Asset Management Plan

- (a) Manage Co must develop, implement and update an Asset Management Plan in accordance with the requirements of this Agreement.
- (b) The Asset Management Plan is to be updated in accordance with the update frequency, as identified in Table 7, with any amendments agreed by the State's Representative and justified by the results of the Condition Assessment. The State (acting reasonably) may instruct Manage Co to accelerate or delay the replacement of Assets (as part of the Services), as justified by the Condition Assessment. Manage Co must update the Asset

Management Plan and undertake the lifecycle works in accordance with those instructions.

- (c) The Asset Management Plan must address the requirements of section 2.2 of Attachment C.1 to Part C of the Output Specification and must include:
- (i) the approach Manage 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 Manage 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) Manage 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 Manage Co;
 - (C) details on the systems that will be used to monitor and facilitate Service Failure reporting and rectification monitoring including:
 - (I) how Manage 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) an **asset Register** of all Assets within the Site in a format agreed by the State;
 - (vii) **Manage Co Equipment Register**: which identifies all Manage Co Equipment, as agreed by the State;

- (viii) **an annual Asset Works Plan**, covering refurbishment and replacement and augmentation of those Assets detailed on the Asset Register (with the exception of Minor Assets) for the coming year;
- (ix) **a 12 year Asset Works Plan**, covering refurbishment and replacement and augmentation of those Assets detailed on the Asset Register (with the exception of Minor Assets) for the coming 12 years;
- (x) a consolidated programmed **Planned Maintenance Schedules** for each Asset (with the exception of Minor Assets) which must:
 - (A) list each Planned Preventative Maintenance activity 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 Maintenance 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 f:
 - (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;
- (xi) **an 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;
- (xii) **a whole-of-life assessment**: a consolidated current and predicted whole-of-life refurbishment and replacement schedule for all Assets (with the exception of Minor Assets) for the balance of the Term; and
- (xiii) **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.

2.13 Operating Manuals

Manage 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 Centre 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 C of the Output Specification.

2.14 Communications and Community Relations Plan

Manage Co is to provide a comprehensive Communications and Community Relations Plan for the Operating Phase which includes:

- (a) how Manage 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 Manage Co in consultation with the State;

- (b) 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) the interface protocols which will be implemented by Manage Co with respect to interactions with the Community Advisory Council appointed under s243 of CASA to monitor the Correctional Centre;
- (d) a strategy for Manage Co's interaction with the local community;
- (e) 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;
- (f) an approach to media engagement including both proactive and reactive media, as well as designated media spokespeople;
- (g) how Manage Co will address the State's proposed community and communications activities (if any) as provided by the State (from time to time); and
- (h) 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) Manage Co must develop, implement and update an Operating Phase Quality Assurance Plan for the Services, as specified in this Agreement.
- (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 Manage Co's key personnel with quality management responsibilities and accountabilities, including:
 - (A) lines of communication and interfaces with Manage 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 occurrence and recurrence; and
 - (vii) reporting requirements.

2.16 Environmental Management Plan

- (a) Manage Co must develop, maintain and update an Environmental Management Plan, which complies with the requirements of this Agreement.
- (b) The Environmental Management Plan must include:

- (i) the organisational structure identifying Manage Co's key environmental personnel and personnel with environmental management responsibilities and accountabilities, including:
 - (A) lines of communication and interfaces with Manage 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

Manage Co must develop, implement and update a Business Continuity Plan, which includes:

- (a) organisational structure identifying Manage Co's key personnel with business continuity responsibilities, including:
 - (i) roles;
 - (ii) lines of communication and interfaces with Manage 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 Centre, human resources and payroll.

2.18 Local Industry Participation Plan

Manage 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 C 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 Centre.

2.19 Performance Monitoring Program

- (a) Manage Co must prepare a Performance Monitoring Program (**PMP**) containing all the performance monitoring activities (including frequencies, systems, methods and audit tools) that Manage 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 Agreement (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 Manage 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

- (a) Manage Co must develop, implement and update an Aboriginal Participation Plan for the Services as specified in clause 10.13 of this Agreement using the template provided at: <https://www.procurepoint.nsw.gov.au/before-you-supply/policy-framework-construction>; and
- (b) Manage Co must provide detail on the methodology, programs and initiatives they will implement in order to achieve and maintain the minimum level of workforce participation which must be no less than █%.

2.21 Not Used

2.22 Correctional Centre Access Protocols

- (a) The Correctional Centre Access Protocols must contain the processes, systems and procedures Manage Co will use to provide access for those people entitled to access the Correctional Centre and any Inmates under this Agreement; and
- (b) details on how Manage Co will ensure that all people who access the Correctional Centre, including Inmates do so in accordance with these protocols.

2.23 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 Manage Co is not a principal contractor under the WHS Legislation) and also provides for:

- (a) arrangements in relation to general industry training, work activity based health and safety training and site specific health and safety training;
- (b) arrangements for employees, agents and contractors of Manage 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 Centre. 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 Agreement;
- (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 Centre; and
 - (iii) lists of plant and other Assets relevant to delivery of the Services to the Correctional Centre;
- (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 Centre 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 Assessments;
 - (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;
 - (vi) records relevant to compliance with Law, Policy and Approvals, licences and registrations maintained by Manage 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 Manage 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 Manage 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

REDACTED

Schedule 17 – Performance Regime

Contents

| | | |
|-----------|---|-----------|
| 1. | Introduction | 3 |
| 1.2 | Format of Performance Regime | 3 |
| 1.3 | Calculation of Quality Failure Points - example | 4 |
| 1.4 | Definitions | 5 |
| 1.5 | OIMS | 6 |
| 2. | Key Performance Indicators | 7 |
| 2.1 | KPI 1 – Purposeful Activity | 7 |
| 2.2 | KPI 2 – Time out of Cells | 10 |
| 2.3 | KPI 3 - Serious Self Harm | 12 |
| 2.4 | KPI 4 – Assaults on Non-Inmates | 13 |
| 2.5 | KPI 5 – Assaults on Inmates by other Inmates | 15 |
| 2.6 | KPI 6 - Specified Serious Incidents | 17 |
| 2.7 | KPI 7 – Illicit Drug Use | 20 |
| 2.8 | KPI 8 – Staff Misconduct | 22 |
| 2.9 | KPI 9 – Accuracy of Reporting | 24 |
| 2.10 | KPI 10 – Adherence to Performance Improvement Notice cure plans | 25 |
| 2.11 | KPI 11 – Carrying out scheduled FM Service tasks | 26 |
| 2.12 | KPI 12 – Rectifying FM Service Failures | 28 |
| 2.13 | KPI 13 – Chronic Healthcare Plans | 32 |
| 2.14 | KPI 14 – Timely Primary Health Services | 34 |
| 2.15 | KPI 15 – Health Discharge Plans | 36 |
| 2.16 | KPI 16 – Early Detection Programs and Immunisation Services | 38 |
| 2.17 | KPI 17 – Health Related Incident Reporting | 40 |
| 2.18 | KPI 18 – Health Screening | 42 |
| 2.19 | KPI 19 – Inmate Place Unavailability | 44 |
| 2.20 | KPI 20 – Meal Failures | 47 |
| 3. | Charge Events | 48 |
| 3.1 | Charge Event 1 – Unnatural Deaths | 48 |
| 3.2 | Charge Event 2 - Escapes | 49 |
| 3.3 | Charge Event 3 - Major Disruption to Correctional Operations | 50 |
| 3.4 | Charge Event 4 - Compliance with Release Dates | 52 |

1. Introduction

- (a) This Schedule sets out:
- (i) the Key Performance Indicators; and
 - (ii) the Charge Events.

During the Operating Phase, Manage 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 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 ██████ 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 Manage 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 Manage Co | Sets out Manage 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 Manage 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 5B: Substantiated Assaults on Inmates by Inmates

The following table sets out the Quality Failure Points which Manage Co will accrue each Month depending on its performance relative to the Target, Level 1 and Level 2 Performance Ranges.

| | Performance Range | Quality Failure Points |
|---------|-------------------|------------------------|
| Target | | |
| Level 1 | | |
| Level 2 | | |

The formula is as follows:

$$\frac{\text{(Number of Inmate victims of Substantiated Assault by Inmates)}}{\text{(Daily Average Inmate population)}} \times 100$$

Assume that for Month n:

- (a) The number of Inmate victims of Substantiated Assault by Inmates is equal to [redacted] and
- (b) The Daily Average Inmate population is equal to [redacted].

The KPI result is [redacted] % (i.e. [redacted] which represents Level 2 performance). 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 [redacted] 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 or matter which is not captured within the definitions of Serious Assault or Significant Assault.

Custodial Patients means all Inmates.

Daily Average Inmate population is calculated in accordance with the following formula:

$$\frac{\text{Total number of Inmates at the Correctional Centre as at midnight of each day of the reporting period}}{\text{Total number of days in the reporting period}}$$

JHeHS means the Justice Health electronic Health Service.

OIMS means the CSNSW Offender Integrated Management System.

PAS means the Patient Administration System.

Non-Inmate includes any person at the Correctional Centre who is not an Inmate including Staff, Official Visitors, Associates, and Visitors.

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").

Service Requirement means the minimum specific requirements for the FM Service as specified in [volume 4 Part C Technical Requirements Facilities Management/FM Services].

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 Manage Co in accordance with this Schedule are to be entered in OIMS.

2. Key Performance Indicators

2.1 KPI 1 – Purposeful Activity

| KPI 1 | 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 Manage 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 style="background-color: #d3d3d3;"> <th style="width: 10%;">A.</th> <th style="width: 50%;">Performance Range</th> <th style="width: 40%;">Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td style="background-color: #d3d3d3;">Target</td> <td colspan="2" style="background-color: black;"></td> </tr> <tr> <td style="background-color: #d3d3d3;">Level 1</td> <td colspan="2" style="background-color: black;"></td> </tr> <tr> <td style="background-color: #d3d3d3;">Level 2</td> <td colspan="2" style="background-color: black;"></td> </tr> </tbody> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: #d3d3d3;"> <th style="width: 10%;">B.</th> <th style="width: 50%;">Performance Range</th> <th style="width: 40%;">Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td style="background-color: #d3d3d3;">Target</td> <td colspan="2" style="background-color: black;"></td> </tr> <tr> <td style="background-color: #d3d3d3;">Level 1</td> <td colspan="2" style="background-color: black;"></td> </tr> <tr> <td style="background-color: #d3d3d3;">Level 2</td> <td colspan="2" style="background-color: black;"></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 | | | | | | | | | | | | | | | | | | | | | | | | | | |

| | |
|---------------------------|---|
| | <div style="background-color: black; width: 100%; height: 100%;"></div> |
| <p>Definitions</p> | <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; (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; (vi) Personal Development and Life Skills Programs: a structured program that addresses the life skills and well-being of the Inmate’s needs; (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 (viii) Exercise: not more than one hour each day for exercise in the open air; or <p>(b) the following activities on weekends:</p> <ul style="list-style-type: none"> (i) Recreational Activities including sports activities and any other recreational activities provided within the Correctional Centre to create a sense of community and to provide recreation for the Inmates; or (ii) Community and social activities including any activities which provide the opportunity for Inmates to purposefully engage with each other for leisure purposes. <p>Commercial Industries means programs run by Manage Co or its Associates at the Correctional Centre 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 Centre 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 the extent that it prevents that Inmate from participating in Purposeful Activities, either in whole or part; • Inmates who for specified reasons cannot reasonably achieve a minimum of 6 hours (for sentenced Inmates) or 4 hours (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 Centre (and alternative arrangements are in place in accordance with the Output Specification or as agreed with the State in writing); • 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); or • Inmates in the Correctional Centre pursuant to NSW Drug Court orders. |
| Reporting Requirements | N/A |
| Reporting Period | Monthly |

2.2 KPI 2 – Time out of Cells

| | |
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| KPI 2 | 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 = ■ x 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. If an Inmate opts to remain in the Inmate's cell during a time when the Inmate is permitted to leave the cell, that period is included in the calculation of Actual Out of Cell hours.</p> <p>Minimum Out of Cell hours means ■ hours per day, subject to Approved Exceptions.</p> <p>Approved Exceptions means:</p> <p>(a) monthly scheduled searches of the Correctional Centre in accordance with the Deed;</p> <p>(b) Inmates in segregated custody or NSW Drug Court beds; and</p> <p>(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.</p> |
| Counting Rules | <p><u>Example:</u></p> <ul style="list-style-type: none"> • Minimum Out of Cell Hours per day = ■ hours • Actual Out of Cell Hours for ■ Inmates each day in January = ■ hours • Assume the Daily Average Inmate Population for January is ■ • The Variance in Out of Cell Hours for each of those ■ Inmates for each day in January is calculated as (■) = ■ hours = ■ x ■ minute intervals |

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| KPI 2 | Time out of Cells |
| | <ul style="list-style-type: none"> • Failure Periods = (█ x █ Inmates x █ days) – (█ x █) = █ • Quality Failure Points are calculated as █ x █ = █ • |
| Reporting Requirements | <ul style="list-style-type: none"> • Total 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; ○ Number of Inmates affected by lock-down; and ○ Duration of the lockdown. |
| Reporting Period | Monthly |

2.3 KPI 3 - Serious Self Harm

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|--|--|--------------------------|-------------------------------|
| KPI 3 | Serious Self-Harm | | |
| Formulae | Number of incidents of Serious Self-Harm | | |
| Calculation of Quality Failure Points | The following table sets out the Quality Failure Points which Manage Co will accrue each Month depending on its performance relative to the Target, Level 1 and Level 2 Performance Ranges. | | |
| | | 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 and Non-Fatal Drug Overdoses (as defined in KPI 6 (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. • Manage 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 | | |

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| KPI 4 | Assaults on Non-Inmates |
| | <p>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); • 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 Manage 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; • Manage 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 |

2.5 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 [REDACTED]</p> | | | | | | | | | | | | |
| Calculation of Quality Failure Points | <p>The Quality Failure Points which Manage Co will accrue each Month is as follows:</p> <p>A. Substantiated Serious Assaults – [REDACTED] per Inmate victim</p> <p>B. Substantiated Significant Assault – [REDACTED] per Inmate victim</p> <p>C. Substantiated Assault - The following table sets out the Quality Failure Points which Manage 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="475 837 1418 1191"> <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</p> | | | | | | | | | | | | |

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| KPI 5 | Assaults on Inmates by Inmates |
| | 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. |
| 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 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; • Manage 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 |

2.6 KPI 6 - Specified Serious Incidents

| KPI 6 | Specified Serious Incidents |
|---------------------------------------|---|
| Formulae | <p>A. Number of Deliberately Lit Fires, Security Breaches and Non-Fatal Drug Overdoses</p> <p>B. Number of Contraband Breaches identified by the State</p> |
| Calculation of Quality Failure Points | <p>The Quality Failure Points which Manage 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, excluding the first three items per search, 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 Centre 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 Centre 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 Centre (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 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 Centre (but does not breach or otherwise pass the outer most secure perimeter of the Correctional Centre) or breaches a Security Barrier in the Correctional Centre;</p> |

| KPI 6 | Specified Serious Incidents |
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| | <p>(b) a failure for any reason to secure an Inmate during lock-in;</p> <p>(c) failure by Manage Co or its Associates to account for an Inmate at the times required in accordance with Output Specification; or</p> <p>(d) an unauthorised discharge of a firearm by any person within the Correctional Centre or while an Inmate is on temporary leave or being (or required to be) escorted by Manage 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, Contraband Breach or Non-Fatal Drug Overdose.</p> <p>Weapons means any offensive weapon or instrument (as defined by the <i>Crimes Act 1900</i> (NSW)).</p> |
| Counting Rules | <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> <p>(a) if two Inmates are found together in unauthorised areas of the Correctional Complex, then count two Security Breaches;</p> <p>(b) if there were two lock-ins during the reporting period and each time two Inmates were not secured, count four Security Breaches;</p> <p>(c) if there are three incidents whereby Project Co or its Associates cannot account for two Inmates, count six Security Breaches; or</p> <p>(d) if one incident results in the unauthorised discharge of multiple firearms then count this as one Security Breach.</p> <p>Serious Contraband Breach Count the number of Serious Contraband identified by the State during the reporting period. For example, if ■■■ mobile phones are found by the State within the Correctional Centre within a reporting period (whether they are found during one inspection or on multiple occasions), count ■■■ Serious Contraband Breaches during the reporting period.</p> <p>Non-Fatal Drug Overdose</p> |


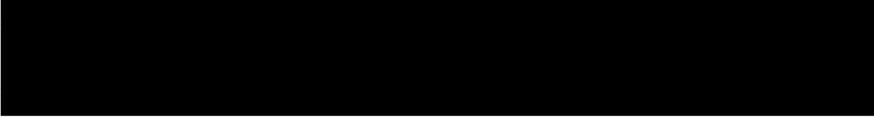

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| KPI 6 | Specified Serious Incidents |
| | Count the number of Inmates that suffer a Non-Fatal Drug Overdose during the reporting period. |
| Reporting Requirements | <p>Details of each Specified Serious Incident must include:</p> <ul style="list-style-type: 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; • Manage 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. |
| Reporting Period | Monthly |

2.7 KPI 7 – Illicit Drug Use

| KPI 7 | Illicit Drug Use | | | | | | | | | | | | |
|--|---|------------------------|-------------------|------------------------|--------|------------|--|---------|------------|--|---------|------------|--|
| Formulae | (Number of Positive Random Drug Tests) / (Number of Random Drug Tests) x [REDACTED] | | | | | | | | | | | | |
| Calculation of Quality Failure Points | <p>The following table sets out the Quality Failure Points which Manage 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 colspan="2">[REDACTED]</td> </tr> <tr> <td>Level 1</td> <td colspan="2">[REDACTED]</td> </tr> <tr> <td>Level 2</td> <td colspan="2">[REDACTED]</td> </tr> </tbody> </table> | | Performance Range | Quality Failure Points | Target | [REDACTED] | | Level 1 | [REDACTED] | | Level 2 | [REDACTED] | |
| | Performance Range | Quality Failure Points | | | | | | | | | | | |
| Target | [REDACTED] | | | | | | | | | | | | |
| Level 1 | [REDACTED] | | | | | | | | | | | | |
| Level 2 | [REDACTED] | | | | | | | | | | | | |
| Definitions | <p>Random Drug Test means a random drug test to identify illicit drug use conducted by Manage Co or its Associates in respect of a [REDACTED] % sample of the population of Eligible Inmates as randomly selected by the State each Month and notified to Manage 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 excluding Inmates in the Correctional Centre pursuant to NSW Drug Court orders.</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 Centre.</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 Centre during the reporting period.</p> | | | | | | | | | | | | |
| Reporting | <ul style="list-style-type: none"> • Date Random Drug Test was administered | | | | | | | | | | | | |

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| KPI 7 | Illicit Drug Use |
| Requirements | <ul style="list-style-type: none">• Details of each Inmate tested;• Results of each Random Drug Test; and• Details of each Inmate who refused testing. |
| Reporting Period | Monthly |

2.8 KPI 8 – Staff Misconduct

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| KPI 8 | Staff Misconduct |
| Formulae | <p>A. Number of incidents of Staff Misconduct</p> <p>B. Number of Staff Misconduct not known to Manage 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 Manage Co will accrue each Month is as follows:</p> <p>A. </p> <p>B. </p> <p>C. </p> |
| Definitions | <p>Staff Misconduct means:</p> <ul style="list-style-type: none"> (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 Centre, subject only to the Exceptions; or (b) a finding of misconduct of a member of Staff, including: <ul style="list-style-type: none"> (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 Centre including any breach of Law, Policies or procedures or any professional standards or guidelines applicable to the position of that Staff member; or (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>Exceptions means:</p> <ul style="list-style-type: none"> (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 Centre; or (b) any conviction for which the Staff member has received a pardon or which has been quashed. <p>Staff Misconduct not known to Manage Co or its Associates means identification by the State of Staff Misconduct which, based on the findings of a State investigation, Manage 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 Manage 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</p> |

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| KPI 8 | Staff Misconduct |
| | in a prior reporting period. |
| 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 Manage 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. |
| Reporting Period | Monthly |

2.9 KPI 9 – Accuracy of Reporting

| KPI 9 | Accuracy of Reporting |
|---------------------------------------|---|
| Formulae | <p>A. Number of Non-Compliant Incident Reports</p> <p>B. Number of Critical Reporting Failures</p> |
| Calculation of Quality Failure Points | <p>The Quality Failure Points which Manage Co will accrue each Month is as follows:</p> <p>A. [REDACTED] points per Non-Compliant Incident Report</p> <p>B. [REDACTED] points per Critical Reporting Failure</p> |
| Definitions | <p>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).</p> <p>Critical Reporting Failure means a failure by Manage 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).</p> |
| Counting Rules | <p>A. Count the number of Non-Compliant Incident Report during the reporting period.</p> <p>B. Count the number of Critical Reporting Failures during the reporting period.</p> |
| CSNSW Validation | Review by Monitors including a qualitative review of reports. |
| Reporting Requirements | <p>For each Non-Compliant Incident Report:</p> <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. <p>For each Critical Reporting Failure:</p> <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 |

2.10 KPI 10 – Adherence to Performance Improvement Notice cure plans

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| KPI 10 | 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 | Manage Co will accrue [REDACTED] Quality Failure Points for each failure to comply with a Performance Improvement Notice cure plan. |
| Definitions | <p>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 notices to Manage Co if it fails to comply with the Services Requirements (Performance Improvement Notice or PIN).</p> <p>If the State issues a Performance Improvement Notice, Manage 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 Agreement.</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 |

2.11 KPI 11 – Carrying out scheduled FM Service tasks

| KPI 11 | 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 Manage 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" data-bbox="448 607 1393 965"> <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" data-bbox="448 1032 1393 1391"> <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 and Planned Maintenance Schedules (as included in the Asset Management Plan), in the reporting period. Type 2 Failures means incidents of failure to undertake Critical Planned Maintenance Tasks in accordance with the Asset Management Plan and Planned Maintenance Schedules in the reporting period.</p> <p>Critical Planned Maintenance Tasks means any planned maintenance tasks identified in the Asset Management Plan and Planned Maintenance Schedules (as included 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 | | | | | | | | | | | | | | | | | | | | | | | | |

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| KPI 11 | Carrying out scheduled FM Service tasks |
| | (e) security systems. Non-Critical Maintenance Tasks means any planned maintenance tasks which are not Critical Planned Maintenance Tasks. |
| 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 and Planned Maintenance Schedules (as included in the Asset Management Plan). |
| Reporting Period | Monthly |

2.12 KPI 12 – Rectifying FM Service Failures

(a) 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 |
| means any FM Service Failure which: <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 Centre; • 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. | ██████████ |
| Level B FM Service Failure – Urgent/High Priority | Level B Rectification Period |
| means any FM Service Failure that is not categorised as a Level A FM Service Failure and: <ul style="list-style-type: none"> • is interrupting, or if not Rectified within the Level B Rectification Time, has the potential to interrupt the operation or functionality of the Site or Correctional Centre; or • may develop into a Level A FM Service Failure if not Rectified within the Level B Rectification Period. | ██████████ |
| Level C FM Service Failure – Medium Priority | Level C Rectification Period |
| means any FM Service Failure which is not categorised as a Level A or B FM Service Failure and: <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 Centre; or • potentially causes more than minor disruption, inconvenience to Manage Co or its Associates in carrying out the operations if not | ██████████ |

| | |
|--|-------------------------------------|
| FM Table | |
| Rectified within the Level C Rectification Period. | |
| Level D FM Service Failure – Low Priority | Level D Rectification Period |
| <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 Centre 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. | |

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).

- (b) On becoming aware of an FM Service Failure, Manage Co must:
 - (i) Respond as soon as practicable; and
 - (ii) categorise the FM Service Failure in accordance with the FM Table.
- (c) 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 Manage 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 Manage Co by notifying Manage Co. If Manage Co disputes the changed level, then Manage Co may refer for resolution in accordance with the Project Deed. In the interim, Manage Co must Rectify the FM Service Failure in accordance with the level given by the State.
- (d) Manage Co is entitled to request a Temporary Fix in accordance with Schedule 16 (Payment Schedule).
- (e) 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 12 | 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</p> |

| KPI 12 | Rectifying facilities management failure events | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|------------------------|-------------------|------------------------|--------|------------|--|---------|---------|--|-------------------|------------------------|--------|------------|--|---------|---------|--|-------------------|------------------------|--------|------------|--|---------|---------|
| | <p>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> | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>Calculation of Quality Failure Points</p> | <p>The following tables set out the Quality Failure Points which Manage 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" data-bbox="512 618 1305 1010"> <thead> <tr> <th></th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td colspan="2" rowspan="3">[REDACTED]</td> </tr> <tr> <td>Level 1</td> </tr> <tr> <td>Level 2</td> </tr> </tbody> </table> <p>B. Number of incidents of failure to Rectify a Level B FM Service Failure within the Level B Rectification Period</p> <table border="1" data-bbox="512 1122 1305 1469"> <thead> <tr> <th></th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td colspan="2" rowspan="3">[REDACTED]</td> </tr> <tr> <td>Level 1</td> </tr> <tr> <td>Level 2</td> </tr> </tbody> </table> <p>C. Number of incidents of failure to Rectify a Level C FM Service Failure within the Level C Rectification Period</p> <table border="1" data-bbox="512 1581 1305 1973"> <thead> <tr> <th></th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td colspan="2" rowspan="3">[REDACTED]</td> </tr> <tr> <td>Level 1</td> </tr> <tr> <td>Level 2</td> </tr> </tbody> </table> <p>D. Number of incidents of failure to Rectify a Level D FM Service</p> | | Performance Range | Quality Failure Points | Target | [REDACTED] | | Level 1 | Level 2 | | Performance Range | Quality Failure Points | Target | [REDACTED] | | Level 1 | Level 2 | | Performance Range | Quality Failure Points | Target | [REDACTED] | | Level 1 | Level 2 |
| | Performance Range | Quality Failure Points | | | | | | | | | | | | | | | | | | | | | | | |
| Target | [REDACTED] | | | | | | | | | | | | | | | | | | | | | | | | |
| Level 1 | | | | | | | | | | | | | | | | | | | | | | | | | |
| Level 2 | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Performance Range | Quality Failure Points | | | | | | | | | | | | | | | | | | | | | | | |
| Target | [REDACTED] | | | | | | | | | | | | | | | | | | | | | | | | |
| Level 1 | | | | | | | | | | | | | | | | | | | | | | | | | |
| Level 2 | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Performance Range | Quality Failure Points | | | | | | | | | | | | | | | | | | | | | | | |
| Target | [REDACTED] | | | | | | | | | | | | | | | | | | | | | | | | |
| Level 1 | | | | | | | | | | | | | | | | | | | | | | | | | |
| Level 2 | | | | | | | | | | | | | | | | | | | | | | | | | |

| KPI 12 | Rectifying facilities management failure events | | | | | | | | |
|-------------------------------|--|------------------------|-------------------|------------------------|--------|--|--|---------|---------|
| | <p>Failure within the Level D Rectification Period</p> <table border="1" data-bbox="512 293 1305 647"> <thead> <tr> <th data-bbox="512 293 687 362"></th> <th data-bbox="687 293 979 362">Performance Range</th> <th data-bbox="979 293 1305 362">Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td data-bbox="512 362 687 432">Target</td> <td colspan="2" data-bbox="687 362 1305 432" rowspan="3" style="background-color: black;"></td> </tr> <tr> <td data-bbox="512 432 687 539">Level 1</td> </tr> <tr> <td data-bbox="512 539 687 647">Level 2</td> </tr> </tbody> </table> | | Performance Range | Quality Failure Points | Target | | | Level 1 | Level 2 |
| | 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 Failures 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 ■ 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 Rectification Period which equates to ■ Quality Failure Points (i.e. ■ x ■).</p> | | | | | | | | |
| Reporting Requirements | <p>Manage 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, Manage 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, Manage Co is to separately provide a critical incident report.</p> | | | | | | | | |
| Reporting Period | Monthly | | | | | | | | |

2.13 KPI 13 – Chronic Healthcare Plans

| KPI 13 | Chronic Healthcare Plans | | | | | | | | | | | | |
|--|--|------------------------|-------------------|------------------------|--------|------------|------------|---------|------------|------------|---------|------------|------------|
| Formula | (Number of Eligible Custodial Patients with an Up to Date Chronic Healthcare Plan) / (Number of Eligible Custodial Patients) x [REDACTED] | | | | | | | | | | | | |
| Calculation of Quality Failure Points | <p>The following table sets out the Quality Failure Points which Manage Co will accrue each Month depending on its performance relative to the Target, Level 1 and Level 2 Performance Ranges.</p> <table border="1" style="margin-left: 40px;"> <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 | <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 Centre; (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 style="margin-left: 40px;">(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 | | | | | | | | | | | | |

| KPI 13 | Chronic Healthcare Plans |
|--|--|
| | <p>the necessity for other interventions.</p> <p>Required timeframe means:</p> <p>(a) ■ days from (as applicable) reception at the Correctional Centre or diagnosis by Manage Co or its Associates of the chronic illness; or</p> <p>(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 Centre, the later of:</p> <p>(i) ■ days from the date of identification of the chronic health condition; or</p> <p>(ii) ■ days from the date of the Custodial Patient's transfer to the Correctional Centre.</p> <p>Eligible Custodial Patients means Custodial Patients who have been at the Correctional Centre for at least 29 days and:</p> <p>(a) have chronic conditions, as determined in accordance with the Services Specification; or</p> <p>(b) are identified as requiring a Chronic Healthcare Plan in accordance with the Services Specification,</p> <p>but do not include Custodial Patients who have been released or transferred from the Correctional Centre 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 Manage Co | <p>For each Eligible Custodial Patient without an Up to Date Chronic Healthcare Plan, Manage Co or its Associates' intended actions to ensure the Eligible Custodial Patient has an Up to Date Chronic Healthcare Plan in the following Month.</p> |
| Reporting Period | Monthly |

2.14 KPI 14 – Timely Primary Health Services

| | |
|--|--|
| KPI 14 | Provision of timely primary health services |
| Formulae | <p>A. Number of Failure Periods for Priority 1 Custodial Patients</p> <p>B. Number of Failure Periods for Priority 2 Custodial Patients</p> |
| Calculation of Quality Failure Points | <p>A. ■■■ Quality Failure Points per Failure Period</p> <p>B. ■■■ Quality Failure Points per Failure Period</p> |
| 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 Centre 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, ■■■; and</p> <p>(b) For Priority 2 Custodial Patients, ■■■.</p> |
| Counting Rules | <p>For each of A and B above, 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 ■■■ (being ■■■ 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 Manage Co or its Associates to perform the Services in accordance with this Agreement) 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 | Number of Failure Periods for Priority 1 Custodial Patients |

| | |
|-------------------------|---|
| KPI 14 | Provision of timely primary health services |
| Manage Co | Number of Failure Periods for Priority 2 Custodial Patients |
| Reporting Period | Monthly |

2.15 KPI 15 – Health Discharge Plans

| <p>KPI 15</p> | <p>Health discharge plans</p> | | | | | | | | | | | | | | | | | | | | | | | | |
|---|--|------------------------|-------------------|------------------------|--------|-------|--|---------|-------|--|---------|-------|--|--------------------|-------------------|------------------------|--------|-------|--|---------|-------|--|---------|-------|--|
| <p>Formulae</p> | <p>A. (Number of In-Scope Sentenced Custodial Patients provided with a Health Discharge Plan)/(Number of In-Scope Sentenced Custodial Patients) x ■■■</p> <p>B. (Number of In-Scope Remand Custodial Patients provided with a Health Discharge Plan)/(Number of In-Scope Remand Custodial Patients) x ■■■</p> | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>Calculation of Quality Failure Points</p> | <p>The following table sets out the Quality Failure Points which Manage 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="512 752 1361 1146"> <thead> <tr> <th data-bbox="512 752 746 860">A – Sentenced Inmates</th> <th data-bbox="746 752 1038 860">Performance Range</th> <th data-bbox="1038 752 1361 860">Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td data-bbox="512 860 746 931">Target</td> <td colspan="2" data-bbox="746 860 1361 931">■■■■■</td> </tr> <tr> <td data-bbox="512 931 746 1039">Level 1</td> <td colspan="2" data-bbox="746 931 1361 1039">■■■■■</td> </tr> <tr> <td data-bbox="512 1039 746 1146">Level 2</td> <td colspan="2" data-bbox="746 1039 1361 1146">■■■■■</td> </tr> </tbody> </table> <table border="1" data-bbox="512 1218 1361 1610"> <thead> <tr> <th data-bbox="512 1218 746 1326">B – Remand Inmates</th> <th data-bbox="746 1218 1038 1326">Performance Range</th> <th data-bbox="1038 1218 1361 1326">Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td data-bbox="512 1326 746 1397">Target</td> <td colspan="2" data-bbox="746 1326 1361 1397">■■■■■</td> </tr> <tr> <td data-bbox="512 1397 746 1505">Level 1</td> <td colspan="2" data-bbox="746 1397 1361 1505">■■■■■</td> </tr> <tr> <td data-bbox="512 1505 746 1610">Level 2</td> <td colspan="2" data-bbox="746 1505 1361 1610">■■■■■</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 | ■■■■■ | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>Definitions</p> | <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 Centre 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</p> | | | | | | | | | | | | | | | | | | | | | | | | |

| | |
|--|---|
| KPI 15 | Health discharge plans |
| | <p>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. |
| 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 Manage Co or its Associates' records and OIMS and 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 Centre 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 Manage 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 |

2.16 KPI 16 – Early Detection Programs and Immunisation Services

| KPI 16 | Early detection programs and immunisation services | | | | | | | | | | | | | | | | | | | | | | | | |
|--|---|------------------------|-------------------|------------------------|--------|---|--|---------|---|--|---------|---|--|---------|-------------------|------------------------|--------|---|--|---------|---|--|---------|---|--|
| Formulae | <p>A. (Number of Eligible Custodial Patients provided with Immunisations)/(Number of Eligible Custodial Patients) x █</p> <p>B. (Number of High Risk Custodial Patients provided with EDP)/(Number of High Risk Custodial Patients) x █</p> | | | | | | | | | | | | | | | | | | | | | | | | |
| Calculation of Quality Failure Points | <p>The following table sets out the Quality Failure Points which Manage 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="512 680 1358 1077"> <thead> <tr> <th data-bbox="512 680 746 786">A – Immunisations</th> <th data-bbox="746 680 1038 786">Performance Range</th> <th data-bbox="1038 680 1358 786">Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td data-bbox="512 786 746 860">Target</td> <td colspan="2" data-bbox="746 786 1358 860">█</td> </tr> <tr> <td data-bbox="512 860 746 965">Level 1</td> <td colspan="2" data-bbox="746 860 1358 965">█</td> </tr> <tr> <td data-bbox="512 965 746 1077">Level 2</td> <td colspan="2" data-bbox="746 965 1358 1077">█</td> </tr> </tbody> </table> <table border="1" data-bbox="512 1144 1358 1503"> <thead> <tr> <th data-bbox="512 1144 746 1218">B – EDP</th> <th data-bbox="746 1144 1038 1218">Performance Range</th> <th data-bbox="1038 1144 1358 1218">Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td data-bbox="512 1218 746 1292">Target</td> <td colspan="2" data-bbox="746 1218 1358 1292">█</td> </tr> <tr> <td data-bbox="512 1292 746 1397">Level 1</td> <td colspan="2" data-bbox="746 1292 1358 1397">█</td> </tr> <tr> <td data-bbox="512 1397 746 1503">Level 2</td> <td colspan="2" data-bbox="746 1397 1358 1503">█</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 Centre in the last █ days of the previous Month; or (b) received into custody at the Correctional Centre in the current Month excluding the last █ 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 | | | | | | | | | | | | | | | | | | | | | | | | |

| | |
|--|--|
| KPI 16 | Early detection programs and immunisation services |
| | <p>transmissible infection; and</p> <p>(b) who voluntarily undergo screening,</p> <p>who are:</p> <p>(c) received into custody at the Correctional Centre in the last 14 days of the previous Month; or</p> <p>(d) received into custody at the Correctional Centre in the current Month excluding the last ■ days of the Month.</p> <p>EDP means early detection programs for blood borne viruses and sexually transmissible infections in accordance with the Services Specification.</p> |
| 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>B. EDP</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 Manage 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 |

2.17 KPI 17 – Health Related Incident Reporting

| KPI 17 | 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 Manage 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 Centre or submitted in writing including through external services such as the NSW Health Care Complaints Commission or the</p> |

| | |
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| KPI 17 | Health Related Incident Reporting |
| | <p>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> <p>(a) for Performance Target A, within █ days of notification by the State through IIMS;</p> <p>(b) for Performance Target B, within █ days of Manage Co or its Associates being notified of the complaint.</p> |
| Counting Rules | <p>A. Example:</p> <p>Manage Co is notified of the requirement to submit an RCA through IIMS on █. Manage Co submits the RCA to the Ministry of Health on █ i.e. █ days later. Count █ Failure Periods.</p> <p>B. Example:</p> <p>A written complaint is lodged by an Inmate on 15 March 2025. Manage Co meets with the Inmate on █ (i.e. █ days later) to discuss the complaint and apologise. Manage Co does not provide a written response to the Inmate until █ (i.e. █ days after the complaint is lodged). Count █ 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 Manage 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 |

2.18 KPI 18 – Health Screening

| KPI 18 | Health Screening | | | | | | | | | | | | |
|--|--|------------------------|-------------------|------------------------|--------|------------|--|---------|------------|--|---------|------------|--|
| Formula | <p>(Number of Custodial Patients received into custody at the Correctional Centre in the Period who undergo a Health Assessment within 24 hours) / (Number of Custodial Patients received into custody at the Correctional Centre in the Period) x</p> <p>██████████</p> | | | | | | | | | | | | |
| Calculation of Quality Failure Points | <p>The following table sets out the Quality Failure Points which Manage 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="512 725 1310 1081"> <thead> <tr> <th data-bbox="512 725 695 797"></th> <th data-bbox="695 725 986 797">Performance Range</th> <th data-bbox="986 725 1310 797">Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td data-bbox="512 797 695 869">Target</td> <td colspan="2" data-bbox="695 797 1310 869">██████████</td> </tr> <tr> <td data-bbox="512 869 695 972">Level 1</td> <td colspan="2" data-bbox="695 869 1310 972">██████████</td> </tr> <tr> <td data-bbox="512 972 695 1081">Level 2</td> <td colspan="2" data-bbox="695 972 1310 1081">██████████</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 Centre 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 Centre 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"> (d) the last day of the preceding Month; and (e) 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 Centre 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</p> | | | | | | | | | | | | |

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|--|---|
| KPI 18 | Health Screening |
| | Correctional Centre in the Reporting Period. |
| Reporting Requirements of Manage 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 Centre in the period. |
| Reporting Period | Monthly |

2.19 KPI 19 – Inmate Place Unavailability

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| KPI 19 | Inmate Place Unavailability |
| Formula | Number of days of Inmate Place Unavailability |
| Calculation of Quality Failure Points | <p>The Quality Failure Points which Manage Co will accrue for each Inmate Place Unavailability is as follows:</p> <p>(a) ■■■ points per day, or part thereof, for the first seven days; plus</p> <p>(b) ■■■ points per day, or part thereof, for any subsequent days,</p> <p>from the expiry of the Rectification Period for that Inmate Place Unavailability until the Inmate Place Unavailability is Rectified.</p> |
| Definitions | <p>Inmate Place Unavailability means an Inmate Place that is not an Available Inmate Place.</p> <p>Inmate Place means a cell at the Correctional Centre (which, when occupied by two Inmates or three Inmates, will be treated as two cells or three cells, respectively) up to the maximum number of Available Inmate Places to be provided by Manage Co which is no less than 441.</p> <p>Available Inmate Place means, on any day during the Operating Phase, an Inmate Place:</p> <p>(a) which achieves the minimum standards as specified in the Output Specification, the Proposal and Policies, in respect of:</p> <p>(i) lighting (appropriate levels of lighting are available for night observation of Inmates by Staff);</p> <p>(ii) power outlets (except for designated cells where no power outlets are provided for safety and behavioural reasons);</p> <p>(iii) water supply;</p> <p>(iv) bathroom amenities (availability, operation, control, and drainage);</p> <p>(v) security door;</p> <p>(vi) air circulation;</p> <p>(vii) fire protection;</p> <p>(viii) the following security systems:</p> <p>A. Cell and pass locks</p> <p>B. Detection systems (incl. video, motion, microphonics)</p> <p>C. Alarm Systems (incl. Duress)</p> |

| KPI 19 | Inmate Place Unavailability |
|------------------------------|---|
| | <ul style="list-style-type: none"> D. Metal Detector (Walk through) E. XRAY Detection Systems F. CCTV / Video Systems G. Access Door Systems H. Cell Call System; <p>(b) all Laws relating to Inmate Places or any Inmate occupying Inmate Places were complied with in full;</p> <p>(c) any Inmate occupying an Inmate Place had available appropriate health services in accordance with the Output Specification and the Services Proposal;</p> <p>(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;</p> <p>(e) any Inmate occupying that Inmate Place had access to potable water;</p> <p>(f) any Inmate occupying an Inmate Place had access to appropriate mattress, bedding and a pillow; and</p> <p>(g) the levels of safety and security in the Correctional Centre were maintained as required under the Output Specification and Performance Regime.</p> <p>Rectification Period has the meaning given to it in Schedule 16 (Payment Schedule)</p> |
| <p>Counting Rules</p> | <p>To the extent that an Inmate Place Unavailability continues beyond the end of the nth Month, Quality Failure Points will be calculated for that Inmate Place Unavailability in the nth Month and any subsequent Month until the Inmate Place Unavailability is Rectified.</p> <p>For the avoidance of doubt, the calculation of Quality Failure Points in any such subsequent Month will utilise the higher amount of Quality Failure Points 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)).</p> <p>For example, the Rectification Period for an Inmate Place Unavailability expires at [REDACTED]. The Inmate Place Unavailability is not Rectified until [REDACTED]. The Quality Failure Points for that Inmate Place Unavailability would be calculated as:</p> |

| | |
|--|--|
| KPI 19 | Inmate Place Unavailability |
| | <ul style="list-style-type: none"> • [REDACTED] QFPs x [REDACTED] days = [REDACTED] (in respect of [REDACTED]); • [REDACTED] QFPs x [REDACTED] days = [REDACTED] (in respect of [REDACTED]); <p>The Quality Failure Points for the Inmate Place Unavailability total [REDACTED]</p> |
| Reporting Requirements of Manage Co | <p>Manage 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 Inmate Place Unavailability, Manage Co must record the following:</p> <ul style="list-style-type: none"> • a unique identification number; • the nature of the Inmate Place Unavailability; • the date, time, extent and duration of the Inmate Place Unavailability; • the specific location of the Inmate Place Unavailability; • the required and actual Rectification Period; and • the Quality Failure Points attributable to the Inmate Place Unavailability. <p>Where the Inmate Place Unavailability gives rise to Critical Incidents, Manage Co is to separately provide a critical incident report.</p> |
| Reporting Period | Monthly |

2.20 KPI 20 – Meal Failures

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|--|---|
| KPI 20 | Meal Failures |
| Formula | Number of Meal Availability Failures in the relevant Month |
| Calculation of Quality Failure Points | The Quality Failure Points which Manage Co will accrue each Month is ■ points per Meal Availability Failure. |
| Definitions | <p>CSI means Corrective Services Industries.</p> <p>Meal Availability Failure means a failure to provide any Inmate food (to the extent that the Inmate is physically present at the Correctional Centre at the time of the food) in accordance with the minimum services requirements for Food Services set out in the Output Specification and Manage Co's other obligations in relation to food set out in this Agreement.</p> |
| Counting Rules | <p>Count the number of Meal Availability Failures.</p> <p>Exclude:</p> <ul style="list-style-type: none"> • Manage Co will be entitled to a relief from the Meal Availability Failure to the extent that the Meal Availability Failure is a direct result of the State (or CSI on behalf of the State) failing to comply with its obligations under section 1 of Schedule 33 and it was not reasonably practicable to identify that failure using visual inspections or sample tests which Manage Co is obliged to perform under this Agreement. |
| Reporting Requirements of Manage Co | <ul style="list-style-type: none"> • Report the number of Meal Availability Failures. |
| Reporting Period | Monthly |

3. Charge Events

3.1 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 Centre 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 Centre, or outside the Correctional Centre during participation in a temporary leave program or when the Inmate is being (or is required to be) escorted by Manage 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 Manage 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 Centre, 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 Manage 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 Manage Co or its Associates. • Manage 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 |

3.2 Charge Event 2 - Escapes

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|--|---|
| Charge Event 2 | Escapes |
| Formulae | Number of Escapes from Secure Custody |
| Charge | Each Escape from Secure Custody results in a charge of [REDACTED] |
| Definitions | <p>Escape means the departure (regardless of duration), without lawful authority, of an Inmate:</p> <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 Manage Co or its Associates. <p>Secure Custody means any Correctional Centre classified by the State as maximum security or medium security.</p> |
| 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). |
| Reporting Requirements of Manage 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 Manage Co or its Associates. • Manage 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 |

3.3 Charge Event 3 - Major Disruption to Correctional Operations

| | |
|--|--|
| Charge Event 3 | Major Disruption to the operation of the Correctional Centre |
| Formula | Number of Major Disruptions to the operation of the Correctional Centre |
| Charge | Each Major Disruption results in a charge of [REDACTED] 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 Manage Co or its Associates (whether or not by physical or electronic failure or otherwise) of any part of the Correctional Centre (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 Manage Co or its Associates; (b) the taking of a hostage (whether an Inmate or Non-Inmate); (c) a riot in the Correctional Centre; or (d) the State lawfully intervening to restore good order or security to any part of the Correctional Centre (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 Manage 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 Manage Co | <ul style="list-style-type: none"> • Complete Incident Report Module requirements. • 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. |

| | |
|-------------------------|--|
| Charge Event 3 | Major Disruption to the operation of the Correctional Centre |
| | <ul style="list-style-type: none">• Damage to the Correctional Centre or any other location where the incident occurred. |
| Reporting Period | Monthly |

3.4 Charge Event 4 - Compliance with Release Dates

| | |
|-------------------------------|--|
| Charge Event 4 | Compliance with Release Dates |
| Formulae | <p>Number of Erroneous Releases</p> <p>Number of Erroneous Detentions</p> |
| Charge | <p>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 ██████</p> <p>Each Erroneous Detention results in a charge of ██████ per day from the date of the Erroneous Detention until the Inmate is released from custody.</p> |
| Definitions | <p>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.</p> <p>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.</p> |
| Counting Rules | <p>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.</p> <p>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.</p> |
| Reporting Requirements | <p>For each Erroneous Detention:</p> <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. <p>For each Erroneous Release:</p> <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 |

Schedule 18 — Not Used

[Not used]

Schedule 19 — Not Used

[Not used]

Schedule 20 — Not Used

[Not used]

Schedule 21 — Not Used

[Not used]

Schedule 22 — Insurance

Introduction

There are three parts to this Schedule:

- Part A — Insurance during the Transition Phase to be procured and maintained by Manage Co;
- Part B — Insurance during the Transition Phase to be procured maintained by the State; and
- Part C — Insurance during the Operating Phase to be procured and maintained by Manage Co.

Part A — Insurance during the Transition Phase

Manage 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.

Summary of cover required:

- (a) Legal Liability cover;
- (b) Not used;
- (c) Workers' Compensation cover;
- (d) Motor Vehicle cover; and
- (e) Miscellaneous covers,

each as provided in the TMF statement of cover from time to time.

(a) Legal Liability cover

| | |
|---------|--|
| Insured | Each of: <ul style="list-style-type: none">▪ Manage Co and its Associates;▪ the State and its Associates in respect of their vicarious liability for the acts and omissions of Manage Co or any of its Associates; and <p>For the avoidance of doubt, the State and its Associates must be included as an Insured under this policy for all acts or omissions committed during the implementation of the Services (whether or not the liability is vicarious or caused by the act/omission of the State or its relevant Associate).</p> |
|---------|--|

(b) Not used

(c) Workers' Compensation cover

| | |
|---------|--|
| Insured | Each party is required to procure its own Workers' Compensation cover and, in respect of its statutory obligations and otherwise as required by Law and commercial prudence. |
|---------|--|

(d) Motor Vehicle cover

| | |
|---------|--|
| Insured | Each party is required to procure and maintain its own insurance for vehicles to be used in connection with the Transition Phase Activities. |
|---------|--|

(e) Miscellaneous covers

| | |
|---------|---|
| Insured | Each party is required to procure and maintain its own cover for risks covered under the Miscellaneous covers of the TMF statement of cover in connection with the Transition Phase Activities. |
|---------|---|

Part B — Insurance during the Transition Phase to be procured and maintained by the State

The State must procure, or caused to be procured, and thereafter maintained, each of the Insurances specified in this Part B on the terms set out in this Part B.

Summary of cover required:

- (a) Contract Works Insurance (Material Damage);
- (b) Contract Works Insurance (Public Liability);
- (c) Contractors' Pollution Liability;
- (d) Marine Transit (Material Damage);
- (e) Workers Compensation Insurance; and
- (f) Motor Vehicle Insurance.

(a) Contract Works Insurance (Material Damage)

| Insurance element | Minimum Requirement |
|---|---|
| Party responsible for procuring the insurance | Any of: <ul style="list-style-type: none"> ▪ the State; or ▪ any one or more Contractor (UW). |
| Insured | Each of: <ul style="list-style-type: none"> ▪ the State and its Associates (including any Contractor (UW)); and ▪ Justice Health and any of its Associates, and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Upgrade Works. |
| Sum insured | The full cost of reinstatement or replacement of the Upgrade Works based on the capital cost of those works. |
| Scope of cover | Physical loss, destruction or damage to the Upgrade Works including construction and reinstatement of the Upgrade Works, and testing and commissioning of plant and equipment insofar as it relates to the Upgrade Works. Insurance to include coverage at a minimum for the following: <ul style="list-style-type: none"> ▪ materials, plant and equipment on the Site; ▪ principal owned materials; ▪ continuation of cover for any part of the Upgrade Works handed over and put into use at any time prior to the whole of the Upgrade Works achieving completion; ▪ tunnelling (if part of the Upgrade Works), trenching and dewatering; ▪ off site fabrication; ▪ professional fees with a sub limit of at least ██████; ▪ removal of debris with a sub limit of at least ██████; ▪ expediting expenses with a minimum sub limit of ██████% of normal costs or ██████ for any one occurrence whichever is the lesser; ▪ ██████% contract price escalation; ▪ inland transit, off-site storage with a sub limit of at least ██████ in |

| Insurance element | Minimum Requirement |
|-------------------------|--|
| | <p>respect of inland transit and \$ [REDACTED] in respect of off-site storage;</p> <ul style="list-style-type: none"> ▪ subsidence/earth movement; ▪ civil works/excavation works; ▪ riots, strikes, industrial action; ▪ equipment commissioning and testing; ▪ temporary equipment and works, scaffolding and formwork; ▪ equipment excluding temporary equipment, but where in transit shall be subject to a sub-limit of not less than [REDACTED] and where in offsite storage shall be subject to a sub-limit of not less than [REDACTED] ▪ temporary protection and/or loss mitigation expenses, with a sub limit of at least [REDACTED]; 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 | Maximum deductible of [REDACTED] per claim |
| Additional requirements | N/A |
| Period of insurance | <p>From Commercial Close to the end of the later of:</p> <ul style="list-style-type: none"> ▪ the last of the defects liability periods (or equivalent related to the Upgrade Works) under any contract in relation to the Upgrade Works; and ▪ the Date of Operational Readiness. |

(b) Contract Works Insurance (Public Liability)

| Insurance element | Minimum Requirement |
|---|---|
| Party responsible for procuring the insurance | <p>Any of:</p> <ul style="list-style-type: none"> ▪ the State and its Associates; or ▪ any one or more Contractor (UW) |
| Insured | <p>Each of:</p> <ul style="list-style-type: none"> ▪ the State and its Associates (including any Contractor (UW)); and ▪ Justice Health and of its Associates, <p>and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Upgrade Works.</p> |
| Sum insured | [REDACTED] for any one occurrence or series of occurrences arising out of the same source or original cause in connection with the Upgrade Works, and unlimited in the aggregate during the period of insurance but in the |

| Insurance element | Minimum Requirement |
|-------------------------|--|
| | aggregate of all occurrences in any one period of insurance with respect to products and pollution liability and completed operations liability. |
| Scope of cover | <p>Legal liability (including to counterparties) for personal injury and/or property damage caused by an occurrence during the period of insurance, where such occurrence:</p> <ul style="list-style-type: none"> ▪ arises out of the construction/site works activities related to the Upgrade Works; or ▪ arises out of the occupation by any Insured of any part of the Site handed over and put into use at any time prior to the whole of the Upgrade Works achieving completion; ▪ occurs during any defects liability period or equivalent related to the Upgrade Works under any contract in relation to the Upgrade Work, and is caused by any Insured whilst remedying any defects in the Upgrade Works in accordance with its contractual rights or obligations. |
| Situation of risk | Anywhere in the Commonwealth of Australia. |
| Retroactive date | N/A |
| Deductibles | Maximum deductible of ████████ per claim |
| 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 Upgrade Works. ▪ 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 | <p>From Commercial Close to the end of the later of:</p> <ul style="list-style-type: none"> ▪ the last of the defects liability periods or equivalent for the Upgrade Works under any contract in relation to the Upgrade Works; and ▪ the Date of Operational Readiness Date. |

(c) Contractors Pollution Liability

| Insurance element | Minimum Requirement |
|-------------------|---------------------|
|-------------------|---------------------|

| Insurance element | Minimum Requirement |
|---|--|
| Party responsible for procuring the insurance | Any of: <ul style="list-style-type: none"> ▪ the State; or ▪ any one or more Contractor (UW) |
| Insured | The State and its Associates (including any Contractor (UW)) and each other party which has an insurable interest or is required to be insured under any Project Document relating to any Upgrade Works. |
| Sum insured | <ul style="list-style-type: none"> ▪ \$██████████ per pollution condition; and ▪ \$██████████ aggregate policy limit. |
| Scope of cover | For legal liability (including to counterparties) for death, personal injury, loss of or damage to third party property and clean up costs as a result of pollution conditions caused by the Upgrade Works. |
| Situation of risk | Anywhere in the Commonwealth of Australia. |
| Retroactive date | N/A |
| Deductibles | Maximum of \$██████████ per claim |
| Additional requirements | <ul style="list-style-type: none"> ▪ Stand alone. ▪ Occurrence wording. ▪ Principal/contractor controlled. ▪ Third party property damage for the assets of the State or any Associate of the State. ▪ The policy must be procured and maintained on a project specific basis. ▪ The policy must specifically cover: <ul style="list-style-type: none"> (a) sudden, accidental and gradual pollution; (b) remediation costs; (c) liability connected with asbestos (including without limiting, liability for soil and groundwater pollution); (d) legal defence costs; and (e) biodiversity and natural resource damages. ▪ Cross liability clause. ▪ Severability and non imputation clauses. |
| Period of insurance | From Commercial Close to the end of the later of: <ul style="list-style-type: none"> ▪ the last of last of the defects liability periods or equivalent for the Upgrade Works under any contract in relation to the Upgrade Works; and ▪ the Date of Operational Readiness. |

(d) Marine Transit (Material Damage)

| Insurance element | Minimum Requirement |
|---|--|
| Party responsible for procuring the insurance | Any of: <ul style="list-style-type: none"> ▪ the State and its Associates; or ▪ any one or more Contractor (UW). |
| Insured | Each of: <ul style="list-style-type: none"> ▪ the State and its Associates (including any Contractor (UW)); and ▪ Justice Health and its Associates, and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Upgrade Works. |
| Level of cover | Marine Transit 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. |
| Scope of cover | Unless covered under the Contract Works (Material Damage) insurance in respect of the Upgrade 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 Upgrade Works. |
| Situation of risk | Worldwide. |
| Retroactive date | N/A |
| Maximum deductibles | Marine Transit Maximum deductibles \$ [REDACTED] |
| Additional requirements | Nil |
| 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 Site. |

(e) Workers Compensation Insurance

| Insurance element | Minimum Requirement |
|---|--|
| Party responsible for procuring the insurance | The State |
| 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 | As required by Law. |
| Annual Premium | N/A. |
| Excess | N/A. |

| Insurance element | Minimum Requirement |
|-------------------------|--|
| Waiting Period | No waiting period. |
| Additional requirements | N/A. |
| Period of cover | For a period commencing on the date of Commercial Close and ending on the Date of Operational Readiness. |

(f) Motor Vehicle Insurance

| Insurance element | Minimum Requirement |
|---|---|
| Party responsible for procuring the insurance | The State ▪ |
| Insured | Each party is required to procure and maintain its own insurance for vehicles to be used in connection with the Upgrade Works. |
| Level of cover | Minimum coverage of \$ [REDACTED] 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 Upgrade Works. |
| Retroactive date | N/A. |
| Deductibles | 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. 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 Contract Works Insurance (Public Liability)). |
| Period of cover | For a period commencing on the date of Commercial Close and ending on the Date of Operational Readiness. |

Part C — Insurance during the Operating Phase

Manage Co must procure, or cause to be procured, and thereafter maintained, each of the insurances with respect to the Site or Project specified in this Part C for the applicable period of insurance upon the minimum terms specified in this Part C.

Summary of Operating Phase insurances required:

- (a) Property cover;
- (b) Legal Liability cover;
- (c) Not used
- (d) Workers' Compensation cover;
- (e) Motor Vehicle cover; and
- (f) Miscellaneous covers.,

each as provided in the TMF statement of cover from time to time.

(a) Property cover

| | |
|-----------------|---|
| Insured | Each of: <ul style="list-style-type: none"> ▪ Manage Co and its Associates; ▪ the State and its Associates; and ▪ Justice Health and any of its Associates, and any other party which has an insurable interest or is required to be insured under any Project Document in relation to the Site. |
| Period of cover | For a period of 12 months commencing on the Operational Commencement Date, to be renewed annually until the Expiry Date. |

(b) Legal Liability cover

| | |
|-----------------|--|
| Insured | Each of: <ul style="list-style-type: none"> ▪ Manage Co and its Associates; ▪ the State and its Associates in respect of their vicarious liability for the acts and omissions of Manage Co or any of its Associates; and For the avoidance of doubt, the State and its Associates must be included as an Insured under this policy for all acts or omissions committed during the implementation of the Services (whether or not the liability is vicarious or caused by the act/omission of the State or its relevant Associate). |
| Period of cover | For a period of 12 months commencing on the Operational Commencement Date, to be renewed annually until the Expiry Date. |

(c) Not used

(d) Workers' Compensation cover

| | |
|-----------------|---|
| Insured | Each party is required to procure its own Workers' Compensation and Employer's Liability cover, in respect of its statutory obligations and otherwise as required by Law and commercial prudence. |
| Period of cover | From the Operational Commencement Date until the Expiry Date. |

(e) Motor Vehicle cover

| | |
|-----------------|--|
| Insured | Each party to procure its own insurance for vehicles to be used in connection with the Services. |
| Period of cover | From the Operational Commencement Date until the Expiry Date. |

Schedule 23 — Commercially Sensitive Information Schedule

The commercially sensitive information set out in the table below, as it appears in:

- (a) this Deed;
 - (b) each Key Subcontract and each Significant Subcontract; and
 - (c) other documents and correspondence, including electronic email messages, steering or similar,
- is Commercially Sensitive Information for the purposes of this Deed.

For the avoidance of doubt, any \$ amount, or % amount in the Key Subcontracts and each Significant Subcontract is Commercially Sensitive Information for the purposes of this Deed.

| Reference | Title | Confidential Information |
|---------------------|--|--|
| Project Deed | | |
| General | | References to names or personal contact details contained in any Project Document (including in the notice provisions of any document) |
| Clause 1 | Definitions ('Default Termination Event') | References to any numerical amount, time period or % |
| Clause 1 | Definitions ('Major Default') | References to any numerical amount, time period or % |
| Clause 1 | Definitions ('Minor Assets') | References to any numerical amount |
| Clause 1 | Definitions ('Minor Modification') | References to any numerical amount |
| Clause 1 | Definitions ('Unidentified Pre-Existing Defect') | References to any numerical amount |
| Clause 12.2(d) | Prescribed terms | References to any additional costs referenced in this paragraph |
| Clause 36.1 | State's payment obligations | References to any numerical amount |
| Clause 37 | Expiry obligations | References to any % amount |
| Schedule 1 | Contract Particulars | References to names or personal contact details, any \$ amount, or % amount |
| Schedule 5 | Change Compensation Principles | References to any \$ amount, or % amount (including Margins) |
| Schedule 16 | Payment Schedule | References to any \$ amount, or % amount |
| Schedule 17 | Performance Regime | References to any \$ amount, or % amount |
| Schedule 22 | Insurance | References to the amount of any deductible |
| Schedule 24 | Termination Payments Schedule | References to any subcontractor |

| | | |
|--------------|----------------------------------|---|
| | | breakage costs |
| Schedule 25 | Handover Reviewer Deed | References to any \$ amount |
| Schedule 32 | Initial Rectification Schedule | All |
| Schedule 33 | Food and Laundry Services | References to any \$ amount, % amount or other numerical amount References to any day or time of day |
| Schedule 35 | Manage Co Equipment | All |
| Schedule 36 | Upgrade Works | All |
| Annexure B | Services Proposal | All |
| Attachment 2 | Initial Transition Phase Plans | All |
| Attachment 3 | Initial Transition Phase Program | All |
| Attachment 5 | Initial Operating Phase Plans | All |

Schedule 24 — Termination Payments Schedule

1. Definitions

For the purposes of this Schedule, the following definitions shall apply:

Compensation Date means either:

- (a) [Not used]; or
- (b) the date on which the Termination Payment under section 3 has been agreed or resolved pursuant to dispute resolution in accordance with clause 50.

Force Majeure Subcontractor Breakage Costs

[Redacted]

[Redacted]

Termination Date means the date of termination of this Agreement in accordance with clause 49 (*Termination*).

Voluntary Termination Amount means the amounts identified in the table in section 4.

2. Payment of Termination Payment

2.1 Timing of payment and instalment option

- (a) Subject to section 6, if this Agreement is terminated under clause 49 (*Termination*), the State must pay Manage 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*), 30 days after the Compensation Date if this is later).
- (b) [Not used]
- (c) [Not used]
- (d) [Not used]
- (e) [Not used]
- (f) If the State fails to make a payment to Manage Co in accordance with section 2.1(a) within the time period specified in section 2.1(a), Manage 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 Overdue Rate. 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*) or 5 (*Force Majeure*) of this Schedule, from and including the Termination Date to (and excluding) the date on which the Termination Payment is paid in full. Interest shall accrue on that Termination Payment at the Overdue Rate. 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 Agreement, if the calculation of the Termination Payment requires the parties to take into account insurance proceeds that have not yet been received by Manage Co, 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 Manage Co is reasonably likely to recover assuming that Manage Co has complied with its insurance obligations under clause 46 (*Insurance*) (**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 Manage Co actually recovers (**Actual Proceeds**) are less than the Provisional Proceeds, the State shall, immediately upon notification of the Actual Proceeds by Manage Co, pay to Manage 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 Manage Co to immediately upon receipt of the Actual Proceeds, pay to the State an amount equal to that by which the Actual Proceeds exceed the Provisional Proceeds (**Manage 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 Manage Co Additional Amount,and Manage Co will not be required to pay any interest on any Manage Co Additional Amount.
- (d) The State shall not be required to make any payment under section 2.1(b)(i) to the extent that the Actual Proceeds are less than the Provisional Proceeds as a result of a breach by Manage Co of its obligations under this Agreement.
- (e) References to insurance proceeds in sections 2.3(b) to 2.3(d) (inclusive) are to insurance proceeds that Manage Co 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) Manage Co must use all reasonable endeavours to mitigate any losses or costs forming part of any Termination Payment.

- (b) Any Termination Payment payable to any party must be calculated in accordance with this Schedule without any double counting.
- (c) [Not used]

3. Termination for Default Termination Event

3.1 [Not used]

3.2 [Not used]

3.3 [Not used]

3.4 [Not used]

3.5 [Not used]

3.6 Termination for Default Termination Event

If this Agreement is terminated pursuant to clause 49.4 (*Default Termination Event*), the Termination Payment shall be calculated as follows:

Termination Payment or TP means:

[REDACTED]

where:

- A** = any amounts due and payable by the State to Manage 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;
- B** = for the period from the Termination Date to and including the Final Expiry Date (assuming that there are no extensions under clause 4), the aggregate costs associated with alternative performance of the Project Activities but only to the extent such costs exceed the cost component to the State of the Transition Phase Payments and Monthly Service Payments relating to the performance of the Project Activities (whether or not any such Project Activities are undertaken);
- C** = amounts that the State is entitled to set off or deduct under this Agreement including, for the avoidance of doubt, the costs of carrying out any works to ensure that the Correctional Centre is in accordance with the requirements of this Agreement 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 Agreement;
- D** = any amounts owing by Manage Co to the State under the State Project Documents as at the Termination Date;
- E** = the net amount (which, for the avoidance of doubt, shall be net of any amount deductible under the relevant insurance policy) Manage Co is entitled to retain, or would be entitled to retain had Manage Co complied with the requirements of clause 46 (*Insurance*) and the relevant insurance policy, under any insurance policy; and
- F** = any amounts paid to Manage Co by the State (including as a component of the Monthly Service Payment) for maintenance, refurbishment, capital replacement or lifecycle capital expenditure where that maintenance, refurbishment, capital replacement or lifecycle capital expenditure has not been carried out by Manage Co.

4. Voluntary Termination

If this Agreement is terminated pursuant to clause 49.2 (*Voluntary Termination*), the Termination Payment shall be calculated as follows:

[REDACTED]

where:

A = the Voluntary Termination Amount for the relevant period as determined by the State in accordance with the following table:

| Voluntary Termination Amount | |
|--|---------------------------------|
| Period | Voluntary Termination Cost (\$) |
| From Commercial Close until midnight on the day immediately prior to the Date of Operational Readiness | [REDACTED] |
| Contract Year 1* | [REDACTED] |
| Contract Year 2 | [REDACTED] |
| Contract Year 3 | [REDACTED] |
| Contract Year 4 | [REDACTED] |
| Contract Year 5 | [REDACTED] |
| Contract Year 6 | [REDACTED] |
| Contract Year 7 | [REDACTED] |
| First Extension Period | |
| Contract Year 8 | [REDACTED] |
| Contract Year 9 | [REDACTED] |
| Contract Year 10 | [REDACTED] |
| Contract Year 11 | [REDACTED] |
| Contract Year 12 | [REDACTED] |

***Note: Contract Year means:**

- (a) for Contract Year 1, the period commencing on the Date of Operational Readiness and ending one day prior to the anniversary of the start of that year;
- (b) subject to paragraph (c), each subsequent 12 Month period during the Operating Phase commencing on the anniversary of the start of Contract Year 1; and
- (c) for the final Contract Year, the period from the end of the last full Contract Year (as defined in paragraph (b)) to the Expiry Date.

For the avoidance of doubt, the Voluntary Termination Amount includes all costs, on and off Site overheads, profit, subcontractor breakage costs and redundancy costs (except to the extent otherwise covered by items B to D (inclusive) below.

- B** = any amounts owing by Manage Co to the State under the State Project Documents as at the Termination Date;
- C** = the net amount (which, for the avoidance of doubt, shall be net of any amount deductible under the relevant insurance policy) Manage Co is entitled to retain, or would be entitled to retain had Manage Co complied with the requirements of clause 46 (*Insurance*) and the relevant insurance policy, under any insurance policy;
- D** = any amounts due and payable by the State to Manage 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; and
- E** = the costs (if any) which are required to be incurred to ensure that the Correctional Centre and the Site meets the Handover Condition as at the Expiry Date.

5. Force Majeure

If this Agreement is terminated pursuant to clause 44.6 (Consequences of State election not to repair or rebuild), 47.3 (Agreed Uninsurable Risks resulting in loss or damage) or clause 49.3 (*Termination for Force Majeure*), the Termination Payment shall be calculated as follows:



where:

- A** = any amounts due and payable by the State to Manage 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;
- B** = any amounts owing by Manage Co to the State under State Project Documents as at the Termination Date;
- C** = the net amount (which, for the avoidance of doubt, shall be net of any amount deductible under the relevant insurance policy) Manage Co is entitled to retain, or would be entitled to retain had Manage Co complied with the requirements of clause 46 (*Insurance*) and the relevant insurance policy, under any insurance policy;
- D** = an amount equal to the Force Majeure Subcontractor Breakage Costs; and
- E** = 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.

6. Negative Termination Payment

If the Termination Payment calculated under this Schedule is a negative number, Manage Co must pay the absolute value of that amount to the State on or before the date which is 30 days after the Termination Date.

Schedule 25

John Morony Correctional Centre Handover Reviewer Deed of Appointment

The Commissioner of Corrective Services for and on behalf of the Crown in right of the State of New South Wales, excluding Manage Co (**State**)

The administrative business unit of Corrective Services NSW, Department of Justice, formed for the purposes of operating and managing the Correctional Centre, in its capacity as Manage Co in this Agreement (**Manage Co**)

[Insert Handover Reviewer] (Handover Reviewer)

[insert ABN]

Schedule 25 — Handover Reviewer Deed of Appointment

Contents

| | | |
|-----------|---|-----------|
| 1. | Definitions and interpretation | 5 |
| 1.1 | Management Deed definitions incorporated | 5 |
| 1.2 | Definitions | 5 |
| 1.3 | Interpretation | 6 |
| 1.4 | Business Day | 8 |
| 1.5 | Joint and several Liability of Handover Reviewer | 8 |
| 1.6 | Several Liability of the Project Parties | 8 |
| 1.7 | Relationship of the parties | 8 |
| 1.8 | Approvals, directions and notices in writing | 8 |
| 1.9 | State's rights and obligations | 9 |
| 2. | Conditions precedent | 9 |
| 2.1 | Conditions precedent | 9 |
| 2.2 | [Not used] | 9 |
| 3. | General obligations of the Handover Reviewer | 9 |
| 3.1 | Appointment | 9 |
| 3.2 | Services | 9 |
| 3.3 | Effect of Services Schedule | 9 |
| 3.4 | Warranties | 10 |
| 4. | [Not used] | 10 |
| 5. | Performance by Handover Reviewer | 10 |
| 5.1 | Standard of care | 10 |
| 5.2 | Duty to act honestly, fairly and independently | 10 |
| 5.3 | Time requirements | 11 |
| 5.4 | Conflict of interest | 11 |
| 5.5 | Communications with Project Parties | 11 |
| 5.6 | No authority to give directions or waive requirements | 11 |
| 5.7 | Acknowledgement of reliance | 11 |
| 5.8 | Knowledge of Project Parties' requirements | 11 |
| 5.9 | Co-ordination and co-operation | 12 |
| 5.10 | Personnel | 12 |
| 5.11 | Key People | 12 |
| 5.12 | Handover Reviewer's Representative | 12 |
| 5.13 | Subcontracting | 13 |
| 6. | Role of the Project Parties | 13 |
| 6.1 | No interference or influence | 13 |
| 6.2 | Provision of information | 13 |
| 6.3 | Access to records and systems | 13 |
| 6.4 | Access to premises | 13 |
| 6.5 | Right to enter, inspect and test | 13 |
| 6.6 | Meetings | 14 |
| 6.7 | Co-operation | 14 |
| 6.8 | Project Parties not liable | 14 |
| 7. | Reporting and meetings | 14 |
| 7.1 | Progress reports | 14 |
| 7.2 | Project Control Group | 15 |
| 7.3 | Meetings with Project Parties | 15 |
| 7.4 | Reports requested by one Project Party | 15 |
| 7.5 | Questions relating to a report | 15 |

| | | |
|------------|--|-----------|
| 8. | Quality | 15 |
| 8.1 | Quality assurance system | 15 |
| 8.2 | Audit | 16 |
| 8.3 | Quality assurance not to relieve Handover Reviewer | 16 |
| 8.4 | Non-complying services | 16 |
| 9. | Liability, insurance and indemnity | 17 |
| 9.1 | Limitation of Liability | 17 |
| 9.2 | Exclusions | 17 |
| 9.3 | Insurances | 17 |
| 9.4 | Notice of matter affecting insurance | 18 |
| 9.5 | Provision of information | 18 |
| 9.6 | Periods for insurance | 18 |
| 9.7 | Obligations unaffected by insurance | 19 |
| 9.8 | Indemnity | 19 |
| 9.9 | Proportionate Liability | 19 |
| 10. | Payment | 19 |
| 11. | Change to or suspension of Services and appointment of Substitute Certifier | 19 |
| 11.1 | Change to Services | 19 |
| 11.2 | Appointment of Substitute Certifier | 20 |
| 11.3 | Handover Reviewer must continue to perform | 20 |
| 11.4 | Suspension of Services | 20 |
| 11.5 | Meeting of all Project Parties | 20 |
| 12. | Termination | 20 |
| 12.1 | Notice of default | 20 |
| 12.2 | Termination for breach | 21 |
| 12.3 | Termination for insolvency | 21 |
| 12.4 | Termination for convenience | 21 |
| 12.5 | No automatic termination upon termination of any State Project Document | 21 |
| 12.6 | Prior agreement on replacement | 21 |
| 12.7 | Handover Reviewer's rights upon termination for convenience | 21 |
| 12.8 | Termination without prejudice | 21 |
| 13. | Transition out | 22 |
| 13.1 | [Not used] | 22 |
| 13.2 | Delivery of documents | 22 |
| 13.3 | Reasonable assistance | 22 |
| 14. | GST | 22 |
| 15. | NSW Code and Guidelines | 23 |
| 15.1 | Reference | 23 |
| 15.2 | Primary Obligation | 23 |
| 15.3 | Access and information | 24 |
| 15.4 | Sanctions | 24 |
| 15.5 | Compliance | 24 |
| 16. | Dispute Resolution | 25 |
| 16.1 | Disputes to be resolved in accordance with the Management Deed | 25 |
| 16.2 | Notice of dispute | 25 |
| 16.3 | Executive negotiation | 25 |
| 16.4 | Reference to Mediation | 25 |
| 16.5 | Mediation | 25 |
| 16.6 | Place of mediation | 26 |
| 16.7 | Evidence not admissible | 26 |
| 16.8 | Costs | 26 |

| | | |
|------------|---|-----------|
| 16.9 | Reference to litigation | 26 |
| 16.10 | Condition precedent to litigation | 26 |
| 16.11 | Services to continue | 26 |
| 17. | [Not used] | 26 |
| 18. | Notices | 26 |
| 19. | Miscellaneous | 27 |
| 19.1 | Governing Law and jurisdiction | 27 |
| 19.2 | Entire agreement | 27 |
| 19.3 | Further acts and documents | 28 |
| 19.4 | Survival of certain provisions | 28 |
| 19.5 | Waiver | 28 |
| 19.6 | Consents and approvals | 28 |
| 19.7 | Amendments | 28 |
| 19.8 | Expenses | 28 |
| 19.9 | Severance | 28 |
| 19.10 | Counterparts | 29 |
| 19.11 | Moratorium legislation | 29 |
| 19.12 | Proportionate liability | 29 |
| 19.13 | Indemnity held on trust | 29 |
| 19.14 | Assignment | 29 |
| 19.15 | Set off | 29 |
| 19.16 | No representation or reliance | 30 |
| 19.17 | Indemnities | 30 |
| | Schedule 1 — Contract Particulars | 32 |
| | Schedule 2 — Services | 34 |
| | Schedule 3 — Payment Schedule | 35 |
| | Schedule 4 — Resource Allocation pro forma | 39 |

Initial Period is the first six months of the Term commencing on the Commencement Date

Key People means the people identified as such in the Contract Particulars.

Operating Agreement means the document entitled '*John Morony Correctional Centre — Operating Agreement*' between the State and Manage Co dated on or about the date of this Deed.

Monthly Fee means the amount payable to the Handover Reviewer 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 Handover Reviewer 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 Parties means the State and Manage Co.

Project Parties' Representatives means, in respect of each of the State and Manage 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 Handover Reviewer 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 Handover Reviewer to perform the Services.

Resource Adjustment Order is the document issued by the Project Parties in accordance with section 11.5 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 Handover Reviewer under this Deed (including in the Services Schedule) or the State Project Documents, as varied in accordance with clause 11;
- (b) all other things or tasks which the Handover Reviewer must do to comply with its obligations under this Deed or the State Project Documents; and
- (c) without limiting paragraph (b), all other things and tasks not described in this Deed or the State Project Documents 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 or the State Project Documents.

Services Schedule means Schedule 2.

Substitute Certifier has the meaning given in clause 11.2(a).

Term means the period from the Commencement Date to the date [three months] after the later of the completion of the Final Refurbishment Works and the Expiry Date or such later date as agreed by the parties.

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) (**documents as amended**): a reference to a document, agreement or instrument, or a provision of any such document, deed, agreement or instrument includes a reference to that document, 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 such 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**): subject to clauses 1.6 and 1.10, 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 Manage Co or the Handover Reviewer) 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) [Not used].

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 Handover Reviewer

If the Handover Reviewer 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 Handover Reviewer to comply with any obligation in accordance with this Deed or otherwise.

1.6 Several Liability of the Project Parties

Without limitation to clause 1.10, 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 Handover Reviewer)**: The Handover Reviewer is acting as an independent contractor for the Project Parties and therefore the Handover Reviewer 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 Operating Agreement in relation to this Deed.
- (b) **(No Claim):** Subject to clause 1.9(c), Manage Co and the Handover Reviewer 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 Manage Co or the Handover Reviewer 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.

1.10 Nature of relationship

Subject to the provisions of this Deed and notwithstanding that the State and Manage Co are not separate legal entities:

- (a) the State and Manage Co intend for this Deed to be implemented between them as though it is an arm's length contract between separate entities;
- (b) a reference to the State is a reference to the State in the capacity described in this Deed; and
- (c) a reference to Manage Co is a reference to Manage Co in the capacity described in this Deed.

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 Operating Agreement by all parties to the Operating Agreement,

(Commencement Date).

2.2 [Not used]

3. General obligations of the Handover Reviewer

3.1 Appointment

- (a) **(Appointment):** Each of the Project Parties appoint the Handover Reviewer under this Deed to perform the Services for the benefit of each of the Project Parties.
- (b) **(Acceptance of appointment):** The Handover Reviewer confirms its acceptance of the appointment.

3.2 Services

The Handover Reviewer must carry out the Services in accordance with this Deed for the Term.

3.3 Effect of Services Schedule

The Project Parties and the Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer under the Project Documents with reference to the facts and circumstances then subsisting.

4. [Not used]

5. Performance by Handover Reviewer

5.1 Standard of care

The Handover Reviewer 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, fairly and independently

The Handover Reviewer must, in performing the Services act honestly, professionally and independently of the Project Parties and their respective contractors, suppliers and consultants.

5.3 Time requirements

The Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer must ensure that a copy of each written communication between the Handover Reviewer 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 Handover Reviewer has no authority to:

- (a) give directions to the Project 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
- (c) discharge or release a party from any of its obligations under the State Project Documents.

5.7 Acknowledgement of reliance

The Handover Reviewer acknowledges that each Project Party:

- (a) is entitled to, and will, rely on:
 - (i) the skill and expertise of the Handover Reviewer in the performance of the Services; and
 - (ii) any certificate signed or given by the Handover Reviewer under the State Project Documents; and
- (b) may suffer Liability if the Handover Reviewer does not perform the Services in accordance with the requirements of this Deed.

5.8 Knowledge of Project Parties' requirements

The Handover Reviewer warrants that:

- (a) it has informed itself of the requirements of the State Project Documents 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 Handover Reviewer must perform in accordance with the State Project Documents;

- (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 Handover Reviewer must, in performing the Services:

- (a) co-operate with the Project Parties and their respective contractors, suppliers and consultants;
- (b) co-ordinate the Services with the work to be performed by the Project Parties, and their respective contractors, suppliers and consultants; and
- (c) avoid any unreasonable interference, disruption or delay to the work to be performed by the Project Parties, and their respective contractors, suppliers and consultants.

5.10 Personnel

The Handover Reviewer 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.

5.11 Key People

Without limiting its obligations in accordance with clause 5.10, the Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer's Representative

The Handover Reviewer:

- (a) has nominated the Handover Reviewer'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 Handover Reviewer'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 Handover Reviewer's Representative has the power and authority to bind the Handover Reviewer.

5.13 Subcontracting

The Handover Reviewer:

- (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 Handover Reviewer in the performance of any of the Services. A communication allowed by this Deed or the Operating Agreement 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 Handover Reviewer in respect of any aspect of the Project Activities.

6.2 Provision of information

Manage Co must, as soon as practicable, ensure that the Handover Reviewer is provided with all information, assistance, documentation, models and particulars as the Handover Reviewer reasonably requests:

- (a) relating to the Services;
- (b) required under the State Project Documents to be provided to the Handover Reviewer; and
- (c) to enable it to perform the Services effectively and otherwise in accordance with the State Project Documents and this Deed.

6.3 Access to records and systems

Without limiting the obligations of Manage Co under the State Project Documents or clause 6.2, Manage Co must provide the Handover Reviewer with such information and documentation (including all Design Deliverables) and access to Manage Co's books, records and systems as the Handover Reviewer 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

Manage Co must ensure that the Handover Reviewer 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 Handover Reviewer to perform the Services effectively and in accordance with the requirements of this Deed and the State Project Documents.

6.5 Right to enter, inspect and test

- (a) **(Right of entry):** Subject to clause 6.5(b), the Handover Reviewer (or any person authorised by the Handover Reviewer) may during Business Hours or upon giving reasonable notice to Manage Co (except in the case of an emergency when no notice is required) enter the Site or the offices of Manage 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 Handover Reviewer has in accordance with any State Project Document; or

- (iii) take such other action as the Handover Reviewer 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 Handover Reviewer must and must ensure any authorised person:
 - (i) complies with the Correction Centre Access 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) **(Manage Co to assist):** If requested by the Handover Reviewer, Manage Co must assist the Handover Reviewer 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 Manage Co Materials as may be required by the Handover Reviewer;
 - (ii) preparing samples of materials used in connection with the Relevant Infrastructure as required by the Handover Reviewer; and
 - (iii) forwarding the samples prepared in accordance with clause 6.5(c)(ii) to the Handover Reviewer or such other place or person notified by the Handover Reviewer.

6.6 Meetings

The Project Parties must:

- (a) allow the Handover Reviewer to attend design meetings; and
- (b) attend such meetings with the Handover Reviewer as the Handover Reviewer may reasonably request to enable it to perform the Services effectively and otherwise in accordance with this Deed.

6.7 Co-operation

Manage Co must and must ensure that Manage Co's contractors, suppliers and consultants co-operate with the Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer must submit a written report to each Project Party:

- (a) [Not used];
- (b) in such form as the Project Parties may reasonably require; and
- (c) containing details of:
 - (i) Manage Co's compliance (and details of any non-compliances) with the State Project Documents;
 - (ii) [Not used];
 - (iii) [Not used];
 - (iv) [Not used];
 - (v) [Not used];
 - (vi) [Not used];

- (vii) [Not used];
- (viii) any notices given by a Project Party to the Handover Reviewer and any notices issued by the Handover Reviewer;
- (ix) [Not used];
- (x) [Not used];
- (xi) [Not used];
- (xii) [Not used]; 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 Management Deed.
- (b) **(The Handover Reviewer's obligations)**: The Handover Reviewer must:
 - (i) attend any meetings 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 Handover Reviewer 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 Handover Reviewer to prepare an additional report which is not otherwise required by the State Project Documents.
- (b) **(Handover Reviewer to prepare report)**: The Handover Reviewer must prepare the additional report as requested in accordance with clause 7.4(a), except where the Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer in relation to a report issued in accordance with clause 7.1.
- (b) **(Handover Reviewer to respond)**: Subject to clause 5.5, the Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer proposes to adopt.

8.2 Audit

- (a) **(Independent Certifies must allow audits)**: The Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer

The Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer's total Liability under all Claims which the Project Parties might have (whether jointly or severally) against the Handover Reviewer:

- (a) arising in connection with this Deed;
 - (b) arising in connection with the Handover Reviewer 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 Handover Reviewer Functions or Handover Reviewer 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 Handover Reviewer or anyone for whom it is responsible:

- (a) criminal acts or fraud;
- (b) wilful misconduct, being any conduct, act or omission done or to be done by the Handover Reviewer or any officer, agent, adviser, consultant, contractor, subcontractor or employee of the Handover Reviewer 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;
- (c) gross negligence, being any negligent act or omission which the Handover Reviewer knew, or ought reasonably to have been aware, would result in substantial losses being incurred by a Project Party; or
- (d) abandonment of all or any material part of the Handover Reviewer Functions.

9.3 Insurances

- (a) **(Insurances):** The Handover Reviewer 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 Handover Reviewer;
 - (B) covering, without limitation, the Handover Reviewer'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 Handover Reviewer 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 Handover Reviewer, or if the Handover Reviewer is comprised of more than one party the persons employed by each such party in carrying out the Services.
- (b) **(Requirement 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 Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer in accordance with this Deed.

9.8 Indemnity

- (a) (**Breach and negligent act or omission**): Subject to clause 9.1, the Handover Reviewer is liable for and must indemnify each Project Party against any Claim or loss brought against, suffered or incurred by a Project Party arising out of, or in connection with, and to the extent caused by:
- (i) any breach of this Deed by the Handover Reviewer; or
 - (ii) any fraudulent, negligent, reckless, unlawful or malicious act or omission of the Handover Reviewer 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 Handover Reviewer'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 reductions in insurance covers**): The Handover Reviewer 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 Handover Reviewer in connection with it.
- (b) (**Reasonable endeavours**): To the extent that the Insurance is not specific to the Project, the Handover Reviewer 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 Handover Reviewer performing the Services in accordance with this Deed, the State will, subject to clause 7.4, pay to the Handover Reviewer 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 Handover Reviewer, instruct the Handover Reviewer to carry out a change to Services (including an addition or omission) which is within the general scope of this Deed. The Handover Reviewer 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 Manage Co.

11.2 Appointment of Substitute Reviewer

- (a) **(Appointment of Substitute Reviewer):** The Handover Reviewer 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 Reviewer)**.
- (b) **(Rights and powers):** The Substitute Reviewer will have all of the rights and powers of the Handover Reviewer under the Project Documents in connection with those Services.
- (c) **(Decisions):** Any decision of a Substitute Reviewer so appointed will be treated (between the Project Parties but not as between the Project Parties and the Handover Reviewer) as if it is a decision of the Handover Reviewer.
- (d) **(No responsibility for performance):** Without prejudice to any Claim which any Project Party may have in respect of the performance of the Handover Reviewer, the Handover Reviewer is not responsible for the performance of the Substitute Reviewer.

11.3 Handover Reviewer must continue to perform

Notwithstanding a change to the Services or the appointment of a Substitute Reviewer, the Handover Reviewer 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 Handover Reviewer, instruct the Handover Reviewer 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 Handover Reviewer's performance of the Services are suspended in accordance with clause 11.4(a), the State and Manage Co will pay the Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer comply with this Deed;
 - (ii) changing the Services of the Handover Reviewer in accordance with clause 11.1 and appointing a Substitute Certifier in accordance with clause 11.2 in connection with the Services which the Handover Reviewer is not performing in accordance with this Deed;
 - (iii) suspending the Services of the Handover Reviewer in accordance with clause 11.4; or
 - (iv) terminating the appointment of the Handover Reviewer in accordance with clause 12.

12. Termination

12.1 Notice of default

If the Handover Reviewer 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 Handover Reviewer:

- (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 Manage Co.

12.2 Termination for breach

If:

- (a) the Handover Reviewer 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 Handover Reviewer in accordance with clause 12.1(b),

then, subject to clause 12.6, the Project Parties may immediately terminate the appointment of the Handover Reviewer by joint notice to the Handover Reviewer.

12.3 Termination for insolvency

If an Insolvency Event occurs in respect of the Handover Reviewer then, subject to clause 12.6, the Project Parties may immediately terminate the appointment of the Handover Reviewer by joint notice to the Handover Reviewer, whether or not the Handover Reviewer 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 Handover Reviewer upon 21 days joint notice to the Handover Reviewer, and appoint another person to act as the Handover Reviewer.

12.5 No automatic termination upon termination of any State Project Document

The appointment of the Handover Reviewer 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 Operating Agreement 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 Handover Reviewer.

12.7 Handover Reviewer's rights upon termination for convenience

Where the appointment of the Handover Reviewer is terminated in accordance with clause 12.4:

- (a) the Handover Reviewer is only entitled to be paid by the State and Manage 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 Handover Reviewer will not otherwise be entitled to bring any Claim against the State or Manage 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 Handover Reviewer 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 [Not used]

13.2 Delivery of documents

Upon completion of the Services, or upon the termination of the appointment of the Handover Reviewer, the Handover Reviewer:

- (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 Handover Reviewer 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 Handover Reviewer, the Handover Reviewer must provide full assistance to the Project Parties and any successor to the Handover Reviewer 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 considerations 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 act.
- (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 that 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 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 Operating Agreement)**: If clause 36 (*Payments Adjustments & Taxes*) of the Operating Agreement would apply in connection with a Taxable Supply to which this clause 14 also applies then clause 36 (*Payments Adjustments & Taxes*) of the Operating Agreement 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 Handover Reviewer 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 Handover Reviewer must notify the New South Wales Industrial Relations 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 Handover Reviewer engages a subcontractor or consultant, the Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer;
 - (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 Handover Reviewer, its subcontractors, consultants, and related entities.
- (c) **(Production of documents):** The Handover Reviewer, 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 Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer, or its related entities, in respect of work to which the NSW Code and the NSW Guidelines apply.

15.5 Compliance

- (a) **(Cost):** The Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer proposes to take to mitigate any adverse impact of the change to the Services,

and the State will direct the Handover Reviewer 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 Management 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 Operating Agreement.

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 Handover Reviewer (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 Handover Reviewer 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 Handover Reviewer 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. [Not used]

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]

Manage Co:

Attention: [Insert]
Address: [Insert]
Email: [Insert]

Handover Reviewer:

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;
 - (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 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 Manage Co's or the Handover Reviewer's rights, powers and 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 Manage Co or the Handover Reviewer 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) **(Manage Co and Handover Reviewer Acknowledgement)**: Manage Co and the Handover Reviewer 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 Manage Co nor the Handover Reviewer 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 Management Deed, all moneys which the State may pay or incur and for which Manage Co is liable under the terms of the Operating Agreement 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 Manage Co under the Management Deed or may be recovered from Manage Co by action at Law or otherwise.
- (a) Notwithstanding any other provision of this Deed, the State may set off or deduct from any moneys payable by the State to the Handover Reviewer, under this Deed or otherwise, any amounts:
 - (i) for which the Handover Reviewer must reimburse the Project Parties;
 - (ii) which the Project Parties pay on the Handover Reviewer's behalf; or

- (iii) which are then due and payable by the Handover Reviewer to the Project Parties (whether or not such amounts are expressed to be a debt due from the Handover Reviewer to the Project Parties), under or in connection with this Deed or arising out of or in respect of or in connection with the Handover Reviewer 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]

Manage Co

[Execution block to be inserted prior to execution]

Handover Reviewer

[Execution block to be inserted prior to execution]

Schedule 1 — Contract Particulars

1. [Not used]

2. [Not used]

3. Other Handover Reviewer Contracts

4. Handover Reviewer's Representative

Name: [Insert]

Address: [Insert]

Email: [Insert]

5. Project Parties' Representatives

State: [insert]

Manage 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 Handover Reviewer's Liability

Limit: \$[Insert]

8. Professional indemnity insurance

Minimum limit of indemnity: \$20,000,000 for any one claim and in the aggregate

Maximum deductible: \$50,000

9. Public Liability insurance

Minimum limit of indemnity: \$20,000,000 for any single occurrence and unlimited in the aggregate as to the number of occurrences for any one period of insurance

Maximum deductible: \$25,000

10. Dispute resolution

State's Executive Negotiator: [insert]

Manage Co's Executive Negotiator: [Insert]

Handover Reviewer's Executive Negotiator: [Insert]

Mediator: [Insert]

Schedule 2 — Services

1. General

The Handover Reviewer must:

- (a) become familiar with the role (express or implied) under the State Project Documents of the "Handover Reviewer" and review information made available to the Handover Reviewer by the parties in order to become fully acquainted with the Project;
- (b) discharge the functions which the State Project Documents contemplate will be discharged by the Handover Reviewer;
- (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 Handover Reviewer under the Project Documents, including the Output Specification.

2. References to functions of the Handover Reviewer



| References to functions of the Handover Reviewer under the Operating Agreement | |
|--|------------------------------|
| Clause 1 | Definitions |
| Clause 37 | Expiry obligations |
| 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 Management Deed, the State will be liable for making any payments due to the Handover Reviewer under this Deed.
- (b) (**Payment for special reports**): Without limiting any provision of the Management Deed, the relevant Project Party requesting the preparation of an additional report under clause 7.4 will be solely responsible for payment to the Handover Reviewer for the costs associated with the preparation of such additional report.

2. Payment claim

- (a) (**Handover Reviewer to prepare and submit**): Subject to section 5, the Handover Reviewer must submit to the State and Manage Co a claim for payment on account of the Monthly Fee (not including any additional report required under clause 7.4):
 - (i) for the Services performed in accordance with this Deed during a month, at the end of the month; and
 - (ii) 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);
 - (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 Handover Reviewer 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 Handover Reviewer the Fee which the State believes represents the contract value of the Services performed by the Handover Reviewer 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 Handover Reviewer the amount which it believes represents the value of the Services performed by the Handover Reviewer relating to the preparation of the additional report during the period for which the payment claim is submitted.

4. Payment of wages by Handover Reviewer

- (a) (**Signed statement required**): Before a payment is made to the Handover Reviewer under section 3, the relevant Project Party may require the Handover Reviewer to give

Project Parties a statement signed by the Handover Reviewer stating that no wages or payments to any sub-contractors of the Handover Reviewer are due and owing by the Handover Reviewer in respect of the Services at the time of payment.

- (b) (**Possible to withhold money**): If, within 2 Business Days after the request, the Handover Reviewer 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 Handover Reviewer until the statement is received.

5. Insurance

Before a payment claim can be made by the Handover Reviewer under section 2(a), the Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer and all moneys paid to the Handover Reviewer under the terms of this Deed are or have been properly accounted for.

7. Notification of disputed amounts

If the State or Manage Co disputes any amount which the Handover Reviewer has claimed then the State or Manage Co (as applicable) must notify the Handover Reviewer of its reasons for disputing that amount within 20 Business Days after receipt of the relevant payment claim.

8. The Initial Fee

[Insert]

9. Schedule of Rates

[Insert]

10. Disbursements

The Handover Reviewer will:

- (a) (**Entitlement**): only be entitled to reimbursement of disbursements for which the Handover Reviewer 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 Manage 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 Manage Co which is satisfactory to the State and Manage Co; and
- (b) (**Disbursements**): not be entitled to make any Claim against the State and Manage 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) during the Initial Period, where the Handover Reviewer makes a payment claim under section 2, the monthly amount of the Fee then payable will be equal to the relevant monthly instalment of the Initial Fee as set out in section 8; and
- (b) 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 Handover Reviewer makes a payment claim under section 2(a) after the Initial Period, the Monthly Fee then payable will be equal to the costs of the Handover Reviewer incurred in providing the Services based on the Schedule of Rates, the personnel days and approved disbursements incurred during the relevant month.

11.3 Adjustment of Monthly Fee Estimates and Schedule of Rates

The amounts with respect to the Schedule of Rates are to be indexed in accordance with the Consumer Price Index.

11.4 Monthly Fee Estimate

The total Monthly Fees payable to the Handover Reviewer 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 direct the Handover Reviewer 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 Handover Reviewer 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 Handover Reviewer during the relevant Quarter; and
- (b) its estimate of the costs for performing the Services having regard to its evaluation of the resource levels and the rates and prices set out in the Schedule of Rates and the amount by which the Monthly Fee Estimates for that Quarter should be adjusted as a result of the Resource Adjustment (if any) which the Handover Reviewer should effect in the relevant Quarter.

11.7 Quarterly meeting

No fewer than 10 Business Days before the start of every Quarter, the Handover Reviewer 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 Handover Reviewer in that Quarter; and
- (b) discuss:

- (i) the possibility of effecting a Resource Adjustment in that Quarter; and
- (ii) the Handover Reviewer'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

If the Project Parties' and the Handover Reviewer 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:

- (a) the Project Parties will issue a Resource Adjustment Order;
- (b) the Monthly Fee Estimates for that Quarter will be adjusted by the agreed adjustments in the Monthly Fee Estimates; and
- (c) the Handover Reviewer must promptly effect the Resource Adjustment.

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 — Not Used

[Not used]

Schedule 27 — Not Used

[Not used]

Schedule 28 — Not Used

[Not used]

Schedule 29 — Not Used

[Not used]

Schedule 30 — Not Used

[Not used]

Schedule 31 — Not Used

[Not used]

Schedule 32 — Initial Rectification Schedule

Redacted

Schedule 33 — Food and Laundry Services

1. Food Services

- (a) On or before the relevant Order Time relevant to a Meal Service, Manage Co must notify the State or its nominated representative of the quantity of each Meal Type which it requires for that Meal Service (**Meal Order**). The Meal Order may be increased or decreased by Manage Co by providing notice in writing to the State at least 4 hours before the Delivery Time of relevant Meal Service to which that increase or decrease relates. That adjustment must not adjust any item in the Meal Order by more than ■%.
- (b) The maximum number of Meals which Manage Co may order for a Meal Service is limited to the number of Inmates held by the Correctional Centre at the time of that Meal Service plus up to an additional 41 Meals ordered to restock temporary food storage.
- (c) The State is only obliged to provide three Meals a day for each Inmate, one each of breakfast, lunch and dinner.
- (d) Subject to receiving a Meal Order from Manage Co, the State must procure CSI to provide Meals identified in that Meal Order to the Delivery Point on or before the Delivery Time for that Meal.
- (e) The State must procure CSI to offer to provide the agreed Meal Types to satisfy the requirement that Meals must meet cultural and dietary needs of Inmates.
- (f) The State must procure CSI to prepare and provide instructions to Manage Co (either with the Meals delivered or separately) which set out the requirements for storage, food handling and preparation the relevant Meals before serving.
- (g) Meals supplied by the State must:
 - (i) be nutritious, adequate for good health and wellbeing and consistent with community standards;
 - (ii) comply with Legislation and packaging and utensils must comply with security requirements;
 - (iii) comply with the dietary intake recommended by the National Health and Medical Research Council, with specific reference to "Dietary Guidelines for Australians – A Guide to Healthy Eating."; and
 - (iv) when delivered to the Delivery Point and subsequently handled and prepared by Manage Co in accordance with the instructions referred to clause 1.6, be safe for each Inmate's consumption.
- (h) The State must procure CSI:
 - (i) to prepare and store the Meals prior to the delivery to the Delivery Point in accordance with; and
 - (ii) to prepare and provide the instructions referred to in section 1(f) so that the content of those instructions are prepared to comply with,

in each case, relevant Legislation, the Australia New Zealand Food Standards Code and the NSW Food Authority.
- (i) The State must procure CSI to:
 - (i) conduct suitable pre-employment health checks for each inmate employed to handle food prior to the Meals being delivered to the Delivery Point;

- (ii) provide suitable clothing and footwear to each inmate engaged in the food preparation and other food services prior to the Meals being delivered to the Delivery Point;
 - (iii) ensure that staff employed to prepare and cook Meals (prior to the Meals being delivered to the Delivery Point) have suitable health checks and are qualified and trained in food handling courses and security awareness procedures;
 - (iv) ensure that the Meal Types are appropriate for climatic conditions and must engage an appropriately qualified independent dietician or nutritionist to review the Meal Types annually and those Meal Types must be modified by the State on the advice of the dietician or nutritionist
- (j) The manufacturing facilities used by the State to prepare the Meals must be externally certified to ISO9001:2008 and HACCP by SAI Global.
- (k) In preparing, handling and storing Meals (prior to the Meals being delivered to the Delivery Point) the State must procure CSI to comply with the following Laws:
- (i) *Food Act 2003*;
 - (ii) *Food Regulation 2010*;
 - (iii) *Community Relations Commission and Principles of Multiculturalism Act 2000*;
 - (iv) *Work Health and Safety Act 2011*;
 - (v) *Work Health and Safety Regulations 2011*;
 - (vi) *Crimes (Administration of Sentences) Act 1999*; and
 - (vii) *Crimes (Administration of Sentences) Regulation 2014*.
- (l) Each party must prepare and retain detailed daily, monthly and yearly records of:
- (i) the Meals ordered by Manage Co;
 - (ii) the Meals delivered to Manage Co by CSI on behalf of the State at the Delivery Point; and
 - (iii) the Returned Meals,
- including both aggregated and for each Inmate:
- (iv) the Meal Types;
 - (v) the quantity of each Meal Type;
 - (vi) the relevant dates, Order Times and Delivery Times; and
 - (vii) for the Returned Meals, the number of Meals returned by Manage Co to CSI on behalf of the State, the date on which that Meal was returned, the reason why the Meal was returned and details of any replacement Meal provided as a result.
- Where there is an inconsistency, ambiguity or discrepancy between this records of the State (or CSI on behalf of the State) and Manage Co, the records of the State (or CSI on behalf of the State) will prevail to the extent of that inconsistency, ambiguity or discrepancy.
- (m) Manage Co must undertake visual inspections and reasonable tests of a random sample of Meals delivered to it identify where the State has not complied with its obligations under this section 1.

- (n) Manage Co must notify the State (or CSI on behalf of the State) of any Claim which it has in relation to this section 1 within 14 days of becoming aware of that Claim and Claims received after that period will not be considered by the State.
- (o) Where the State (or CSI on behalf of the State) does not comply with section 1 of this Schedule 33, Manage Co must immediately notify the CSI Contact Person, identify the relevant failure and request the CSI Contact Person to procure rectification of the failure.
- (p) The State (or CSI on behalf of the State) is only obliged to comply with its obligations under this section 1 for the Operating Phase.

2. Laundry Services

- (a) The State must supply, maintain, launder and replace Linen in accordance with the terms of sections 2 and 3. The State must procure CSI to perform the Laundry Services in a professional manner.
- (b) The State must procure CSI to have available the following Linen Sets during the Operating Phase:
 - (i) one Linen Set for each Inmate which is in use;
 - (ii) one Linen Set held in storage by CSI;
 - (iii) approximately one Linen Set held in storage by CSI as contingency,

provided however in no case shall the number of Linen Sets held by CSI on behalf of the State be less than ■■■.
- (c) Manage Co must deliver Linen to be laundered to the Delivery Point. The State must procure CSI to pick up and return Linen at the Delivery Point. Notwithstanding anything to the contrary in this Schedule 33, the State will only be obliged:
 - (i) to collect and launder Linen which is both collected from the area identified and delivered by Manage Co to the Delivery Point on the day identified in the table below; and
 - (ii) to return laundered Linen to Manage Co at the Delivery Point but only to the extent that that Linen, clothing and visit overalls to be returned to the area as identified in the table below.

| | Days of the Week | Collect - Linen | Return - Linen | Collect – Clothing/Visits Overalls | Return – Clothing/Visits Overalls |
|---|------------------|--------------------|------------------|---|-----------------------------------|
| 1 | Monday | From Wings A and B | To Wings A and B | Clothing/Visit Overalls from Reception | Nil |
| 2 | Tuesday | Nil | Nil | Clothing/Visit Overalls from Reception Clothing From Wings A, B, C and D | Clothing to Wings A, B, C and D |
| 3 | Wednesday | Nil | Nil | Nil | Nil |

| | | | | | |
|---|----------|--------------------|------------------|---|---|
| 4 | Thursday | From Wings C and D | To Wings C and D | Clothing/Visit Overalls from Reception | Clothing/Visit Overalls to Reception |
| 5 | Friday | Nil | Nil | Clothing/Visit Overalls from Reception Clothing from Wings A, B, C and D | Clothing/Visit Overalls to Reception Clothing to Wings A, B, C and D |

Notes to the table:

- 1 Clean Linen will be returned to Manage Co in exchange for dirty Linen delivered by Manage Co to CSI on behalf of the State.
 - 2 References to clothing in the table above exclude workwear
- (d) Manage Co is responsible for counting and keeping a written record of the Linen delivered by it to the Delivery Point, the location from where it was collected by Manage Co and the day on which it was collected and delivered to the Delivery Point. Manage Co must provide a copy of that written record (together with any supporting information requested by the State (or CSI on behalf of the State)) promptly after receiving a request to do so from the State (or CSI on behalf of the State).
- (e) Upon picking up Linen at the Delivery Point, the State must procure CSI to provide Manage Co will replacement Linen on a one for one basis.
- (f) The State must procure CSI:
- (i) to replace worn, damaged, overly soiled and unserviceable Linen; and
 - (ii) to provide Linen which Manage Co has lost and has provided a written request to the State (or CSI on behalf of the State) to replace,
- in aggregate up to █% of each Inmate item per annum. Manage Co must compensate the State for the number of items of Linen which are replaced under this section 2(f) exceed █% of each Inmate item per annum.
- (g) That compensation identified in section 2(f) for each item of Linen (being a sheet, pillowcase, towel and blanket) must be calculated as follows: multiply the number of each item of Linen replaced under section 2(f) in a year which is in excess of █% of each Inmate item per annum by the following amounts:
- (i) sheet - \$ █
 - (ii) pillowcase - \$ █
 - (iii) towel - \$ █ and
 - (iv) blanket – \$ █

3. Other Laundry Services

- (a) The State must procure CSI to launder clothing, pillows, safe cell blankets, visits overalls and workwear. Manage Co must deliver those items which require laundering to the Delivery Point.

- (b) The State must procure CSI to pick up and return clothing and visit overalls (other than workwear) at the Delivery Point. Notwithstanding anything to the contrary in this Schedule 33, the State will only be obliged:
 - (i) to collect and launder those clothes and visit overalls which are both collected from the area identified and delivered by Manage Co to the Delivery Point on the day identified in the table in section 2(c); and
 - (ii) to return those clothes and visit overalls to Manage Co at the Delivery Point on the day identified in the table below but only to the extent that such clothing and visit overalls are to be returned to the area identified in section 2(c).
- (c) The State must procure CSI to supply to Manage Co two washing bags per Inmate after Manage Co requests such washing bags in writing. Manage Co must procure the Inmates to place the clothing which the Inmate needs to be laundered in those washing bags and must deliver those washing bags to the Delivery Point. Manage Co must ensure that the names and room/bed number of the relevant Inmate are clearly marked on those washing bags to enable the clothes to be returned to that Inmate.
- (d) The State must procure CSI to pick up and return pillows, safe cell blankets and workwear at the Delivery Point. Notwithstanding anything to the contrary in this Schedule 33, the State will launder those items as soon as practicable after collecting them at the Delivery Point and return them after laundering to the Delivery Point.
- (e) Manage Co is responsible for counting and keeping a written record of the clothes, visit overalls, pillows, safe cell blankets and work wear delivered by it to the Delivery Point, the location from where it was collected by Manage Co and the day on which it was collected and delivered to the Delivery Point. Manage Co must provide a copy of that written record (together with any supporting information requested by the State (or CSI on behalf of the State)) promptly after receiving a request to do so from the State (or CSI on behalf of the State).
- (f) The State (or CSI on behalf of the State) may refuse to accept clothes, visit overalls, pillows, safe cell blankets and workwear delivered to the Delivery Point which are worn damaged or unserviceable at Manage Co's cost and risk. The State must procure CSI to notify Manage Co when it exercises its rights under this section 3(f) and identify the relevant clothes, visit overalls, pillows, safe cell blankets and workwear which are the subject of that notice.
- (g) The State must procure CSI:
 - (i) to replace worn, damaged and unserviceable washing bags; and
 - (ii) to provide washing bags which Manage Co has lost and has provided a written request to the State (or CSI on behalf of the State) to replace,

in aggregate up to ■% of each Inmate item per annum. Manage Co must compensate the State for the number of washing bags which are replaced under this section 3(f) exceed ■% of each Inmate item per annum.
- (h) That compensation identified in section 3(f) for each washing bag must be calculated as follows: multiply the number of each item of Linen replaced under section 2(f) in a year which is in excess of ■% of each Inmate item per annum by \$■■■■ (Indexed in accordance with the Deed).
- (i) The State must procure CSI to supply to Manage Co trolleys for transportation of Linen and clothing around the Correctional Centre.
- (j) The State must procure CSI to perform the Laundry Services to the standard set out in AS4146:2000 Laundry Practice.

- (k) In performing the Laundry Services, the State must procure CSI to comply with the following Laws:
 - (i) *Crimes (Administration of Sentences) Act 1999*;
 - (ii) *Crimes (Administration of Sentences) Regulation 2014*; and
 - (iii) Corrective Services NSW Operations Procedures Manual (OPM).
- (l) The State must procure CSI to prepare and maintain detailed daily, monthly and yearly records of:
 - (i) the Linen, clothes, washing bags, pillows, safe cell blankets, visits overalls and workwear picked up, returned and (where the State (or CSI on behalf of the State) has an obligation to do so) replaced including:
 - (A) details of each item, quantity, the relevant dates on which they were picked up, returned or (where Manage Co has an obligation to do so) replaced and the various weights laundered;
 - (B) recording items which are worn, damaged, overly soiled or unserviceable or lost by an Inmate; and
 - (C) where Manage Co has an obligation to do so, why an item was replaced; and
 - (ii) where the Laundry Services do not meet the requirements of this Schedule 33, the number of items which fail to meet those requirements which need to be returned by Manage Co to be relaundered by CSI on behalf of the State, the reason why the relevant item was returned and whether a replacement item was provided.
- (m) The State must procure CSI to provide a detailed report to Manage Co at the end of calendar each Month of the information in section 3(l). Where there is an inconsistency, ambiguity or discrepancy between this report and the records held by Manage Co, the report of the State (or CSI on behalf of the State) will prevail to the extent of that inconsistency, ambiguity or discrepancy.
- (n) Manage Co must undertake visual inspections of a random sample of items returned to it from the laundering to identify whether the State has complied with its obligations under sections 2 and 3.
- (o) Manage Co must notify the State (or CSI on behalf of the State) of any Claim which it has in relation to any Laundry Service within 14 days of becoming aware of that Claim and Claims received after that period will not be considered by the State. Where the State (or CSI on behalf of the State) does not comply with sections 2 and 3 of this Schedule 33, Manage Co must immediately notify the CSI Contact Person, identify the relevant failure and request the CSI Contact Person to procure rectification of the failure.
- (p) The State (or CSI on behalf of the State) is only obliged to provide the Laundry Services to Manage Co during the Operating Phase.
- (q) During the period which the State and/or CSI has control of the items which it is obliged to launder under this Schedule 33, neither the State nor CSI on behalf of the State are liable for any fair wear and tear, damage or loss caused to those items and Manage Co waives any right it has against the State and/or CSI to make any Claim arising from or in connection with such fair wear and tear, damage and/or loss.

4. Invoicing

- (a) In consideration for the State procuring CSI to perform the obligations under section 1, Manage Co must pay the State in arrears the result of the following calculation:

- (i) Food Costs; less
 - (ii) the Food Refund.
- (b) To the extent that Manage Co orders any special meals to meet Inmates religious needs (which for the avoidance of doubt are available for dinner only) in any Meal Order, in addition to its obligation to pay the State the standard charge for dinner for such a meal, Manage Co may recover the extra cost of that special meal to meet Inmates religious needs over the cost of a standard dinner for each such meal directly from the Inmate who requested Manage Co to ordered that special meal. As at Commercial Close, that extra cost is \$█████ per special meal.
- (c) In consideration for the State procuring CSI to undertake the Laundry Services, Manage Co must pay the State in arrears the aggregate of the following amounts:
- (i) the Base Laundry Amount; plus
 - (ii) the Visit Overalls Amount; plus
 - (iii) Other Laundry Amount; plus
 - (iv) Replacement Amounts.
- (d) If the maximum Inmate state of the Correctional Centre (which is █████ as at Commercial Close) increases or decreases by more than █% for a period of greater than one month, the Base Inmate Population will be adjusted to the number of Inmates which reflects that new maximum Inmate state.
- (e) The State will invoice Manage Co monthly for the relevant amount calculated under this section 4. The invoices will include information on the items and weights laundered during the prior month plus any amount which the State is entitled to recover pursuant to sections 2(g) and 3(h) and any other amount which the State is entitled to recover under this Schedule 33. Manage Co must pay those amounts to the State within 5 Business Days after receipt of that invoice.
- (f) The Base Laundry Amount, Visit Overall Amount and Other Laundry Amount are fixed until 8 February 2017. Therefore, the State may increase those amounts at intervals of six months, where that increase reflects movements in the costs of materials and consumables incurred by the State (or CSI on behalf of the State) performing the Laundry Services, but not overheads or profit margin.
- (g) The State (or CSI on behalf of the State) may review and increase amounts under this Schedule 33 to reflect movements in overheads and to maintain the profit margin on the anniversary date of 8 February each year.

5. Definitions

In Schedule 16, 17 and this Schedule 33, unless the context otherwise requires:

Base Inmate Population means █████ Inmates, as adjusted pursuant to section 4(d).

Base Laundry Amount means the amount of calculated by multiplying the Base Inmate Population during the relevant month by █████ by \$█████ per Inmate per week.

CSI Contact Person means the person identified as such in the Contract Particulars, subject to replacement or delegation in accordance with clause 10.6.

Delivery Point means JMCC Gate.

Delivery Time means:

- (a) for breakfast:
 - (i) bread on Friday must be delivered by 1.15pm on that Friday; and
 - (ii) all other breakfast pack items must be delivered and stored within the Correctional Centre by 1.15pm on the day before breakfast is to be consumed;
- (b) for lunch, 9.45am on the day on which the lunch is to be consumed; and
- (c) for dinner, 1.15pm on the day on which the dinner is to be consumed.

or such other times agreed by the parties to reflect operation routines at the Correctional Centre

Food Costs means the number of Meals set out in Meal Orders multiplied by the relevant Meal Component Cost applicable to those Meals multiplied by the number of days in the relevant month for which the Meal Component was ordered.

Food Refund means the number of Meal Components multiplied by the Meal Component Cost for the Returned Meals during the relevant month.

Laundry Services means the services which the State is required to procure CSI to provide to Manage Co pursuant sections 2 and 3 and includes the managed linen services.

Linen means sheets, pillowcases, towels and blankets.

Linen Set means for each Inmate, two single bed sheets, one pillow case, two towels, two blankets and two inmate wash bags.

Meal means for each Inmate:

- (a) for breakfast:
 - (i) a breakfast pack which contains:
 - (A) cereal (Cornflakes or similar);
 - (B) coffee and/or tea;
 - (C) sugar substitute; and
 - (D) jam portion; and
 - (iii) 300ml of milk; and
 - (iv) on Monday to Thursdays, one 7 slice bread pack known as a 7 up and on Friday a bread loaf (for consumption on Friday, Saturday and Sunday);
- (b) weekday lunch comprising:
 - (i) two sandwiches or wraps or yoghurt pack (or similar); and
 - (ii) one piece of fruit comprising an apple or a pear or a banana (or similar)
- (c) weekend lunch comprising:
 - (i) two pizzas or pies or similar baked savoury product; and
 - (ii) one piece of fruit comprising an apple or a pear or a banana (or similar); and
- (d) dinner comprising:
 - (i) a hot meal or plated salad; and

- (ii) dessert (baked dessert or one piece of fruit comprising an apple or a pear or a banana (or similar).

Meal Component Cost means the amount in the column entitled "Meal Component Cost" applicable to the relevant Meal Component identified in the column entitled "Meal Component":

| | Meal Component | Meal Component Cost | Portions per Inmate per week |
|---|--|---------------------|------------------------------|
| 1 | Milk (300ml) | | |
| 2 | Breakfast pack | | |
| 3 | 7 Up (7 slice bread pack) | | |
| 4 | Bread loaf | | |
| 5 | Weekday lunch (other than Fruit) | | |
| 6 | Weekend lunch (other than Fruit) | | |
| 7 | Dinner | | |
| 8 | Desert | | |
| 9 | Fruit (apple or pear or banana or similar) | | |

Meal Order has the meaning given in section 1(a).

Meal Service means any of breakfast, lunch or dinner.

Meal Types means any one or more of the following types of meals:

- (a) special meals to meet Inmates religious needs (available for dinner only);
- (b) vegetarian;
- (c) standard meals; and
- (d) back up meals.

Order Time means for any week commencing on Monday and ending on Sunday during the Term, 4pm on the Friday before the commencement of that week and such Meal Order or such other times agreed by the parties to reflect operation routines at the Correctional Centre.

Other Laundry Amount means the amount calculated by multiplying the weight of all items accepted by the State (or CSI on behalf of the State) at the Delivery Point to be laundered by the State (or CSI on behalf of the State) (other than sheets, pillow cases, towels, blankets and visit overalls) in the relevant month by \$█████ per kg of those items delivered to the Delivery Point.

Replacement Amounts means the aggregate of the amounts calculated under sections 2(g) and 3(f).

Returned Meal means:

- (a) any Meal which did not include all of the required Meal Components or was otherwise not in accordance with the requirements of section 1 of this Schedule 33; and
- (b) any Meal which was ordered under a Meal Order but was not delivered to the Delivery Point before the Delivery Time for the relevant Meal Service.

Visit Overalls Amount means the amount calculated by multiplying the Base Inmate Population during the relevant month by █████ by \$█████

Schedule 34 — [Not Used]

[Not Used]

Schedule 35 — Manage Co Equipment

Redacted

Schedule 36 – Upgrade Works

Redacted

Annexure A

[Not used]

Annexure B Services Proposal

Redacted

Annexure C

[Not Used]

Attachment 1

[Not Used]

Attachment 2 – Initial Transition Phase Plans

Redacted

Attachment 3 – Initial Transition Phase Program

Redacted

Attachment 4

[Not Used]

Attachment 5 – Initial Operating Phase Plans

Redacted