

Confidential

Execution version

## *Parklea Correctional Complex – Management Deed*

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

and

Management & Training Corporation Pty. Ltd. (ABN 25 602 791 364) and Broadspectrum (Australia) Pty Ltd (ABN 11 093 114 553) (together, **Manage Co**)

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# Parklea Correctional Complex – Management Deed

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Date 14 November 2018

**Parties** The Minister for Corrections on behalf of the Crown in right of the State of New South Wales and the Commissioner of Corrective Services (together, the **State**)  
Management & Training Corporation Pty. Ltd. (ABN 25 602 791 364) and Broadspectrum (Australia) Pty Ltd (ABN 11 093 114 553) (together, **Manage Co**)

## Background

- A. The Governor of the State of New South Wales has declared the Correctional Complex to be a correctional complex 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. The Commissioner is authorised by Part 12 of the Corrections Act to enter into an agreement with a corporation for the management of a correctional centre.
- D. The State has conducted a public tender process and selected Manage Co as the preferred tenderer for the Project.
- E. The State is currently undertaking the Expansion Works to expand the Correctional Complex.
- F. The State has agreed that Manage Co should manage and operate the Correctional Complex including performing the Project Activities, subject to the terms and conditions set out below.
- G. This Deed sets out the terms on which:
  - (a) Manage Co agrees to perform the Project Activities;
  - (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.
- H. The parties consider the Services are essential or critical services to be provided to the State of New South Wales.

## Operative provisions

### Part A - Interpretation and project parameters

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#### 1. Definitions

In this Deed, unless the context otherwise requires:

**Abatement** means an amount in dollars deducted in accordance with the Payment Schedule, from a Monthly Service Payment, in respect of 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 49.1(a).

**Additional Officer** means a correctional officer engaged by Manage Co to facilitate the performance of the Expansion Works and who is not otherwise engaged by Manage Co to perform the Project Activities at the Existing Facility on the relevant Escort Day.

**Additional Security Escorts Look Forward Notice** means the notice referred to in clause 14.2(a)

**Additional Security Escorts Notice** means the notice referred to in clause 14.2(c).

**Additional Security Services Payment** has the meaning given in clause 24.1(a)(iii).

**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 Deed.

**Amendment** has the meaning given in clause 47.1(a).

**Approval** means any 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.

**Asset** 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) are necessary to ensure the Correctional Complex 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 Deed; 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 Complex,

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 13(e)(ii).

**Asset Condition Report Warranties** means the warranties provided on or about the date of this Deed, 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) or either of them (as applicable).

**Asset Condition Report (First)** means each Asset Condition Report set out in Schedule 21.

**Asset Condition Report (Final)** has the meaning given in clause 13(e).

**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 Governor;
- (iii) Manage Co's officers, agents, advisers, consultants, contractors and employees, each acting in connection with the Project;
- (iv) each Parent Guarantor and its officers, agents, advisers, consultants, contractors and employees, each acting in connection with the Project;
- (v) any Subcontractors (that are not covered by paragraph (a)(iii)) and their respective officers, agents, advisers, consultants, contractors and employees, each acting in connection with the Project; and
- (vi) 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,

but does not include the State, 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;
- (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) Monitors;
- (vi) the Parole Authority;
- (vii) Official Visitors; and
- (viii) any other person to whom the State delegates a right, power, function or duty under this Deed,

each acting in connection with the Project 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.

**Available Inmate Place** has the meaning given in the Performance Regime.

**Base Fee** has the meaning given in the Payment Schedule.

**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.

**Benchmarked Insurance** means the public and products liability insurance required to be taken out by Manage Co in accordance with the Insurance Schedule.

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

- (a) with the standard of skill, care and diligence which may reasonably be expected of a skilled and experienced professional suitably qualified in the provision of services similar to the Services at a correctional centre similar to the Correctional Complex;
- (b) in a manner safe to all people and the Environment;
- (c) with the intent of ensuring reliable, long term and safe and secure operation of the Correctional Complex;
- (d) by trained and experienced personnel using high quality, safe and proper equipment, tools, procedures and industry standards;
- (e) in accordance with all relevant operations and maintenance manuals;
- (f) with adequate levels of resources, including personnel, materials and supplies;
- (g) using suitable, new and high quality finishes and materials which are free from defects; and
- (h) 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 Complex.

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

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

**CCU** has the meaning given in clause 55.2(b).

**CDTCC Services** has the meaning given in clause 7.9.

**Certificate of Operational Readiness** has the meaning given in clause 6.6(a)(i).

**Change in Control** means where, at any time, any person or Entity alone or together with any Associate or Associates, ceases to or commences to, directly or indirectly have Control of an Entity. For the purposes of this definition, Associate or Associates has the meaning given in the Corporations Act and includes a person deemed to be an Associate of a designated body (within the meaning of section 12 of the Corporations Act).

**Change in Law** means;

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

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

- (c) a change in the way a Law is applied or interpreted due to:
  - (i) the failure of 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 to or repeal of any existing Law which was not in force at the date of this Deed but which:
  - (i) had been published in the Government Gazette by way of bill, draft bill or draft statutory instrument or otherwise specifically referred to prior to the date of this Deed;
  - (ii) is contained in or referred to in the Output Specification, the Tender, 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 Deed;
  - (iii) a party performing activities similar to the Project Activities in accordance with Best Industry Practices would have reasonably foreseen or anticipated prior to the date of this Deed;
  - (iv) is substantially the same as a Law in force prior to the date of this Deed; or
  - (v) is substantially the same as any other requirement with which Manage Co was required to comply under any State Project Document as at the date of this Deed; or
- (f) any new Law or change to 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 Deed and that will have an effect on the cost of carrying out the Project Activities; or
- (b) a General Change in Law that occurs after the Operational Commencement Date of the Existing Facility, that will have an effect on the cost of carrying out the Project Activities.

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

- (a) the introduction of a new Policy; or
- (b) a change in a Policy,

but does not include:

- (c) any one of the events referred to in paragraphs (a) to (b):
  - (i) of which the State has expressly notified Manage Co prior to the date of this Deed;
  - (ii) which is contained or referred to in the Output Specification, the Tender, 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 Deed;
  - (iii) which a party performing activities similar to the Project Activities in accordance with Best Industry Practices would have reasonably foreseen or anticipated prior to the date of this Deed;
  - (iv) which is substantially the same as a Policy in force prior to the date of this Deed; 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 Deed;
- (d) 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;
- (e) any of the events referred to in paragraphs (a) to (b) that results from or is in response to any Manage Co Act or Omission or failure of Manage Co or any of its Associates to comply with a Law, Policy or Approval; or
- (f) any new Policy or change in any existing Policy relating to the matters (if any) specified in the Contract Particulars.

**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 Correctional Complex, 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).

**Cohort Adjustment** has the meaning given in the Payment Schedule.

**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 14.

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

**Commitment Deed** means the document titled 'Parklea Correctional Complex – Preferred Proponent Commitment Deed Poll' signed by Manage Co on or about 3 October 2018.

**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 Relief Event** means any of the following events occurring during the Term:

- (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) **(Project specific industrial action)**: industrial action which occurs only at the Site or otherwise only in respect of the Project, which is the direct result of an act or omission of the State or any of its Associates at the Site and in connection with the Project other than any act or omission which is authorised or permitted under a State Project Document, Policy or Law;



- (e) **(Defect (EW))**: a Defect (EW) but only for the period from receipt by the State of Manage Co's notice under clause 14.4(a) until:
  - (i) if the State issues a Defect (EW) Notice, the earlier of:
    - A. the rectification of the Defect (EW) by Manage Co to the satisfaction of the State (acting reasonably); or
    - B. the timeframe for rectification of the Defect (EW) as set out in the Defect (EW) Notice or as extended pursuant to clause 14.4(d)(i); or
  - (ii) if the State does not issue a Defect (EW) Notice, the rectification of the Defect (EW) by the State or a third party to the satisfaction of the State (acting reasonably); or
- (f) **(Unidentified Pre-Existing Defect)**: an Unidentified Pre-Existing Defect but only for the period from receipt by the State of Manage Co's notice under clause 7.8(a) until:
  - (i) if the State issues an Unidentified Pre-Existing Defect Notice, the earlier of:
    - A. the rectification of the Unidentified Pre-Existing Defect by Manage Co to the satisfaction of the State (acting reasonably); or
    - B. the timeframe for rectification of the Unidentified Pre-Existing Defect as set out in the Unidentified Pre-Existing Defect Notice or as extended pursuant to clause 7.8(d)(i); or
  - (ii) if the State does not issue a Unidentified Pre-Existing Defect Notice, the rectification of the Unidentified Pre-Existing Defect by the State or a third party to the satisfaction of the State (acting reasonably); or
- (g) **(other events)**: any other event described as a Compensable Relief Event in this Deed.

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

**Completion (EW)** means the achievement by the Contractor (EW) of practical completion of the Expansion Works, as determined by the State.

**Compulsory Drug Treatment Correctional Centre or CDTCC** means the compulsory drug treatment correctional centre located within the Parklea Correctional Complex and identified in the Site Plan.

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

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

**Conditions Precedent Schedule** means Schedule 2.

**Condition Review Date** has the meaning given in clause 32.4(a) as adjusted (if at all) in accordance with clause 32.6(a).

**Confidential Design Information** means any information designated by the State Representative to be "Confidential Design Information" which may relate to the Expansion Works, any Manage Co Works or any State Works.

**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 Deed or the Project, whether provided prior to or after the date of this Deed;
- (e) Manage Co Material; and
- (f) 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 Deed (provided that any information contained in any such report which is Commercially Sensitive Information is redacted in such report).

**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 Significant 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 17.2(f) to Remediate Contamination:

- (a) to the extent to which such Contamination has been caused or contributed to by the State or its Associates after the date of this Deed;
- (b) that has migrated onto the Site from an Adjoining Property after the date of this Deed, if:
  - (i) the presence of the Contamination presents an unacceptable risk of harm to human health or the Environment, having regard to Best Industry Practice; or
  - (ii) the Contamination is required to be Remediated to comply with any Laws or any Contamination Remediation Notice; or
- (c) that is Unidentified Pre-Existing Contamination,

other than the extent to which the Contamination:

- (d) has been caused or contributed to or disturbed or interfered with 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 Deed;

- (e) would have been minimised or avoided by a prudent, experienced and competent contractor in the same circumstances using Best Industry Practices; or
- (f) is Contamination that would occur in the normal course of operating a similar facility providing similar services in accordance with Best Industry Practices.

**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 17.2(e).

**Contract Particulars** means Schedule 1.

**Contractor (EW)** means the contractor appointed to perform the Expansion Works.

**Control** means:

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

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

**Controlling Entity** means, in relation to a Change in Control of Manage Co or any entity that comprises Manager Co or a Parent Guarantor, the person or Entity to whom Control will pass.

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

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

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

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

**Correctional Complex** means the Parklea Correctional Complex, a correctional complex declared by the Governor of the State of New South Wales pursuant to section 224 of the Corrections Act and which includes the Correctional Centres and the whole of the area inside the boundaries of the Site, the grounds contained within those boundaries, any Staged Handover Areas which have been handed over to Manage Co pursuant to clause 14.5(c) on and from the date that the State hands them over to Manage Co and all Assets, as may be expanded, changed, contracted from time to time by the State but excludes the Compulsory Drug Treatment Correctional Centre.

**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).

**Corrective Services NSW or CSNSW** has the meaning given to Corrective Services NSW in the Corrections Act.

**Counterparty Details** means:

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

**Critical Incident** means any of the following incidents:

- (a) suicide;
- (b) death;
- (c) Escape, attempted Escape or discovery of implements or preparations for an Escape;
- (d) riot;
- (e) hostage situation;
- (f) siege situation;
- (g) Staff Misconduct;
- (h) Serious Assault of any person resulting in hospital treatment;
- (i) serious injury to any person (including Inmates) other than by means of Assault;
- (j) assault on a high profile Inmate which results in a significant media interest;
- (k) major fire;
- (l) use of force with discharge of weapons or chemical aids including warning shots;
- (m) disturbance involving groups of Inmates;

- (n) discovery of a significant amount of contraband (including drugs); or
- (o) erroneous release or unlawful detention of an Inmate.

**CSI** means Corrective Services Industries.

**CSI Contact Person** means the person identified as such in the Contract Particulars, subject to replacement, termination or delegation in accordance with clause 19.6.

**Custodial Patients** means all Inmates.

**Damage Notice** has the meaning given to that term in clause 33.2.

**Date for Operational Readiness** means [REDACTED] on 31 March 2019, as adjusted (if at all) in accordance with this Deed.

**Date for Operational Readiness (EW)** means the date notified to Manage Co by the State in accordance with clause 14.3(b), as adjusted (if at all) in accordance with this Deed.

**Date of Completion (EW)** has the meaning given to that term in clause 14.3(a)(ii).

**Date of Operational Readiness (EW)** means, in respect of the Expanded Facility, the date specified in the Certificate of Operational Readiness as the date on which Manage Co achieved Operational Readiness.

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

**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) **(Manage Co Insolvency Event)**: an Insolvency Event occurs in relation to Manage Co or any entity comprising Manage Co;
- (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 Correctional Complex in breach of clause 47;
- (e) **(Change in Control)**: a Change in Control occurs in respect of Manage Co or any entity comprising Manage Co other than in accordance with clause 48;
- (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 38.4(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, or is deemed to not be 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 38.4(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 \$2 million Indexed by the CPI Annual Multiplier (as defined in Schedule 10) in any rolling 12 month 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 the Payment Schedule) and Charge Events (as determined under the Performance Regime) with an aggregate value greater than:
  - (i) 18% of the Base Fee, Volumetric Adjustment and Surge Adjustment (as calculated in accordance with the Payment Schedule) in any rolling 6 month period; or
  - (ii) 15% of the Base Fee, Volumetric Adjustment and Surge Adjustment (as calculated in accordance with the Payment Schedule) in any rolling 12 month period;
- (l) **(liability cap):** where the aggregate accrued liability of Manage Co and the Parent Guarantors to the Indemnified Persons under this Deed is equal to or exceeds 70% of the General Liability Cap;
- (m) **(Illegality Event):** an Illegality Event occurs;
- (n) **(Probity Event):** Manage Co fails to comply with clause 52.1(d), in relation to a Probity Event; or
- (o) **(deemed Default Termination Event):** any other event which is deemed to be a Default Termination Event under clause 33.6(b)(i) or clause 38.2(f).

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

**Defect** means:

- (a) any Services which are not being provided in accordance with the Services Requirements;
- (b) any defect, shrinkage, expansion, fault or omission in the Correctional Complex (excluding any normal shrinkage or expansion of materials accommodated in accordance with Best Industry Practices); or
- (c) any other aspect of the Correctional Complex which is not in accordance with the requirements of this Deed including any aspect of the Assets which does not satisfy the Maintenance and Performance Standards.

**Defect (EW)** means an error, omission, shrinkage, blemish in appearance or other fault in the Expansion Works or which affects the Expansion Works, resulting from a failure of the Contractor (EW) to comply with the Expansion Works Contract.

**Defect (EW) Notice** has the meaning given in clause 14.4(c).

**Developed IP** means any Intellectual Property Rights 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 but excluding any Manage Co Background IP.

**Disengagement Plan** means the Operating Phase Plan of that name.

**Dispute** has the meaning given in clause 40.1(a).

**Early Warning** has the meaning given in clause 25.1(a).

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

**Emergency** means any event or circumstance which:

- (a) involves serious personal injury, death or significant damage to or destruction of the Correctional Complex, 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 Correctional Complex;
- (c) poses a serious risk of damaging or destroying the Correctional Complex 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 and Operational Readiness Plan or Operating Phase Plan of that name (as applicable).

**Escape** has the meaning given in the Performance Regime.

**Escort Day** mean any day other than a Sunday or public holiday in Sydney, New South Wales.

**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 personal injury or health problems.

**Executive Representatives** has the meaning given in clause 41(a).

**Existing Facility** means the Correctional Complex (excluding the Expanded Facility).

**Expanded Facility** means that part of the Correctional Complex to be delivered by the State following completion of the Expansion Works.

**Expanded Facility Operating Phase** means the period beginning on the Operational Commencement Date of the Expanded Facility and ending on the Expiry Date.

**Expansion Works** means the works to be performed by, or on behalf of, the State to deliver an additional 500 maximum security beds and associated infrastructure as generally identified in Schedule 19 (excluding Building 12 as identified on the plans included in Schedule 19).

**Expansion Works Contract** means the contract between The Minister for Justice and Police for the State of New South Wales and the Contractor (EW) in respect of the Expansion Works.

**Expansion Works Space** has the meaning given in clause 23.4(a).

**Expert Determination Agreement** means an expert determination agreement to be entered into between Manage Co, the State and an independent expert substantially in the form provided by the State (acting reasonably) to Manage Co.

**Expiry Date** has the meaning given in clause 4.2.

**Extension Notice** has the meaning given in clause 4.3.

**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 7.4.

**Final Expiry Date** means 31 March 2026 as extended if at all, under clause 4.3.

**Final Refurbishment Works** has the meaning given in clause 32.4(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 Complex:

- (a) is fit for its intended purposes, functions and uses specified in, or which can reasonably be ascertained from clauses 1 to 56, the Output Specification, Performance Regime and the Payment Schedule;



- (b) otherwise meets the requirements for the Correctional Complex set out in or which can reasonably be ascertained from:
  - (i) the Services Requirements; and
  - (ii) all other requirements of this Deed; and
- (c) is fit for the performance of the Services in accordance with the Services Requirements and so as to facilitate and not impair the achievement of the Project Objectives.

**Force Majeure Event** means any of the following events occurring:

- (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;
- (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);
- (e) bushfire, lightning, cyclone, hurricane, tempest, mudslide, landslide, earthquakes, droughts declared as a state of emergency and high seas inundation;
- (f) a flood which might at the date of this Deed be expected to occur no more frequently than once in 100 years;
- (g) fire or explosion caused by events referred to in paragraphs (a) to (f); or
- (h) during the Operating Phase only, Utility Interruption due to an interruption that occurs upstream from the point at which that Utility provider's Utility Infrastructure connects specifically to the Site or the Correctional Complex;

and which:

- (i) save in relation to paragraph (h), occurs at or directly in the vicinity of the Site;
- (j) prevents Manage Co from carrying out all or substantially all of the Project Activities;
- (k) was not caused or contributed to by Manage Co or its Associates, or the State or its Associates or an Inmate, to the extent arising from a failure by Manage Co or its Associates to perform the Services in accordance with this Deed;
- (l) was beyond the reasonable control of Manage Co or its Associates; and
- (m) could not have been prevented, avoided, remedied or overcome by taking those steps which a prudent, experienced and competent contractor for facilities similar to the Correctional Complex 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 25.3(a) of the Force Majeure Event,

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

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

**Fortnightly Transition Report** means the Transition Phase and Operational Readiness Report of that name.

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

**General Liability Cap** means [REDACTED] as may be adjusted in accordance with clause 36.3.

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

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

**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 24.7(c)(ii).

**GST Law** has the meaning given in the GST Act.

**Handover** means the stage when Manage Co has done everything that this Deed requires to enable Manage Co to handover the Correctional Complex in the Handover Condition.

**Handover Bond** means a Performance Bond provided by Manage Co in favour of the State in accordance with clause 32.7(a)(ii) which must, including any replacement Handover Bond provided under clause 32.9(c), have an expiry date no earlier than 1 year after the end of the Term.

**Handover Condition** means:

- (a) on and from the relevant Operational Commencement Date, the Correctional Complex and Site:
  - (i) meet the Maintenance and Performance Standards; and
  - (ii) enable Manage Co (or at the end of the Term, the State or its nominee) to manage, operate and maintain the Correctional Complex in accordance with the Output Specification in a safe and effective manner; and
- (b) at all times, without limiting paragraph (a) of this definition, the condition that the Correctional Complex and Site would be in if Manage Co had complied with all of its obligations under this Deed (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 Complex and Site to the State.

**Handover Escrow Account** has the meaning given in clause 32.7(a)(i).

**Handover Package** means the Operating Phase Plan of that name.

**Handover Reviewer** means a person:

- (a) reasonably acceptable to the State and Manage Co or if the parties are unable to agree within 10 Business Days of the timing for the Handover Reviewer to be appointed in accordance with clause 32.3(a), selected by the State (acting reasonably and having regard to the factors in paragraphs (b) and (c) of this definition);
- (b) with suitable qualifications, expertise and experience; and
- (c) with no interest or duty which conflicts or may conflict with its functions as the Handover Reviewer,

appointed as the independent certifier for Handover in accordance with clause 32.3.

**Handover Reviewer Deed** means the deed so entitled to be entered into between the State, Manage Co and the Handover Reviewer in accordance with clause 32.3(c).

**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.

**Health Services Provider** means the person identified as such in the Contract Particulars including any replacement of that person.

**Illegality Event** means Manage Co or a Significant 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 Deed 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** means those Pharmaceuticals held in the Correctional Complex which are to be routinely administered to Inmates as circumstances require (which Pharmaceuticals must have been approved by the State in accordance with clause 7.12).

**Incumbent Operator** means the operator responsible for operating Parklea Correctional Complex until [REDACTED] on 31 March 2019, being as at the date of this Deed, the GEO Group Australia Pty Limited (ABN 24 051 130 600).

**Indemnified IP Party** has the meaning in clause 34.5(a).

**Indemnified Person** has the meaning in clause 34.1.

**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** means the period beginning on the Operational Commencement Date of the Existing Facility and ending on the day before the Operational Commencement Date of the Expanded Facility.

**Initial Plans** means the versions of the:

- (a) Transition Phase and Operational Readiness Plans; and
- (b) Operating Phase Plans,

current as at the date of this Deed attached as Attachment 1.

**Initial Transition Phase Program** means the version of the Transition Phase Program current at the date of this Deed attached as Attachment 1.

**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 in relation to the Project.

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

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

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

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

**Insurance Review Date** means each third year anniversary of the Operational Commencement Date of the Existing Facility.

**Insurance Schedule** means Schedule 13.

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

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

**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.

**Justice Health or Justice Health and Forensic Mental Health Network** has the meaning given to Justice Health in the Corrections Legislation.

**JHFMHN Employees** means employees of Justice Health.

**Key People** means the people so named in the Contract Particulars as replaced (if at all) in accordance with clauses 19.7(b), 19.7(c) or 19.7(d).

**Latent Condition** means:

- (a) any structural defect in the Correctional Complex; or
- (b) any defect in the subsurface Utility Infrastructure within the Site.

**Law** means:

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

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

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

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

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

**Licence** means the licence granted under clause 18.1 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 Project Activities.

**Lifecycle Charge** has the meaning given in the Payment Schedule.

**Maintenance and Performance Standards** means:

- (a) in respect of the New Facilities, those minimum condition and performance standards contained in Attachment C.1 of Part C of the Output Specification; and
- (b) in respect of the Remaining Facilities, those minimum condition and performance standards contained in Attachment C.1 of Part C of the Output Specification which are applicable to the Remaining Facilities and the standard set out in the Asset Condition Report (Final) in respect of the relevant Asset.

**Major Default** means any of the following events:

- (a) **(late Operational Readiness)**: Manage Co fails to achieve Operational Readiness by the Date for Operational Readiness or Date for Operational Readiness (EW);
- (b) **(fraud)**: an Associate of Manage Co engages in fraud, collusion or dishonest conduct in performing their obligations under the Project Documents;
- (c) **(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;
- (d) **(subcontracting and Key People)**: Manage Co breaches an obligation in clause 22.2, 22.3 or 22.4;
- (e) **(Personal Information)**: any failure by Manage Co to comply with its obligations under clauses 51.6;
- (f) **(breach of State Project Document)**: any breach of any State Project Document by Manage Co (other than any 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;
- (g) **(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;

- (h) **(Change in Control)**: a Change in Control occurs in respect of a Parent Guarantor without the consent of the State in accordance with clause 48.3;
- (i) **(Probity Event)**: Manage Co fails to remedy a Probity Event in accordance with clause 52;
- (j) **(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 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;
- (k) **(Total Deductions)**: Manage Co has incurred Total Deductions (as calculated in accordance with the Payment Schedule) and Charge Events (as determined under the Performance Regime) with an aggregate value greater than:
  - (i) 12% of the Base Fee, Volumetric Adjustment and Surge Adjustment (as calculated in accordance with the Payment Schedule) in any rolling 3 month period; or
  - (ii) 11% of the Base Fee, Volumetric Adjustment and Surge Adjustment (as calculated in accordance with the Payment Schedule) in any rolling 6 month period; or
- (l) **(Level 2 Performance)**: Manage Co's performance falls within the Level 2 Performance Range for the same Quality Failure for six or more Months within a rolling period of 12 Months;
- (m) **(Charge Event)**: a Charge Event occurs;
- (n) **(Insolvency Event of a Parent Guarantor)**: an Insolvency Event occurs in relation to a Parent Guarantor;
- (o) **(Insurances)**: a breach by Manage Co of any its obligations under clauses 37.1, 37.2(a), 37.3, 37.5 or 37.6;
- (p) **(Accreditation)**: Manage Co fails to obtain and maintain those accreditations specified in the Contract Particulars;
- (q) **(Licences)**: Manage Co fails to obtain and maintain those licences specified in the Contract Particulars;
- (r) **(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)*);
- (s) **(Governor)**: pursuant to section 240(3) of the Corrections Act the Commissioner revokes the authority issued to the Governor pursuant to section 240(1)(a) of the Corrections Act;
- (t) any other event which is deemed to be a Major Default under clause 6.7(d).

**Major Default Notice** has the meaning given in clause 38.2(b).

**Major Default Service Failure** means the defaults described in paragraphs (k) and (l) of the definition of Major Default.

**Manage Co Act or Omission** means:

- (a) a breach of this Deed 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 Intellectual Property Rights created or developed by Manage Co or any of its Associates:

- (a) independently of and not exclusively for the State in the course of providing the Project Activities; and
- (b) outside of the Project and brought to or used by the Project by Manage Co or any of its Associates.

**Manage Co Equipment** means as at Commercial Close, those Assets identified in Schedule 18 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 Margin** means the percentage that Manage Co may charge in accordance with the Contract Particulars (as applicable), as Margin.

**Manage Co Material** means all 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 Deed.

**Manage Co Representative** means the person identified in the Contract Particulars subject to replacement, termination or delegation in accordance with clauses 19.3 and 19.7.

**Manage Co Works** means any capital works to the Correctional Complex to be performed by Manage Co or its Associates, except for:

- (a) capital works performed by Manage Co or its Associates following a Variation directed by the State;
- (b) the rectification of Defects;
- (c) the maintenance, repair or replacement of Assets in accordance with the Asset Management Plan; or
- (d) the repair or remedy to loss or damage to the Correctional Complex in accordance with clause 33.

**Manage Co Works Proposal** has the meaning given to it in clause 18A.1(b).

**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).

**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:



- (a) will prevent:
- (i) the Correctional Complex from complying with the FFP Warranty; or
  - (ii) Manage Co from delivering the Services in accordance with the Services Requirements; or
- (b) has, will, or is likely to, give rise to an Emergency or a Critical Incident.

**Material Defect (EW)** means a Defect (EW) in the Expanded Facility which has given or, will, or is likely to give, rise to an Emergency or Critical Incident.

**Meal** has the meaning given in Schedule 17.

**Minimum Expansion** means the three 50-bed accommodation buildings, visits building, support services building, shade structures, playing fields and landscaping all within the area known as "Area 4" of the Correctional Complex and identified as C6 assets in the Asset Condition Report.

**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 \$500 or combined item value of less than \$5,000 (for Assets which are more than a single item within the Site) and are not associated with the provision of Essential Services.

**Mitigating Factors** means:

- (a) all reasonable endeavours Manage Co, or any of its Associates, has taken (or proposes to take in the future) to mitigate, minimise or avoid the adverse effects, costs, consequences or duration of the Relief Event, Variation or Change in Mandatory Requirements (as the case may be) (including by putting in place temporary measures reasonably required by the State); and
- (b) all reasonable steps Manage Co, or any of its Associates, has taken (or proposes to take in the future) 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, costs, consequences or duration of the Relief Event, Variation or Change in Mandatory Requirements (as the case may be); and
- (c) all actions Manage Co, or any of its Associates, has taken (or proposes to take in the future) to take advantage of any positive or beneficial effects of the Relief Event, Variation or Change in Mandatory Requirements (as the case may be) and maximise any reduction in costs arising from the Relief Event, Variation or Change in Mandatory Requirements (as the case may be).

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

**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 6.

**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.

**New Facilities** means:

- (a) the Expansion Works; and
- (b) the Minimum Expansion.

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

**Notice of Anticipated Operational Readiness of the Expanded Facility** has the meaning given in clause 14.3(b).

**NSW Code** has the meaning given in clause 55.2(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 55.1.

**Official Visitor** has the meaning given in the Corrections Act.

**Omitted Project Activities** has the meaning given to that term in clause 27.5(a).

**Operating Phase** means the period beginning on the Operational Commencement Date of the Existing Facility and ending on the Expiry Date, which includes the Initial Operating Phase and the Expanded Facility Operating Phase.

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

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

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

**Operating Year** means:

- (a) for the first Operating Year, the period commencing on the Operational Commencement Date of the Existing Facility 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:

- (a) in respect of the Existing Facility, the Operational Commencement Date of the Existing Facility; or
- (b) in respect of the Expanded Facility, Operational Commencement Date of the Expanded Facility,

and either of them as the context may require.

**Operational Commencement Date of the Existing Facility** means 4pm on 31 March 2019.

**Operational Commencement Date of the Expanded Facility** means the later of the day after:

- (a) the Date of Operational Readiness (EW); and
- (b) the date on which the State notifies Manage Co that the State has performed and successfully completed the State's operational commissioning set out in Schedule 19.

**Operational Readiness** means, in respect of each of:

- (a) the Existing Facility; and
- (b) the Expanded Facility,

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

**Operational Readiness Activities** means all work, things and tasks which Manage Co is, or may be, required to carry out or do to achieve Operational Readiness in respect of the Expanded Facility, but excludes the Services and the provision of Additional Officers pursuant to clause 14.2.

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

**Operational Readiness Co-ordinator** means the person identified as such in the Contract Particulars, subject to replacement, termination or delegation in accordance with clauses 19.4 and 19.7.

**Operational Readiness Criteria** means those criteria identified as such in the Operational Readiness Schedule in respect of each of:

- (a) the Existing Facility; and
- (b) the Expanded Facility.

**Operational Readiness Outstanding Item** means any act, matter, state of affairs or thing that is required in accordance with this Deed to have been performed, achieved, undertaken, provided or completed by 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:

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

**Operational Readiness Report** means a report in respect of Operational Readiness Assessment required to be submitted by Manage Co in accordance with clauses 6.2, 6.5 and the Operational Readiness Schedule as amended and updated in accordance with this Deed.

**Operational Readiness Schedule** means Schedule 8.

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

**Outstanding Matters Report** has the meaning given in clause 32.4(b).

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

**Ownership Schedule** means Schedule 12.

**Parent Guarantee** means the guarantee given by each Parent Guarantor of Manage Co in connection with the obligations of Manage Co under this Deed in the form set out in Schedule 20.

**Parent Guarantor** means each person giving a Parent Guarantee (or both, as the context requires), which as at the date of this Deed, means the parties listed as Parent Guarantors in the Contract Particulars.

**Parole Authority** has the meaning given in the Corrections Act.

**Payment Claim** means a payment claim submitted by Manage Co in accordance with clause 24.2(a) in the form reasonably required by the State.

**Payment Schedule** means Schedule 10.

**Payment Statement** has the meaning given in clause 24.2(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 11.

**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 in accordance with clause 7.12 (or otherwise if permitted by clause 7.12) to supply Pharmaceuticals for issue or administration to Custodial Patients and any related Pharmaceutical Related Items, Pharmaceutical Supply or Urgent Pharmaceutical Supply.

**Plans** means the Transition Phase and Operational Readiness Plans and Operating Phase Plans.

**Plans and Reports Schedule** means Schedule 7.

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

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

- (a) the standards, codes, specifications, policies, requirements, guidelines, 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 Deed, 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 Deed.

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

**Pre-Agreed Variation** means the Variation described in the Contract Particulars.

**Pre-Agreed Variation Notice** has the meaning given to that term in clause 27.8(a).

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

**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 Deed and is not Unidentified Pre-Existing Contamination.

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

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

- (a) has a material adverse effect on, or on the perception of, the character, integrity or honesty of Manage Co, any Parent Guarantor or a Relevant Person;
- (b) relates to Manage Co, a Parent Guarantor 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 Manage Co, a Parent Guarantor, 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 Manage Co, a Parent Guarantor, the 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.

**Project** means:

- (a) the performance of the Project Activities including:
  - (i) carrying out the Transition Phase Activities, the Operational Readiness Activities and the provision of Additional Officers pursuant to clause 14.2; and
  - (ii) performing the Services;
- (b) the handover of the Correctional Complex 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, the Operational Readiness Activities, providing Additional Officers pursuant to clause 14.2 and the Services.

**Project Control Group** means the group referred to in clause 20.1(a).

**Project Documents** means:

- (a) this Deed;
- (b) each Licence;
- (c) each Significant Subcontract;
- (d) each Side Deed;
- (e) each Parent Guarantee;
- (f) Handover Reviewer Deed; and
- (g) 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 Deed).

**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.

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

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

**Quality Assurance Plans** means the Transition Phase Quality Assurance Plan and the Operating Phase Quality Assurance Plan.

**Quality Assurance Representative** means the person nominated in the Quality Assurance Plans for Manage Co.

**Quality Assurance System** means a quality assurance system that covers:

- (a) the carrying out of the Transition Phase Activities and the Operational Readiness 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 Operational Commencement Date of the Existing Facility;
- (c) the first Quarter of the Operating Phase will be the period from the Operational Commencement Date of the Existing Facility until the day before the first Quarterly Date during the Operating Phase; and
- (d) the last Quarter of the Operating Phase will be the period from the last Quarterly Date during the Operating Phase to the Expiry Date.

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

**Ramp-Up Period** means the period:

- (a) commencing on the Operational Commencement Date of the Expanded Facility; and
- (b) ending 8 weeks after the Operational Commencement Date of the Expanded Facility.

**Ramp-Up Profile Schedule** means Schedule 9.

**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 Correctional Complex.

**Recipient** has the meaning given in clause 24.7(c)(ii).

**Recipient Supply** has the meaning given in clause 24.7(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.

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

**Relevant Downgrade** has the meaning given to that term in clause 5(e)(i).

**Relevant Person** means:

- (a) a director or secretary of Manage Co, an entity comprising Manage Co or a Parent Guarantor;
- (b) the Key People; or
- (c) an officer, agent, adviser, contractor, employee or consultant of Manage Co or a Parent Guarantor or Subcontractor who:
  - (i) has the ability to exercise influence or control over the decisions or actions of Manage Co, a Parent Guarantor or Subcontractor in relation to the Project other than solely through the exercise of voting rights at a meeting of shareholders or directors of Manage Co, a Parent Guarantor or Subcontractor;
  - (ii) works on, or at the Correctional Complex during the Operating Phase; or



- (iii) has access to Personal Information and any other Confidential Information which compromises the security of the Correctional Complex.

**Relief Event** means any of the following events occurring during the Term:

- (a) **(Compensable Relief Event):** a Compensable Relief 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) **(loss or damage):** the State requires Manage Co to repair or rebuild the Correctional Complex and clause 33.5(a) applies;
- (e) **(Emergency and Step-In):** the State exercises its rights under clause 29.1(a) or its step-in rights under clause 29.2(d) to 29.2(g), other than where the event that gives rise to the exercise of the State's rights is 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 Deed;
- (f) **(Contractor (EW)):** prior to the Date of Completion (EW) only, any wrongful act of the Contractor (EW) on the Site during the performance of the Expansion Works, except to the extent arising as a result of a failure by Manage Co to perform its obligations under clause 14 and excludes Defects or Defects (EW); or
- (g) **(State Works):** the performance by the State or its Associates of State Works.

**Relief Event Effects** means, in respect of a Relief Event, Variation or Change in Mandatory Requirements:

- (a) the effects of the Relief Event, Variation or Change in Mandatory Requirements (as the case may be) on:
  - (i) the quality, appearance or durability of any part of the Correctional Complex;
  - (ii) the management or maintenance of the Correctional Complex;
  - (iii) the carrying out of the Project Activities and Manage Co's ability to carry out the Services in accordance with the Services Requirements; and
  - (iv) any other relevant part of this Deed, including any amendments required;
- (b) in respect of a Compensable Relief Event, Variation or Change in Mandatory Requirements only, any compensation sought by Manage Co as a consequence of the Relief Event, Variation or Change in Mandatory Requirements (as the case may be) under clause 30; and
- (c) any relief sought by Manage Co as a consequence of the Relief Event, Variation or Change in Mandatory Requirements (as the case may be) under clauses 26, 26.2(d) or 28 (as the case may be).

**Relevant Relief Event** means any Relief 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.

**Remaining Facilities** means the Correctional Complex excluding the New Facilities.

**Remand Inmate** has the meaning given to that term in the Payment Schedule.

**Remand Inmate Floor** has the meaning given to that term in the Payment Schedule.

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

**Reports** means the Transition Phase and Operational Readiness Reports and Operating Phase Reports.

**Reputable Insurer** means an insurance company having the Required Rating.

**Request for Tender** means the Request for Tender for the Project issued by the State on or about February 2018.

**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.

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

**Retained Equipment** has the meaning given in clause 32.2(a).

**Review Period** has the meaning given in clause 11(c).

**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, or may be, required to provide or undertake during the Operating Phase to comply with the Services Requirements or State Project Documents, including the CDTCC Services,

in each case as modified in accordance with this Deed.

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

**Services Proposal** means Annexure A.

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

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

**Side Deed** means any Subcontract Side Deed executed in accordance with clause 22.2(c).

**Significant Subcontract** means:

- (a) any Subcontract in respect of the Project Activities identified in the Contract Particulars, as replaced in accordance with clauses 22.2 and 22.3; and
- (b) 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 \$1,000,000 per annum (indexed).

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

**Site** means the land on which the Correctional Complex is located and in respect of which the Services are undertaken, as identified within the blue dotted line on the Site Plans.

**Site Conditions** means any physical conditions on, above, 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 Deed; and
- (i) **(Adverse Rights)**: all Adverse Rights over or in connection with the Site.

**Site Plan** means:

- (a) prior to and including the Date of Operational Readiness (EW), the site plan set out in Part A of Schedule 5; and
- (b) after the Date of Operational Readiness (EW), the site plan set out in Part B of Schedule 5.

**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 Complex.

**Staff Misconduct** has the meaning given in Schedule 11.

**Staged Handover Area** means that part of the Expansion Works other than the 500 maximum security bed facilities.

**Staged Handover Notice** has the meaning given in clause 14.5(c).

**Staged Handover Preparation Notice** has the meaning given in 14.5(b).

**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 Comment Right** means the State is of the view, acting reasonably, that:

- (a) the Submitted Document:
  - (i) is incomplete, inaccurate, of poor quality, ambiguous, unclear or otherwise is not in a condition to allow the State, in its reasonable opinion, to adequately review it;
  - (ii) does not comply with the relevant Laws, Approvals or Policies;
  - (iii) is not in accordance with the requirements of this Deed or any other State Project Document (including that the Submitted Document is inconsistent with or not in accordance with Services Requirements); or
- (b) implementing or proceeding on the basis of the Submitted Document would 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 rights, obligation or functions, or its ability to perform its obligations under a State Project Document.

**State Damage** means loss or damage to the Correctional Complex to the extent caused by:

- (p) a breach by the State of any State Project Document; or
- (q) 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.

**State Nominee** has the meaning given in clause 47.3(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 19.2.

**State Supplied Assets** means those Assets set out in the Asset Condition Report to be provided by the State to Manage Co in accordance with clause 12.1(a).

**State Works** means any works undertaken, or to be undertaken, by the State or its Associates at the Correctional Complex, but does not include any work required to ensure the Services or the Project Activities are in accordance with this Deed.

**State Works Escort** means a correctional officer engaged by Manage Co to facilitate the performance of State Works and who is not otherwise engaged by Manage Co to perform the Project Activities at the Correctional Complex on the relevant day.

**Step-In Event** has the meaning given in clause 29.2.

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

**Subcontract** means an agreement which:

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

in connection with the Project Activities.

**Subcontract Side Deed** means a direct deed substantially in the form set out in Schedule 16.

**Subcontractor** means:

- (a) any person who enters into a contract in connection with the Project Activities with Manage Co and includes the Pharmaceuticals Supplier; or
- (b) for the purposes of the definition of Relevant Person and Probity Event and clauses 22.1(d), 22.3(a), 22.3(b), 22.4 and 23.1, 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 Significant Subcontractor.

**Submitted Document** means any document submitted for review in accordance with clause 11.

**Sunset Date** means the last day of the period referred to in clause 38.3(d) applicable to the Major Default.

**Supplier** has the meaning given in clause 24.7(c).

**Surge Adjustment** has the meaning given in the Payment Schedule.

**Surge Capacity** has the meaning given in the Payment Schedule.

**Tax or Taxes** means any present or future tax, levy, impost, 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.

**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 Deed:

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

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

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

- (a) the Expiry Date;
- (b) the date on which the amount of the relevant Termination Payment is agreed by the State and Manage Co or, failing agreement, is determined by an independent expert in accordance with clause 42; 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 15.

**Threshold Amount** has the meaning given in clause 32.7(a).

**Transition Payments** means the Transition Phase Payments for the Existing Facility and the Transition Phase Payments for the Expanded Facility.

**Transition Phase** means the period beginning on the date of this Deed and ending on the day before the Operational Commencement Date of the Existing Facility.

**Transition Phase Activities** means:

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

but excludes the Services and provision of the Additional Officers pursuant to clause 14.2.

**Transition Phase Payments for the Existing Facility** has the meaning given in clause 24.1(a)(i).

**Transition Phase Payments for the Expanded Facility** has the meaning given in clause 24.1(a)(ii).

**Transition Phase and Operational Readiness Plans** means each of the plans described in Part A of the Plans and Reports Schedule.

**Transition Phase Program** means the Initial Transition Phase Program, as updated in accordance with clause 10.

**Transition Phase Program Requirements** means the requirements set out in Schedule 4.

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

**Transition Phase and Operational Readiness Reports** means each of the reports described in Part A of the Plans and Reports Schedule.

**Transition Plan** means the Transition Phase and Operational Readiness Plan of that name.

**Transition Requirements** means:

- (a) the requirements for operational readiness set out in the Operational Readiness Schedule; and
- (b) the general transition obligations set out in section 1 of Part B (Project Scope) of the Output Specification and Transition Phase Activities.

**Uncleared Personnel** has the meaning given in clause 23.6(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 Deed and which is not identified, contemplated by or reasonably ascertainable from:

- (a) the Asset Condition Report (First), Asset Condition Report (Final) or any Project Information prior to the date of this Deed; 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 Deed.

**Unidentified Pre-Existing Defect** means any Latent Condition:

- (r) in the Existing Facility which is in existence prior to the date of this Deed and which is not identified, contemplated by or reasonably ascertainable from:
  - (i) the Asset Condition Report (First);
  - (ii) the Asset Condition Report (Final); or
  - (iii) any investigation carried out by or on behalf of Manage Co or its Associates on the Site prior to the date of this Deed; or
- (s) in the Expanded Facility which is discovered at least 6 years after the Date of Completion (EW),

but excluding any Latent Condition which:

- (t) would have been reasonably foreseeable or discovered or minimised as at the date of this Deed by a prudent, experienced and competent contractor in the same circumstances as Manage Co using Best Industry Practices;
- (u) Manage Co or any of its Associates is aware as at the date of the Deed;
- (v) is a Contamination Compensation Event; or

(w) is loss or damage to the Correctional Complex.

**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 Correctional Complex.

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

**Variation** means:

- (a) a change to the Services Requirements or the Services;
- (b) a change to the Correctional Complex;
- (c) an Asset Condition Change, which (if applicable) will be deemed to have occurred on the date of receipt by Manage Co of the Asset Condition Report (Final); or
- (d) the State requiring Manage Co to accommodate within the Correctional Complex:
  - (i) at any time during the Initial Operating Phase:
    - A. more than 846 maximum security Inmates (excluding Surge Capacity); or
    - B. more than 84 Surge Capacity Inmates;
  - (ii) at any time during the Expanded Facility Operating Phase:
    - A. more than 1,346 maximum security Inmates (excluding Surge Capacity); or
    - B. more than 240 Surge Capacity Inmates;
  - (iii) at any time during the Operating Phase:
    - A. more than 230 minimum security Inmates; or
    - B. a number of Remand Inmates less than the Remand Inmate Floor for a continuous period of at least six months;
    - C. a number of Remand Inmates greater than 90% of the total number of Inmates at the Correctional Complex for a continuous period of at least six months;
    - D. without limiting clause 27.8, female Inmates other than in accordance with the Pre-Agreed Variation;

but excluding:



- (e) any direction by the State to Manage Co to in accordance with clause 2.2 or 29.1(b);
- (f) any change referred to in paragraphs (a) to (d) which is required to ensure that the Correctional Complex or the Services are otherwise in accordance with this Deed;
- (g) without limiting paragraph (d) above or any entitlement to payment pursuant to the Payment Schedule, any change in the number of Inmates or the type of Inmate cohort; and
- (h) any direction or determination given by the Commissioner in accordance with the Corrections Legislation.

**Variation Order** means a notice entitled "Variation Order" issued in accordance with clause 27.3(c)(iii) or 28(c), requiring Manage Co to proceed with the relevant Variation or comply with the Change in Mandatory Requirements (as applicable).

**Variation Request** has the meaning given in clause 27.1.

**Visiting Magistrate** has the meaning given in the Corrections Legislation.

**Visitors** has the meaning given in the Corrections Legislation.

**Volumetric Adjustment** has the meaning given in the Payment Schedule.

**Voluntary Termination** means the termination of this Deed pursuant to clause 39.2.

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

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

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

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

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

**WHS Management Plan** means each of the plans of that name included in the 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 2017* (NSW).

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## 2. General rules of interpretation

### 2.1 Interpretation

In this Deed:

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

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) **(Deed and Schedule references)**: a reference to:
- (i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Deed; and
  - (ii) a section is a reference to a section of a Schedule;
- (d) **(document as amended)**: a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(Party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
- (h) **(Policies)**: a reference to a Policy means:
- (i) in the case of a Policy in existence as at the date of this Deed, the version of that Policy stated in this Deed, or if no version is stated, the current version as at the date of this Deed; or
  - (ii) in the case of new Policy which is introduced after the date of this Deed, the current version as at the date such Policy is introduced,
- in each case, as amended or updated from time to time but in all cases excluding any new Policy or amended Policy which the State notifies or directs Manage Co under clause 28(c) that Manage Co is not required to comply with;
- (i) **(definitions)**:
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
  - (ii) unless the context otherwise requires, terms which are defined in a Schedule of this Deed have the same meaning throughout this Deed (including the Schedules and Annexures to it);
- (j) **('includes')**: 'includes' and 'including' will be read as if followed by the phrase '(without limitation)';
- (k) **('or')**: the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;
- (l) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations,

drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;

- (m) ('\$'): a reference to '\$', AUD or dollar is to Australian currency;
- (n) (**Business Day**): if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;
- (o) (**day**): except as otherwise provided in this Deed or where a reference is made to 'Business Days', day means a calendar day;
- (p) (**time**): a reference to time is a reference to time in Sydney, Australia;
- (q) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (r) (**function**): a function includes a power, authority or duty;
- (s) (**obligations and liabilities**): a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (t) (**'may'**): except to the extent that the State is expressly required under this Deed to act reasonably:
  - (i) in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion (and without regard to Manage Co) and the State has no obligation to do so; and
  - (ii) the State may consent or grant any approval as the State (in its absolute and unfettered discretion (and without regard to Manage Co)) thinks fit or may be given subject to any conditions;
- (u) (**construction**): where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
  - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
  - (ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (v) (**asset**): references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including Intellectual Property Rights) and any right, interest, revenue or benefit in, under or derived, from the property or asset; and
- (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.

## 2.2 Composition of this Deed and order of precedence

- (a) (**Deed composition**): This Deed comprises:
  - (i) clauses 1 to 56;
  - (ii) Schedule 1 to Schedule 21; and

(iii) Annexure A,

(the **Deed**).

(b) (**Attachments**): The Attachments do not form part of this Deed.

(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 Deed, then that party must notify the other party of the inconsistency, ambiguity or discrepancy as soon as possible and, in any case not later than 5 Business Days after becoming aware of the inconsistency, ambiguity or discrepancy.

(e) (**Resolution of ambiguity**): Within 15 Business Days after:

(i) in the case of a notice from Manage Co under clause 2.2(d), the State's receipt of Manage Co's notice pursuant to clause 2.2(d); or

(ii) in the case of a notice from the State, the date of the State's notice pursuant to clause 2.2(d),

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:

(iii) (**Order of precedence**): if the relevant inconsistency, ambiguity or discrepancy is within a document forming part of this Deed, and there is a process for resolving such inconsistencies, ambiguities and discrepancies contained in the relevant document, then, in accordance with that process; or

(iv) (**Higher standard**): if the inconsistency, ambiguity or discrepancy is between documents forming part of this Deed or is within a document that forms part of this Deed but does not have a process for resolving the inconsistency, ambiguity or discrepancy, then the State will direct 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 Deed, the standards, codes, specifications, policies and requirements set out in paragraphs (a), (b) and (c) of the definition of Policies will prevail over the standards, codes, specifications, policies and requirements referred to in paragraph (d) of that definition.

(g) (**Inconsistency between State Project Documents**): If there is an ambiguity, discrepancy or inconsistency between this Deed and any other State Project Document, then the following order of precedence will apply:

(i) this Deed; and

(ii) 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 Deed, 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 Deed will give rise to a breach of its obligations under the Corrections Legislation, comply with its obligations under the Corrections Legislation, in which case, Manage Co will be deemed to have complied with this Deed to that same extent.

## 2.3 Approvals, directions and notices in writing

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

## 2.4 Prior approval or consent

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

## 2.5 Action without delay

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

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

## 2.7 Relationship of the parties

Nothing in this Deed or any other Project Document:

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

## 2.8 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 2.8(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 2.8(a) to 2.8(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.

## 2.9 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 2.9(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.

## 2.10 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 any Submitted Documents); or

- (ii) inspect or review the Project Activities or the Correctional Complex, 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, comment upon, acceptance, approval, certification of, endorsement, rejection of or failure to comment upon any Manage Co Material by the State or its Associates;
  - (ii) inspection or review of the Project Activities or the Correctional Complex 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.
- (c) **(No Claim):** Manage Co will not be entitled to make any Claim against the State, whether under this Deed or at Law, for any Liabilities incurred by Manage Co in connection with any review, comment or failure to comment on, acceptance, approval, certification of, endorsement or rejection of, any Manage Co Material (including any Submitted Documents).

## 2.11 Indexation

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

## 2.12 Cost of carrying out obligations

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

## 2.13 Exclusion of Civil Liability Act 2002 (NSW)

- (a) **(Excluded operation of Civil Liability Act):** To the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002 (NSW)* is excluded in relation to

any and all rights, obligations and Liabilities arising under or in relation to this Deed, howsoever those rights, obligations or Liabilities are sought to be enforced.

- (b) **(Subcontracts must exclude operation of Civil Liability Act):** 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.

## 2.14 Final and binding

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

## 2.15 Governing Law

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

## 2.16 Entire Agreement

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

## 2.17 Further acts and documents

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

## 2.18 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 or Subcontract to which that Associate is a party.

## 2.19 Survival of certain provisions

- (a) **(Surviving clauses):** All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this



Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:

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

## 2.20 Waiver

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

## 2.21 Severance

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

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

## 2.22 Counterparts

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

## 2.23 Moratorium legislation

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

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

(each matter referred to in 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 Deed.

## 2.24 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 Deed or by or under any Law; and
- (b) (**Notify State**): must notify the State immediately of any conflict of interest which does arise, and act in accordance with any direction given by the State to the extent that it is able to do so in accordance with Law and this Deed.

## 2.25 Manage Co Associates

Notwithstanding any other provision of this Deed, the parties acknowledge and agree that the State has no Liability for, Manage Co will not be entitled to relief in respect of, and Manage Co's Liability to the State under this Deed will not be reduced by:

- (a) any act or omission of Manage Co's Associates, including CSI and Justice Health when acting in their capacity as contractors, consultants, advisers or agents of Manage Co; or
- (b) any act, omission or breach by the State or CSI, on behalf of the State, in relation to any of the State's obligations to provide Meals in accordance with Schedule 17.

## 2.26 Supply of essential or critical goods or services

For the purposes of Regulations 5.1.50, 5.2.50 and 5.3A.50 of the Corporations Regulations, the parties intend that this Deed is a contract for the supply of essential or critical goods or services to the State of New South Wales or the public on behalf of the State of New South Wales.

## Part B - Project commencement

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### 3. Conditions Precedent

#### 3.1 Commencement

- (a) This Deed will only come into force and effect (but will do so automatically on the date) when the last of the Conditions Precedent to be satisfied, has been satisfied, (or waived in accordance with clause 3.3) except for the provisions contained in:
- (i) clause 1 (Definitions);
  - (ii) clause 2.1 (Interpretation);
  - (iii) clause 2.7 (Relationship of the parties);
  - (iv) clause 2.8 (State's executive rights, duties and functions);
  - (v) clause 2.9 (Reasonable endeavours and obligations to act in good faith);
  - (vi) clause 2.10 (No State liability for review);
  - (vii) this clause 3 (Conditions Precedent);
  - (viii) clause 5 (Performance Security);
  - (ix) clause 6 (Term);
  - (x) clause 7.3 (All Risks);
  - (xi) clause 16 (Project Information);
  - (xii) clause 17.3 (General Site undertakings);
  - (xiii) clauses 19.2 and 19.3 (Parties' representatives);
  - (xiv) clause 26 (Reduction in State liability for Relief Events);
  - (xv) clause 34 (Indemnities and Consequential or Indirect Loss);
  - (xvi) clause 36 (Limitation of liability);
  - (xvii) clause 37 (Insurance);
  - (xviii) clauses 40 to 43 (Dispute resolution);
  - (xix) clause 44 (Representations and warranties);
  - (xx) clause 47 (Assignment and amendments);
  - (xxi) clause 48 (Change in Control);
  - (xxii) clause 50 (Intellectual Property Rights);
  - (xxiii) clause 51 (Confidential Information and disclosure);
  - (xxiv) clause 52 (Probity Events and Probity Investigations); and
  - (xxv) clause 53 (Notices and bar to Claims),
-

which will commence on the date of this Deed.

### 3.2 Satisfaction of Conditions Precedent

- (a) **(Conditions Precedent Schedule)**: The Conditions Precedent Schedule sets out which party is to satisfy each Condition Precedent.
- (b) **(State to use reasonable endeavours)**: The State must use reasonable endeavours to satisfy each Condition Precedent it is obliged to satisfy in accordance with the Conditions Precedent Schedule (or procure its waiver in accordance with clause 3.3) by the Condition Precedent Deadline, and must notify 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 Deed upon giving not less than 5 Business Days' notice to Manage Co;
- (b) **(State Project Documents terminated)**: if the State terminates this Deed in accordance with clause 3.4(a), each of the State Project Documents will be taken to have been terminated at the time this Deed is terminated and will be of no further force or effect; and
- (c) **(No claim)**: neither party will have any Claim against the other party arising out of or in connection with the Project or the Project Documents, including due to the failure to satisfy (or procure the waiver of) a Condition Precedent, except in respect of antecedent breaches of the clauses listed in clause 3.1.

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## 4. Term

### 4.1 Commencement date

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

## 4.2 Expiry Date

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

## 4.3 Option to Extend

- (a) No later than 12 months prior to the then Final Expiry Date, the State may issue to Manage Co a notice entitled "Extension Notice" which identifies that the State requires the then Final Expiry Date to be extended and the period of that extension which must be no greater than 5 years (**Extension Notice**).
- (b) Where an Extension Notice is issued under clause 4.3(a):
  - (i) the Final Expiry Date will be deemed to be amended to the last day of the period set out in the Extension Notice; and
  - (ii) Manage Co must comply with its obligations in respect of the "Extension Notice" in clause 5(b) and 36.2.
- (c) The State may only (but is not obliged to) issue one Extension Notice under clause 4.3(a).

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## 5. Performance Security

- (a) Manage Co must procure and provide to the State a Performance Bond:
  - (i) as a condition precedent to the occurrence of Commercial Close;
  - (ii) having a face value in the amount of [REDACTED];
  - (iii) for the period from and including Commercial Close to and including the date which is 60 Business Days after the Expiry Date (**End Date**) or if there are any Disputes which remain unresolved on that End Date, to the date which is 20 Business Days after that Dispute is finally resolved (which ever is the later); and
  - (iv) which names the State as beneficiary.
- (b) If the State issues an "Extension Notice" pursuant to clause 4.3(a), Manage Co must refresh the Performance Bond so that on 31 March 2026 the face value of the Performance Bond then held by the State is in the amount of [REDACTED]
- (c) The State is entitled to call upon or have recourse to the Performance Bond provided under clause 5(a):
  - (i) in respect of the amount of any Claim the State may make in good faith against Manage Co;
  - (ii) if a Default Termination Event occurs; or
  - (iii) if Manage Co has not replaced that Performance Bond in accordance with the requirements of this clause 5,without providing notice to Manage Co that it intends to make such a call or have recourse to those Performance Bonds.
- (d) If at any time the State has been provided with the Performance Bond pursuant to this Deed and it has an expiry date which is prior to the last day of the period identified in clause 5(a)(iii), Manage Co must provide a replacement Performance Bond to the State having the same face value as the Performance Bond it is

replacing not less than 30 days prior to any expiry or termination of the Performance Bond.

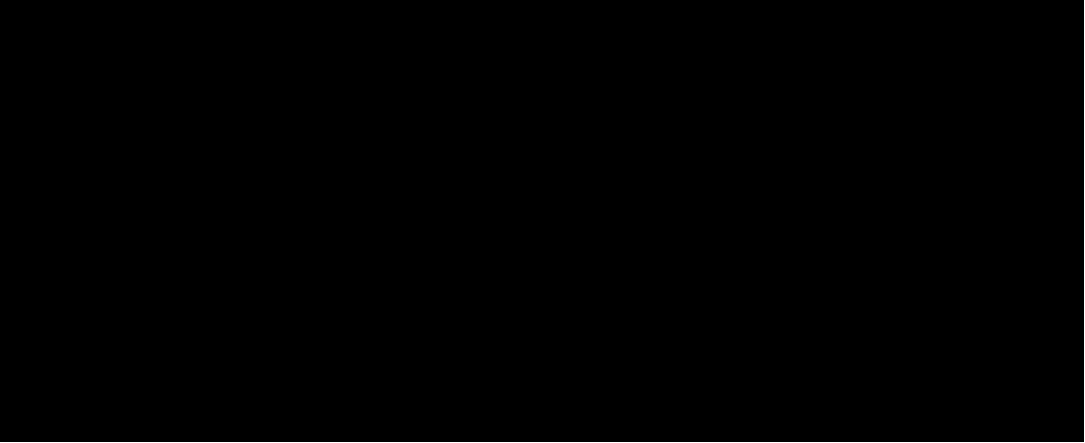
(e) If at any time:

- (i) the long term credit rating of the issuer of the Performance Bond is withdrawn or falls below the Required Rating or that issuer otherwise ceases to be the holder of a current licence issued by the Australian Prudential Regulatory Authority (each a **Relevant Downgrade**); or
- (ii) the specified location within Sydney (or such other place as approved by the State) is no longer available for demand to be given or for payment to be made under a Performance Bond,

Manage Co must provide the State with a replacement Performance Bond:

- (iii) for the same face value as the Performance Bond it is replacing;
- (iv) that satisfies all of the requirements of this clause 5; and
- (v) from a financial institution that is the holder of a current licence issued by Australian Prudential Regulatory Authority, which is acceptable to the State and which has a Required Rating at the time of issue of the replacement Performance Bond.

That replacement Performance Bond must be provided to the State by Manage Co within 20 Business Days after the Relevant Downgrade.

- (f) If the State has not received a replacement Performance Bond required by clause 5(d) or 5(e) before the date identified in clause 5(d) or 5(e) respectively, irrespective of anything contained in and without limiting the State's rights under any State Project Document or that Performance Bond and without limiting the unconditional nature of that Performance Bond, the State may call on or have recourse to that Performance Bond currently held by the State and hold the proceeds pursuant to this clause 5.
- (g) Any proceeds held by the State pursuant to clause 5(f) will be available to the State and may be drawn upon by the State pursuant to clause 5(b). The State is entitled to the interest earned on those proceeds.
- (h) The balance of any proceeds held by the State pursuant to clauses 5(f) and 5(g) must be returned to Manage Co within 10 Business Days after the date upon which Manage Co provides a replacement Performance Bond in accordance with clause 5(d) or 5(e) as the case may be.
- (i) Nothing in this clause 5 will prevent the State from seeking other remedies from Manage Co at any time.
- (j) 

- (k) Manage Co must not institute any proceedings or take any steps to injunct or otherwise restrain:
  - (i) any issuer of the Performance Bond held by the State from paying the State pursuant to the relevant Performance Bond or contact the issuer of the Performance Bond in an attempt to prevent or delay the issuer from making any payment under the Performance Bond;
  - (ii) the State from taking any steps for the purpose of calling on, having recourse to or making a demand under the Performance Bond or receiving payment under the Performance Bond or otherwise exercising its rights under the Performance Bond; or
  - (iii) the State from using any money received under the Performance Bond.
- (l) If the State calls on any Performance Bond where it does not have the right to do so, the State must repay (with interest at the Overdue Rate) the amounts so called under the Performance Bond and the cost of procuring any replacement Performance Bond to Manage Co as the Manage Co's sole remedy for such breach, and Manage Co must reinstate the Performance Bond as a precondition to the State being obliged to make such payment.
- (m) The parties acknowledge that the Performance Bond is provided to effect an allocation of cash flow risk notwithstanding any dispute in respect of whether an entitlement to call on the Performance Bond arises.

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## 6. Operational Readiness

### 6.1 Requirement

Manage Co must:

- (a) use its best endeavours to achieve Operational Readiness of the Existing Facility by 8 March 2019;
- (b) achieve Operational Readiness of the Existing Facility by [REDACTED] on 31 March 2019; and
- (c) achieve Operational Readiness of the Expanded Facility by the Date for Operational Readiness (EW).

### 6.2 Operational Readiness Report

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

### 6.3 Corrective Action Plan

- (a) **(Notice of non-compliance):** If Manage Co fails to achieve a milestone set out in its Transition Phase Program the State may give notice to Manage Co and require it to provide a corrective action plan which sets out how Manage Co will overcome the failure and achieve its obligations in clause 6.1.
- (b) **(Corrective action plan):** If the State issues a notice pursuant to clause 6.3(a), Manage Co must, promptly, and in any event within 5 Business Days, issue a corrective action plan to the State for review in accordance with clause 11 which shows how Manage Co proposes to overcome the delay and achieve its obligations in clause 6.1.

- (c) **(Compliance):** Manage Co must comply with a corrective action plan for which the State does not provide any comments or is deemed to provide no comments in accordance with clause under clause 11.
- (d) **(Liability):** Manage Co will not be relieved of any Liability or responsibility under this Deed or otherwise at Law arising out of or in connection with the implementation of any corrective action plan in accordance with this clause 6.3.
- (e) **(No claim):** Manage Co will not be entitled to make any Claim against the State arising out of or in connection with any Loss suffered or incurred by Manage Co in preparing, or complying with, a corrective action plan.

#### 6.4 Notice before Operational Readiness

- (a) **(Notice timeline):** Manage Co must give the State Representative notice:
  - (i) 30 Business Days;
  - (ii) 20 Business Days; and
  - (iii) 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 6.4(a), the date upon which Manage Co reasonably expects to achieve Operational Readiness changes, Manage Co must notify the State promptly of the revised date.

#### 6.5 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 any issues raised by the State in relation to the draft Operational Readiness Report.
- (b) **(Existing Facility):** In respect of the Existing Facility, Manage Co must submit a notice pursuant to clause 6.5(a) on or before 8 March 2019.
- (c) **(Notice by the State):** Notwithstanding that Manage Co may not have issued a notice under clause 6.5(a), when the State considers that Manage Co has achieved Operational Readiness, the State may notify Manage Co of its opinion.

#### 6.6 Determination of Operational Readiness

- (a) If, in the opinion of the State (acting reasonably), Operational Readiness:
  - (i) **(Issue Certificate):** 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 6.5, which certificate must state the date on which Operational Readiness was achieved **(Certificate of Operational Readiness)**; or
  - (ii) **(Issue notice):** has not been achieved, the State must, by not later than 5 Business Days after receipt of the notice issued in accordance with clause 6.5, issue to Manage Co a notice containing details of any outstanding Operational Readiness Criteria after which Manage Co must, notwithstanding that the Operating Phase may have commenced,



continue to expeditiously and diligently progress the Transition Phase Activities or the Operational Readiness Activities (as the case may be) to achieve Operational Readiness.

- (b) **(Consequence of notice):** If the State issues a notice under clause 6.6(a)(ii), the process in clauses 6.4 to 6.6(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 6.6(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 6.6:
  - (i) is final and binding upon the State and Manage Co;
  - (ii) does not constitute:
    - A. evidence that Manage Co has satisfied the FFP Warranty;
    - B. an approval by the State of the completion or acceptance of the Transition Phase Activities or the Operational Readiness Activities (as the case may be) under this Deed; or
    - C. evidence that all or any other obligations under this Deed have been satisfied.

## 6.7 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) **(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 clause 11 a program for the completion of the Operational Readiness Outstanding Items, which complies with clause 6.7(a).
- (c) **(Complete within timeframe):** Manage Co must complete or remedy each Operational Readiness Outstanding Item in the relevant timeframe determined in accordance with clause 6.7(b) to the satisfaction of the State (acting reasonably).
- (d) **(Failure to complete):** A Major Default will be deemed to occur if an Operational Readiness Outstanding Item is not completed or remedied within the timeframe determined in accordance with clause 6.7(b).

## Part C - Services

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### 7. Project Activities

#### 7.1 Performance of Project Activities

- (a) **(Performance):** Manage Co must carry out the Project Activities.
- (b) **(Project Activities):** Without limiting clause 7.1(a), Manage Co must perform the Project Activities in accordance with:
  - A. the Project Documents;
  - B. all applicable Laws, Approvals and, subject to clause 28(c), Policies;
  - C. the Services Requirements;
  - D. the Plans; and
  - E. subject to clause 12.2(a)(ii), Best Industry Practices;
- (ii) ensure that neither it nor any of its Associates, in either case acting in connection with the Project, cause the State or any of the State's Associates to breach any Law; and
- (iii) subject to clause 12.2(a)(ii), ensure that it manages all risks associated with the Project Activities in accordance with Best Industry Practices.
- (c) **(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 Deed;
  - (iii) all Variation Orders issued by the State in accordance with this Deed; 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 7.1(c)(iv)B or otherwise in accordance with this Deed,

whether or not Manage Co disputes that such direction is a direction or asserts that the direction is or determination is a Variation under this clause, except as required by Law.
- (d) **(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 Associate of the State other than:
  - (i) the State Representative or a State delegate appointed in accordance with clause 19.2;

- (ii) the Commissioner or its delegates delegated with the relevant authority in accordance with the Corrections Act;
- (iii) a Monitor acting in accordance with the Corrections Act; and
- (iv) the Minister or its delegates delegated with the relevant authority in accordance with the Corrections Act.

## 7.2 Disputed Directions

- (a) **(Comply with direction):** Subject to clause 26.2(d), where Manage Co disputes that any direction given or determination made has been given or made in accordance with clause 7.1(c) or clause 7.1(d), 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 40.
- (b) **(Determination of Dispute):** An expert, arbitrator, court or tribunal with power to determine a Dispute under this Deed will have the power to open up and review the direction purported to be given or determination purported to be made under this Deed.

## 7.3 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 Complex 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 Complex, the Project or the Project Documents, including any Claim for breach of contract, misrepresentation or negligence (other than a Claim for breach of contract where the State fails to make any payment properly due to Manage Co under this Deed).
- (b) **(Liability exceptions):** Clause 7.3(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 Deed 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 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 7.3(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 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 for delay, prevention, disruption, hindrance or disturbance to the progress or performance of

any part of the Project Activities, including by reason of a Relief Event, a Change in Mandatory Requirements, a Contamination Compensation Event or a Variation, is limited to the amount payable by the State to Manage Co in accordance with clauses 25.4(c), 26.2(d), 28 and 30.

#### 7.4 Fit For Purpose Warranty

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

- (a) **(Fit for Purpose)**: remain Fit For Purpose, by reference to the purposes, function, uses and requirements which are current and apply as at the relevant 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.

#### 7.5 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 Deed.

#### 7.6 Corrections Legislation

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

- (ii) any other Law, so far as that Law affects the Correctional Complex or the welfare of Inmates.
- (c) **(Sufficient Staff):** Manage Co must employ sufficient Staff, including custodial and paramedical Staff, to enable Manage Co to discharge its obligations under this Deed.
- (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 Complex.
- (e) **(Minimum standard):** The parties agree that Parts B and C 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 Complex for the purpose of section 248(1) of the Corrections Act.

## 7.7 Defects

- (a) **(Defects):**
  - (i) Subject to clauses 7.7(a)(ii) and 7.7(a)(iii), 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 7.7, including Material Defects (EW), Defects (EW) and Unidentified Pre-Existing Defects.
  - (ii) During the first 6 years following the Date of Completion (EW), Manage Co is not required to rectify Defects (EW) except to the extent:
    - A. clause 14.4(b) applies; or
    - B. the State has issued a Defect (EW) Notice pursuant to clause 14.4(c).
  - (iii) Manage Co is not required to rectify an Unidentified Pre-Existing Defect except to the extent:
    - A. clause 7.8(b) applies; or
    - B. the State has issued an Unidentified Pre-Existing Defect Notice pursuant to clause 7.8(c).
- (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:
  - (i) specifying the Material Defect;
  - (ii) requiring Manage Co to rectify the Material Defect; and
  - (iii) specifying a reasonable time within which this must occur, which period must not, if the Material Defect also gives rise to a Quality Failure, be less than any applicable rectification period specified in the Performance Regime or the Payment Schedule which period will be extended on a day for day basis if an extension is granted pursuant to Section 11.3 of the Payment Schedule in respect of the same Quality Failure.
- (c) **(Timeframe to rectify):** Manage Co must rectify a Material Defect:
  - (i) if a notice is given under clause 7.7(b), within the time specified in the State's notice; or

- (ii) otherwise, as soon as reasonably practicable, having regard to the nature of the Material Defect.
- (d) **(State entitled to rectify):** If that Material Defect is not rectified by Manage Co in accordance with clause 7.7(c), then the State is entitled to rectify that Material Defect itself or engage a third party to rectify that Material Defect and any Liability incurred by the State in connection with that Material Defect, including 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 Deed or otherwise at Law in connection with Defects will be:
  - (i) affected or limited by the rights conferred upon the State by this clause 7.7 or any other provision of this Deed; or
  - (ii) affected or limited by the failure of the State to exercise any such rights.
- (f) **(Rights unaffected):** Nothing in this clause 7.7, or any other clause of this Deed in connection with Defects, limits Manage Co's obligations in respect of a 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 Correctional Complex constitutes a Defect for the purposes of this Deed must be referred for dispute resolution in accordance with clause 40.

## 7.8 Unidentified Pre-Existing Defects

- (a) **(Notification):** Manage Co must notify the State as soon as it becomes aware of any Unidentified Pre-Existing Defect, which notice must identify:
  - (i) the Unidentified Pre-Existing Defect; and
  - (ii) the location of that Unidentified Pre-Existing Defect.
- (b) **(Unidentified Pre-Existing Defect):** If an Unidentified Pre-Existing Defect occurs:
  - (i) Manage Co must immediately undertake such temporary and make safe measures as are required to avoid the occurrence of a Critical Incident and thereafter the regime in clause 7.8(c) will apply to the rectification of the Unidentified Pre-Existing Defect; and
  - (ii) the cost of any temporary and make safe measures undertaken by Manage Co will be paid by the State to Manage Co in accordance with clause 30.
- (c) **(State rights):** Following receipt of a notice from Manage Co under clause 7.8(a) or the State otherwise becoming aware of an Unidentified Pre-Existing Defect, the State may:
  - (i) rectify the Unidentified Pre-Existing Defect itself or engage a third party to rectify that Unidentified Pre-Existing Defect; or
  - (ii) issue a notice to Manage Co requiring Manage Co to rectify that Unidentified Pre-Existing Defect which notice must set out the time frame within which Manage Co must rectify the Unidentified Pre-Existing Defect which time frame must be reasonable having regard to the nature of the Unidentified Pre-Existing Defect and the operation of the Correctional Complex (**Unidentified Pre-Existing Defect Notice**).

- (d) **(Rectification by Manage Co):** If the State issues an Unidentified Pre-Existing Defect Notice:
- (i) Manage Co must rectify that Unidentified Pre-Existing Defect within the time set out in the Unidentified Pre-Existing Defect Notice which period must not, if the Unidentified Pre-Existing Defect also gives rise to a Quality Failure, be less than any applicable rectification period specified in the Performance Regime or the Payment Schedule, and such period will be extended to the extent the applicable rectification period specified in the Performance Regime or the Payment Schedule is extended in accordance with the Payment Schedule, and the cost of any such rectification work will be paid by the State to Manage Co in accordance with clause 30; and
  - (ii) if the Unidentified Pre-Existing Defect is not rectified by Manage Co in accordance with the Unidentified Pre-Existing Defect Notice as may be extended in accordance with clause 7.8(d)(i), then the State may rectify that Unidentified Pre-Existing Defect itself or engage a third party to rectify that Unidentified Pre-Existing Defect and any Liability incurred by the State in connection with that Unidentified Pre-Existing Defect, including the cost of any such rectification work will be a debt due and payable by Manage Co to the State.

## 7.9 Compulsory Drug Treatment Correctional Centre

Notwithstanding any other provision of this Deed, Manage Co must provide those Services set out in Section 2.4.4 of Part B of the Output Specification to the Compulsory Drug Treatment Correctional Centre (**CDTCC Services**).

## 7.10 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) from Commercial Close up to the Operational Commencement Date of the Existing Facility by any emergency services to the extent caused or contributed to by Manage Co or its Associates; and
  - (ii) after the Operational Commencement Date of the Existing Facility for the remainder of the Term by any emergency services; and
- (b) **(NSW Fire and Police):** any costs for NSW Fire and Rescue or NSW Police attendance at the Site at the time during the Term where such attendance is requested by 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.

## 7.11 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 approval (acting reasonably) prior to the Operational Commencement Date of the Existing Facility.
- (c) **(Work performed by Inmates):** Any work performed by Inmates in Correctional Industries must comply with:

- (i) all relevant Laws, Approvals and Policies;
  - (ii) the Services Requirements;
  - (iii) the Operating Phase Plans; and
  - (iv) 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 7.11(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 7.3(a), the State accepts no risk in connection with any use by Manage Co, or any of its Associates, of Inmates to provide labour at the Correctional Complex.

## 7.12 Pharmaceutical Supply arrangements

To the extent that Manage Co or one of its Associates are able to, and do, purchase Pharmaceuticals at the prices available through the 'Standing Offer Agreement 902 - supply of pharmaceutical products to eligible customers in New South Wales' (Managed by HealthShare NSW) (or equivalent) (**Standing Offer**), Manage Co will not be required to conduct a tender process for the appointment of a Pharmaceuticals Supplier as contemplated by clauses 7.12(a) – (e). For the avoidance of doubt, if Manage Co or its Associates do not (for any reason except with the prior written consent of the State) purchase Pharmaceuticals through the Standing Offer, Manage Co must promptly conduct a tender as contemplated by clause 7.12(a) – (e).

- (a) **(Prior to Operational Readiness):** Prior to Operational Readiness, Manage Co must conduct a tender process for the appointment of a Pharmaceuticals Supplier.
- (b) **(Tender process):** Manage Co must ensure that the tender process for the appointment of the Pharmaceuticals Supplier is conducted consistently with New South Wales Government procurement principles including the principles of value for money, open and fair competition, accountability, risk management and probity and transparency.
- (c) **(Form of tender):** Prior to conducting the tender process for the appointment of the Pharmaceuticals Supplier, Manage Co must, in consultation with the State, prepare and submit to the State for review in accordance with clause 11 a copy of the proposed form of tender to be used to appoint a Pharmaceuticals Supplier.
- (d) **(Pricing):** As a tender condition, Manage Co must require tenderers to provide unit prices, rates or charging formulas (as applicable) for:



- (i) each Pharmaceutical item;
- (ii) each Pharmaceutical Related Item;
- (iii) Pharmaceutical Supply; and
- (iv) Urgent Pharmaceutical Supply,

which Manage Co reasonably anticipates would be required in relation to the issue or administration of Pharmaceuticals to Custodial Patients at the Correctional Complex.

- (e) **(Copies):** Manage Co must provide the State with copies of all tenders received from the tenderers for the role of the Pharmaceuticals Supplier as requested by the State.
- (f) **(Consent of the State):** Neither Manage Co nor an Associate of Manage Co may appoint or replace a Pharmaceuticals Supplier without the prior written consent of the State (which will not be unreasonably withheld).
- (g) **(Imprest Stock):** Any Pharmaceuticals that are intended by Manage Co or an Associate of Manage Co to be administered to Inmates as Imprest Stock are subject to the prior approval of the State from time to time.
- (h) **(Changes in price):** Manage Co or an Associate of Manage Co must obtain the prior written consent of the State (which will not be unreasonably withheld) for any increase to:
  - (i) any fixed unit price or rate (where a charging formula does not otherwise apply); and
  - (ii) any percentage increase against the base cost for any charging formula,

which would be payable by Manage Co (and therefore reimbursed by the State) in relation to any Pharmaceuticals, Pharmaceutical Related Items, Pharmaceutical Supply or Urgent Pharmaceutical Supply contained in the Pharmaceuticals Supplier's appointment.

- (i) **(Changes in appointment):** Subject to clauses 7.12(g) and 7.12(h), Manage Co may, from time to time during the Operating Phase, notify the State of changes made to the terms of the Pharmaceuticals Supplier's appointment, to ensure the availability of Pharmaceuticals necessary for the provision of the Health Services at the Correctional Complex.
- (j) **(Branding):** Manage Co will:
  - (i) order and administer the best value generic equivalent of branded Pharmaceuticals; and
  - (ii) where a patent for a branded patented Pharmaceutical expires and a generic competitor or a biosimilar product enters the market, order and administer a generic Pharmaceutical equivalent to, or biosimilar of, the relevant patented Pharmaceutical, within one month of the expiry of the patent,

other than where:

  - (iii) the generic brand does not provide the best value for money to the State; or

- (iv) there is a clinical reason to not prescribe a generic equivalent of the branded Pharmaceutical or the previously patented Pharmaceutical (as the case may be).
- (k) The obligations of Manage Co under this clause 7.12 are without limitation to the requirements in clause 22.

### 7.13 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 Deed, either party becomes aware of an international policy, obligation or standard in relation to the management or operation of an Australian prison, that comprises or may reasonably be expected to comprise a Policy, it will notify the other party of the same as soon as reasonably practicable and clause 28 shall apply.

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## 8. Quality Assurance

- (a) **(Quality Assurance System):** During the Term, Manage Co must develop, implement, maintain and comply with a Quality Assurance System.
- (b) **(Minimum standard):** Manage Co's Quality Assurance System must:
  - (i) be at least to the standard set out in Australian/New Zealand Standards AS/NZS ISO 9001 'Quality systems - model for quality assurance in design, development, production, installation and servicing' or an accepted international equivalent; and
  - (ii) have been certified by a JASANZ accredited certifying body, as complying with the requirements of AS/NZS ISO 9001 and such certification must remain current throughout the Term.
- (c) **(Certification):** Manage Co must ensure that it and any relevant Significant Subcontractors engaged to perform relevant Project Activities are certified to the standards set out in the Contract Particulars at all relevant times.
- (d) **(Subcontractors to have Quality Assurance Representative):** Manage Co must have a suitably qualified Quality Assurance Representative to ensure that its Quality Assurance System is developed, implemented and maintained in accordance with this Deed.
- (e) **(Proof of accreditation):** Manage Co must submit proof of its quality assurance accreditations required by this Deed at the same time it is required to submit its Transition Phase Quality Assurance Plans and at any other time requested by the State (acting reasonably).

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## 9. Audits and performance compliance

- (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 or performance compliance reviews of the Project Activities or the Correctional Complex to verify Manage Co's compliance with the State Project Documents.

- (b) **(Audit scope):** An audit or performance compliance review may include examination of:
  - (i) any part of the Correctional Complex;
  - (ii) the carrying out of any Project Activities;
  - (iii) the Accounts and Records;
  - (iv) Manage Co Material; and
  - (v) Manage Co's and its Associates' processes and methodologies.
- (c) **(State audit obligations):** Where the State undertakes an audit or performance compliance review in accordance with clause 9(a), the State:
  - (i) must, where reasonable able to do so, provide Manage Co with no less than 10 Business Days' notice of any relevant audit or performance compliance review;
  - (ii) must use reasonable endeavours to minimise any disruption caused to the Project Activities; and
  - (iii) may provide a copy of any report prepared as a consequence of the audit or performance compliance review to Manage Co and its Associates and may require Manage Co and its Associates to attend a meeting to discuss the audit or performance compliance review report.
- (d) **(Manage Co audit obligations):** Without limiting clause 18, Manage Co must:
  - (i) provide all Manage Co Material reasonably requested by the State or any of its Associates (acting reasonably) undertaking the audit or performance compliance review; 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 Correctional Complex, including Inmates.
- (e) **(Discussion of audit):** When required by the State, the Project Control Group must discuss any audit or performance compliance review 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.
- (f) **(Implementation of actions):** To the extent that:
  - (i) the parties reach agreement in accordance with clause 9(e), Manage Co must implement the actions as agreed between the parties; or
  - (ii) the parties are unable to reach an agreement in accordance with clause 9(e), the State may direct Manage Co to meet the requirements referred to in clause 9(e)(i) and Manage Co must implement such actions.
- (g) **(Liability for cost of audit):** Manage Co will not be liable for any costs incurred by the State performing audits or performance compliance reviews under this clause 9, unless an audit or performance compliance review 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 or performance compliance review

are to be paid by Manage Co as a debt due and payable by Manage Co to the State.

- (h) **(Auditor-General not limited):** Without limiting this clause 9, the parties acknowledge and agree that, notwithstanding any provision of this Deed to the contrary:
- (i) the powers and responsibilities of the Auditor-General for the State of New South Wales under the *Public Finance and Audit Act 1983* (NSW) (or any substituted legislation) are not limited or affected by the terms of this Deed and each party submits to those powers and responsibilities;
  - (ii) the State or 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 9(h)(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 9(h)(ii).

## Part D - Documents

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### 10. Plans and Reports

- (a) **(Initial Transition Phase and Operational Readiness Plans):** The parties acknowledge that the Initial Plans are included as Attachment 1.
- (b) **(Preparation):** Manage Co must:
  - (i) prepare and update each Plan and Report:
    - A. in accordance with the Plans and Reports Schedule (as applicable) and the other requirements of this Deed;
    - B. to ensure each Plan contains complete and accurate information in respect of the relevant aspects of the Project; and
    - C. as necessary to reflect any changes to the nature, understanding or status of the Services; and
  - (ii) submit each Plan and Report to the State for review in accordance with clause 11 and the Plans and Reports Schedule (as applicable).
- (c) **(Authority Approval):** If a Plan or Report is required to be approved by an Authority, Manage Co must ensure that it has obtained that Approval prior to submitting the relevant Plan or Report to the State for review.
- (d) **(Performance):** Unless otherwise agreed by the State, Manage Co must carry out the Project Activities in accordance with the Plans.
- (e) **(Warranty):** Manage Co warrants that:
  - (i) each Plan and each 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 Plan will, at all relevant times during the Term, be fit for purpose.
- (f) **(Current version):** A reference to any Transition Phase and Operational Readiness Plan, Transition Phase and Operational Readiness Report, Operating Phase Plan or Operating Phase Report is a reference to that Transition Phase and Operational Readiness Plan, Transition Phase and Operational Readiness Report, Operating Phase Plan or Operating Phase Report as amended or updated from time to time under this Deed.

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### 11. Review of documents by the State

- (a) **(Form of Submitted Document):** Manage Co must provide electronic versions in PDF and native format of each Submitted Document to the State, which must be editable by the State.
- (b) **(Additional information):** Manage Co must promptly provide to the State, any additional information, data or documents requested by the State (acting reasonably) in connection with a Submitted Document or reasonably required by the State to review the Submitted Document and respond in accordance with clause 11.
- (c) **(Review Period):** The State may provide Manage Co comments (in writing) on a Submitted Document within:

- (i) where the Submitted Document is an Operating Manual (as that term is defined in the Plans and Reports Schedule), 30 Business Days; or
- (ii) in the case of any other document, 15 Business Days,

of receipt by the State of the Submitted Document or such additional information, data or documents as may be requested by the State pursuant to clause 11(b) (**Review Period**) if a Submitted Document gives rise to a State Comment Right.

(d) (**Deemed "no comment"**): If the State fails to provide any comments on a Submitted Document within the Review Period, then the State will be deemed to have no comments on the Submitted Document.

(e) (**Amend and resubmit**): If the State provides 'comments' on a Submitted Document in accordance with clause 11(b), Manage Co must:

- (i) amend the Submitted Document in accordance with the comments of the State to the extent required to overcome or address the relevant State Comment Rights; and
- (ii) resubmit the revised Submitted Document to the State,

(**Resubmitted Document**), and the provisions of this clause 11 will reapply to the Resubmitted Document until such time as the State has 'no comments' or is deemed to have 'no comments' on the Resubmitted Document pursuant to clause 11(d).

(f) (**Proceed**): Manage Co may only proceed with the Project Activities in accordance with a Submitted Document where the State provides 'no comments' or is deemed to provide no comments in respect of the Submitted Document.

(g) (**Latest version**): 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 this clause 11, Manage Co must comply with the version of the document that has been submitted, reviewed and amended (if applicable) in accordance with clause 11.

(h) (**Register**): 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:

- (i) each Submitted Document to which it receives a response or comment from the State, including a copy of that response or comment; and
- (ii) 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 this clause 11.

## Part E – Site and Assets

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### 12. Assets during the Operating Phase

#### 12.1 Title and responsibility for risk

- (a) **(State Supplied Assets):** The State will make the State Supplied Assets available at the Site for use by Manage Co from the Operational Commencement Date of the Existing Facility in accordance with this Deed.
- (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 Deed;
  - (ii) incorporates into or attached to any other Asset on the Site; or
  - (iii) without limiting clauses 12.1(b)(i) and 12.1(b)(ii), installs, constructs or places on the Site and which is, or becomes, part of the Correctional Complex,

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 of the Existing Facility; 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) **(Use of Assets):** Without limiting the remainder of this clause 12, the parties acknowledge and agree that, from the Operational Commencement Date of the Existing Facility until the Expiry Date, Manage Co may use any Assets in the Correctional Complex for the purpose only of performing its obligations under this Deed.
  - (d) **(Obligations):** Manage Co must maintain, replace and repair all Assets until the end of the Operating Phase in accordance with the Asset Management Plan, the Services Requirements and its other obligations under this Deed.

#### 12.2 Replacement

- (a) **(Asset replacement):** Subject to clause 12.2(b) and in addition to its obligations in clause 7, when Manage Co is required to replace an Asset, it must do so with an Asset that:
  - (i) in respect of the New Facilities:
    - A. 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 in that it is replacing at the time the original Asset was procured; and
    - B. has a design life equal to or greater than the Asset it is replacing and complies with the Maintenance and

Performance Standards, Asset Management Plan and the Output Specification; or

- (ii) in respect of the Remaining Facilities, is at least the same standard and quality and has at least the same functionality and level of technological advancement as the Asset that it is replacing was in as set out in, or reasonably ascertainable from, the Asset Condition Report (Final).
- (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 110% 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 12.2(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 12.2(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.

### 12.3 Computer requirement

- (a) During the Operating Phase, Manage Co must use and maintain access to the State's corporate information system known as the Offender Integrated Management System as required to perform its obligations under this Deed.
  - (b) During the Operating Phase, Manage Co must:
    - (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 immediate 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 (including where the State undertakes a software or system upgrade so that Manage Co can at all times comply with its obligations under this clause 12.3 and the Deed).
- (d) When Manage Co undertakes a software upgrade in accordance with clause 12.3(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.

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### 13. Correctional Complex and Asset Condition

- (a) On or before the date of this Deed the State provided Manage Co with the Asset Condition Report (First).
- (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 Deed 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) On or about the date which is 20 Business Days prior to the Operational Commencement Date of the Existing Facility, 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 Complex (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.
- (d) 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 of the Existing Facility. The parties must jointly inspect the Assets (excluding Manage Co Equipment and Minor Assets) immediately prior to the Operational Commencement Date of the Existing Facility to identify the condition of the Assets (excluding Manage Co Equipment and Minor Assets) as at that date.
- (e) Within 5 Business Days after the Operational Commencement Date of the Existing Facility, 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 Complex (excluding Manage Co Equipment and Minor Assets) as at the Operational Commencement Date of the Existing Facility; 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 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 or its Associates and unforeseen deterioration of those Assets, in each case after the date of the Asset Condition Report (First).

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## 14. Expansion Works

### 14.1 Expansion Works (general)

- (a) **(Execution of Expansion Works):** The parties acknowledge and agree that the State is performing the Expansion Works on the Site during the Transition Phase and Initial Operating Phase.
- (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 Deed may impact on, interfere with or delay the execution of the Expansion Works; and
  - (ii) it has taken the Expansion Works into account in preparing the Transition Phase Program, in the Transition Payments and in performing its obligations arising from or in connection with this Deed.
- (c) **(Manage Co obligations):** Manage Co must:
  - (i) cooperate with the State and its Associates in relation to the performance of the Expansion Works;
  - (ii) coordinate the performance of the Project Activities with the State's performance of the Expansion Works;
  - (iii) not do anything that will cause or contribute to the Expansion Works being delayed or damaged; and
  - (iv) attend coordination meetings between the State and the Contractor (EW) as the State may request (acting reasonably).
- (d) **(Updates):** The State must provide Manage Co with:
  - (i) any Variations (as that term is defined in the Expansion Works Contract) directed by the State to the Expansion Works under the Expansion Works Contract; and
  - (ii) regular updates as to the status and staging of the Expansion Works.
- (e) **(Contractor EW):** Manage Co acknowledges and agrees that:
  - (i) notwithstanding that the Contractor (EW) is an Associate of the State; and
  - (ii) without limiting:
    - A. Manage Co's right to issue a notice to the State under clause 26A of this Deed; or
    - B. any right which Manage Co may have against the Contractor (EW) in accordance with Law,

it is only entitled to claim relief, compensation or additional payment from the State in respect of acts or omissions of the Contractor (EW) to the extent that:

- (iii) an event described in paragraph (e) or (f) of the definition of a Compensable Relief Event occurs;
- (iv) an event described in paragraph (f) of the definition of a Relief Event occurs; or
- (v) loss or damage occurs for which Manage Co is entitled to claim payment from the State in accordance with clause 33.5,

and such relief, compensation and additional payment is as set out in this Deed.

## 14.2 Additional security escorts

(a) **(Additional Security Escorts Look Forward Notice):** The State may:

- (i) two weeks prior to the Operational Commencement Date of the Existing Facility; and
- (ii) thereafter on the second week of every month until the Operational Commencement Date of the Expanded Facility,

provide a notice to Manage Co entitled "Additional Security Escorts Look Forward Notice" which sets out the number of Additional Officers which the State anticipates will be required for the following month commencing at least 2 weeks after the date of the relevant Additional Security Escorts Look Forward Notice which must be broken down on a day by day basis.

(b) **(Meeting):** Manage Co must attend weekly meetings with the State to discuss the Expansion Works and the State's requirement for Additional Officers in respect of the Expansion Works.

(c) **(Additional Security Escorts Notice):** The State may:

- (i) two weeks prior to the Operational Commencement Date of the Existing Facility; and
- (ii) thereafter on a weekly basis until the Operational Commencement Date of the Expanded Facility,

provide a notice to Manage Co entitled "Additional Security Escorts Notice" which sets out the number of Additional Officers which the State requires Manage Co to provide for the week commencing 2 weeks after the date of the relevant Additional Security Escorts Notice which must be broken down on a day by day basis.

(d) **(Additional Security Escorts):** Subject to clauses 14.2(e) and 14.2(f), Manage Co must provide 10 Additional Officers on every Escort Day from the Operational Commencement Date of the Existing Facility to the Operational Commencement Date of the Expanded Facility. For the avoidance of doubt, such additional correctional officers must not otherwise be engaged to provide Project Activities at the Existing Facility for those relevant Escort Days.

(e) **(Amending the number of Additional Security Escorts):** If the State provides an Additional Security Escort Notice:

- (i) that requires less than 10 Additional Officers on an Escort Day in the week commencing 2 weeks after the date of the relevant Additional Security Escorts Notice, Manage Co must use reasonable endeavours to:

- A. provide the number of Additional Officers specified in the relevant Additional Security Escorts Notice for the relevant Escort Days requiring less than 10 Additional Officers; and
  - B. mitigate its Liabilities and other costs in respect of complying with this clause 14.2(e); and
- (ii) that requires more than 10 Additional Officers on an Escort Day in the week commencing 2 weeks after the date of the relevant Additional Security Escorts Notice, Manage Co must use best endeavours exercising Best Industry Practices to provide the number of Additional Officers specified in the relevant Additional Security Escorts Notice for the relevant Escort Days requiring more than 10 Additional Officers.
- (f) **(Termination of additional security escorts regime):** The State may direct Manage Co that it is no longer required to provide Additional Officers pursuant to this clause 14.2 by providing no less than 4 weeks' notice to Manage Co and Manage Co is not entitled to make any Claim against the State in respect of such direction.

### 14.3 Completion and commissioning of the Expansion Works

- (a) **(Completion (EW) of Expansion Works):** The State must:
- (i) use its reasonable endeavours to give written notice to the Manage Co Representative 20 Business Days prior to the date upon which it reasonably expects the Contractor (EW) to achieve Completion (EW) of the Expansion Works; and
  - (ii) promptly give the Manage Co Representative notice of the date upon which the Contractor (EW) achieves Completion (EW) of the Expansion Works (**Date of Completion (EW)**).
- (b) **(Notice of Anticipated Operational Readiness of the Expanded Facility):** On a date being at least 6 months prior to the date on which the State anticipates the Expanded Facility will achieve Operational Readiness, the State must give Manage Co a notice entitled "Notice of Anticipated Operational Readiness of the Expanded Facility" which notice must set out the date the State anticipates Operational Readiness of the Expanded Facility will be achieved which will be a date being at least 6 months following the date of the State's notice (**Date for Operational Readiness (EW)**).
- (c) **(Commissioning):** In respect of any testing or commissioning performed by or on behalf of the State in respect of the Expanded Facility:
- (i) the State may give Manage Co not less than 5 Business Days prior written notice of the date, time and place for the conduct of any testing or commissioning;
  - (ii) the State may postpone a test or commissioning activity;
  - (iii) if the State postpones a test or commissioning activity in accordance with clause 14.3(c)(ii), the State may give Manage Co at least 5 Business Days' notice of the rescheduled date, time and place for the conduct of that test or commissioning activity;
  - (iv) Manage Co may, but are not obliged to, attend and witness the conduct of tests or commissioning activity; and
  - (v) if Manage Co attends any testing or commissioning in respect of the Expansion Works, Manage Co must not provide any comments or otherwise interfere with or hinder the testing or commissioning.

- (d) **(Notice of delay):** If either party becomes aware of any matter which has, or will, delay the Date of Operational Readiness (EW), that party must, promptly upon becoming aware of the event, notify the other party of that expectation and provide an estimate of the date upon which it reasonably expects the Date of Operational Readiness (EW) to take place.
- (e) **(Delays):** If the Date of Operational Readiness (EW) is not achieved by the Date for Operational Readiness (EW) as a result of an act or omission of the State or any of its Associates in connection with the Expansion Works the State will pay Manage Co the additional costs incurred by Manage Co calculated in accordance with clause 30.

#### 14.4 Expansion Works Defects

- (a) **(Notification):** From the earlier of:
  - (i) the date that the first Staged Handover Notice is provided to Manage Co in accordance with clause 14.5(c) (if any); and
  - (ii) the Date of Completion (EW),
 until 6 years after the Date of Completion (EW), Manage Co must notify the State as soon as it becomes aware of any Defect (EW), which notice must identify:
  - (iii) the Defect (EW);
  - (iv) the location of that Defect (EW); and
  - (v) whether the Defect (EW) is a Material Defect (EW).
- (b) **(Material Defects (EW)):** If a Material Defect (EW) occurs:
  - (i) Manage Co must immediately undertake such temporary and make safe measures as are required to avoid or overcome the occurrence of a Critical Incident and thereafter the regime in clause 14.4(c) will apply to the rectification of the Defect (EW); and
  - (ii) the cost of any temporary and make safe measures undertaken by Manage Co will be paid by the State to Manage Co in accordance with clause 30.
- (c) **(State rights):** Following receipt of a notice from Manage Co under clause 14.4(a) or the State otherwise becoming aware of a Defect (EW), the State may:
  - (i) rectify the Defect (EW) itself or engage a third party to rectify that Defect (EW); or
  - (ii) issue a notice to Manage Co requiring Manage Co to rectify that Defect (EW) which notice must set out the time frame within which Manage Co must rectify the Defect (EW) which timeframe must be reasonable having regard to the nature of the Defect (EW) and the operation of the Correctional Complex (**Defect (EW) Notice**).
- (d) **(Rectification by Manage Co):** If the State issues a Defect (EW) Notice:
  - (i) Manage Co must rectify that Defect (EW) within the time set out in the Defect (EW) Notice which period must not, if the Defect (EW) also gives rise to a Quality Failure, be less than any applicable rectification period specified in the Performance Regime or the Payment Schedule, and such period will be extended to the extent the applicable rectification period specified in the Performance Regime or the Payment Schedule is extended in accordance with the Payment Schedule, and the cost of any

such rectification work will be paid by the State to Manage Co in accordance with clause 30; and

- (ii) if the Defect (EW) is not rectified by Manage Co in accordance with the Defect (EW) Notice as may be extended in accordance with clause 14.4(d)(i), then the State may rectify that Defect (EW) itself or engage a third party to rectify that Defect (EW) and any Liability incurred by the State in connection with that Defect (EW), including the cost of any such rectification work will be a debt due and payable by Manage Co to the State.

## 14.5 Handover of Expansion Works

- (a) Manage Co acknowledges and agrees that the Staged Handover Area (or any part of it) may be ready for use and operation by Manage Co in carrying out its Project Activities prior to the Operational Commencement Date of the Expanded Facility.
- (b) The State may, at any time after the Operational Commencement Date of the Existing Facility and prior to the Operational Commencement Date of the Expanded Facility, provide to Manage Co a written notice entitled "Staged Handover Preparation Notice" which sets out:
  - (i) the locations of the Staged Handover Area which the State reasonably anticipates will be ready for Manage Co's use prior to the Operational Commencement Date of the Expanded Facility; and
  - (ii) the date upon which the State reasonably anticipates such Staged Handover Area will be complete and ready for use by Manage Co to carry out its Project Activities, which date must be at least 4 weeks after the date of the relevant Staged Handover Preparation Notice.
- (c) The State may, no earlier than 4 weeks after the date that the Staged Handover Preparation Notice was provided in accordance with clause 14.5(b), provide to Manage Co a further written notice entitled "Staged Handover Notice" which sets out the locations of the Staged Handover Area which the State is satisfied (acting reasonably) are ready for Manage Co's use and operation prior to the Operational Commencement Date of the Expanded Facility (which cannot include any areas not identified in the Staged Handover Preparation Notice).
- (d) From the date of the Staged Handover Notice Manage Co must perform the Project Activities in the relevant Staged Handover Area identified in the Staged Handover Notice in accordance with this Deed and such Staged Handover Area will not be subject to any further Operational Readiness Activities.

## 14.6 Available Inmate Places

This clause applies from the Operational Commencement Date of the Expanded Facility only and does not impact on Manage Co's obligations to provide accommodation to the number of Inmates in the Existing Facility and provide the Services in respect of those Inmates.

- (a) **(Available Inmate Places):** Manage Co must, at all times on and from the Operational Commencement Date of the Expanded Facility, provide to the State 1,816 Available Inmate Places at the Correctional Complex.
- (b) **(Ramp-Up Period):** Notwithstanding clause 14.6(a), during the Ramp-Up Period, Manage Co:
  - (i) is only required to accommodate the number of Inmates set out in the Ramp-Up Profile Schedule in the Expanded Facility and provide the Services in respect of those Inmates; and

- (ii) may be required following notice in writing from the State to move Inmates around all housing locations within the Expanded Facility (**Wings**), to ensure that the facilities or procedures within each Wing operate as designed.
- (c) (**Monthly Service Payment**): Without limiting its rights under this Deed, on and from the Operational Commencement Date of the Expanded Facility, the State will pay Manage Co the Monthly Service Payment in accordance with the Payment Schedule notwithstanding that, in accordance with the Ramp-Up Profile Schedule, there are less than 1,816 Inmates accommodated at the Correctional Complex.
- (d) (**Performance Regime adjustments**): If at any time during the Ramp-Up Period, the Commissioner is of the opinion (acting reasonably) that Manage Co is unable to provide the Services in respect of the Expanded Facility to the number of Inmates proposed in the Ramp-Up Profile Schedule having regard to Manage Co's performance of the Services (including reference to any Quality Failures), then on and from the date of a notice from the State to Manage Co setting out the Commissioner's opinion, the Performance Regime will apply and the Monthly Service Payments will be adjusted to the extent and in the manner described in the Performance Regime and Payment Schedule.

## 15. Approvals

### 15.1 Approvals

- (a) (**General**): Manage Co must:
  - (i) obtain, maintain and comply with; and
  - (ii) on and after the Operational Commencement Date of the Existing Facility, ensure that the Correctional Complex 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.

### 15.2 Conditional 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 Deed, or otherwise affects Manage Co's ability to meet its obligations under this Deed, Manage Co must:

- (a) (**notification**): notify the State that those conditions would or could have such an effect; and
- (b) (**State's approval**): provide to the State for review in accordance with clause 11 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.

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## 16. Project Information

### 16.1 No representations from the State

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;
- (b) **(Proposal)**: the feasibility or fitness for purpose of the Tender (or any part of it);
- (c) **(Site)**: the Site Conditions, title to the Site or adequacy of or access to the Site and its surroundings for the Project;
- (d) **(Utility Infrastructure and External Infrastructure)**: the existence, location, condition, adequacy, completeness or availability of any Utility Infrastructure or External Infrastructure above or below the surface of the Site; or
- (e) **(Adverse Rights etc)**: any Adverse Rights or rights of way.

### 16.2 Collateral warranties for Asset Condition Report

On or about Commercial Close, the State will either:

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

### 16.3 Project Information representations and warranties by Manage Co

Without limiting clause 16.1, Manage Co acknowledges and agrees that:

- (a) **(Entry into Deed)**: it enters into this Deed based on its own investigations, interpretations, deductions, information and determination;
- (b) **(Opportunity to investigate)**: it was given the opportunity to itself undertake, and to request others to undertake, tests, enquiries and investigations:
  - (i) relating to the subject matter of any Project Information; and
  - (ii) of the Site and its surroundings;
- (c) **(Project Information)**: the Project Information does not form part of this Deed and was provided by the State, its Associates and 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 Complex from being Fit For Purpose; or
  - (ii) the Services being carried out in accordance with this Deed;



- (e) **(No reliance)**: it did not rely upon any Project Information or the accuracy, adequacy, suitability or completeness of the Project Information for the purposes of entering into this Deed or delivering the Project;
- (f) **(State entry into Deed)**: the State has entered into this Deed relying upon the warranties, acknowledgements, representations and agreements of Manage Co as set out in this Deed; and
- (g) **(Intellectual Property Rights)**: all Intellectual Property Rights in the Project Information remain the property of the State, any of its Associates or any Asset Condition Report provider (as the case may be).

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## 17. The Site

### 17.1 Environmental issues

Manage Co must:

- (a) **(Obligation)**: not, and must procure that its Associates do not, except as authorised by Law or an Approval:
  - (i) cause any Pollution on, in, under or emanating from the Site;
  - (ii) abandon, dump, 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) **(Notification)**: immediately notify the State of any non-compliance or alleged or potential non-compliance with the Environmental Management Plan;
- (c) **(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 and this Deed; and
- (d) **(Assist the State)**: assist the State to comply with its obligations under Law, any Approvals and the requirements of any Authority in relation to the Environment at the Site or in connection with the Project.

### 17.2 Contamination

- (a) **(Prevent or minimise Contamination)**: Without limiting clause 17.1(a), Manage Co must not (and must procure its Associates do not) by any act or omission cause, contribute to or exacerbate any Contamination in, on, over, under or emanating from the Site.
- (b) **(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.
- (c) **(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.
- (d) **(Notification Requirements)**: Manage Co's notice under clause 17.2(c) 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.

- (e) **(Contamination Remediation Plan):** If the Contamination is discovered on or after the Operational Commencement Date, Manage Co must, promptly on discovering or otherwise becoming aware of such Contamination (including following receipt by Manage Co of a Contamination Remediation Notice), and in any event within 10 Business Days, submit to the State for review in accordance with clause 11 a plan for the Remediation of that Contamination (**Contamination Remediation Plan**).
- (f) **(Remediation):** On and after the Operational Commencement Date and without limiting clauses 25 and 30, Manage Co must Remediate:
  - (i) any Contamination in, on, over or under the Site; or
  - (ii) any Contamination that is emanating, or has emanated, from the Site, or that is migrating, or has migrated, onto the Site,

in accordance with Law, any Approvals, all requirements of any Authority and the relevant Contamination Remediation Plan that has been approved under clause 17.2(e) where such Remediation is necessary to:

- (iii) comply with Law, any Approvals, the requirements of any Authorities or any Contamination Remediation Notice;
- (iv) 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;
- (v) render the Site suitable for the Project; or
- (vi) prevent the migration of Contamination from the Site.

### 17.3 General Site undertakings

- (a) **(Undertakings):** Except to the extent expressly provided otherwise in this Deed but without limiting clause 17, 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. disruption to operations or activities carried out on, or adjacent to, the Site;

- (iii) 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;
- (iv) must not engage in, and 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;
- (v) on and after the Operational Commencement Date, is solely responsible for any person who enters the Site or the Correctional Complex;
- (vi) must not do, or permit to be done on any part of the Site, anything which may:
  - A. interfere with the State's or any of its Associate's access to the Site; or
  - B. cause the State to breach any of its obligations in connection with any Adverse Rights to which the Licence is subject; and
- (vii) must not without the prior written consent of the State, exhibit on any part of the exterior of any part of the Site or the Correctional Complex any notice, sign, signboard or advertisement.

#### 17.4 Utilities Infrastructure and Utilities

- (a) **(Manage Co assumes risk):** Without limiting Manage Co's express entitlement's pursuant to this Deed, 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.
- (b) **(Manage Co obligations):** Except as expressly provided to the contrary in this Deed, Manage Co must:
  - (i) **(Agreements):** enter into all agreements for the supply of Utilities to the Site and the Correctional Complex;
  - (ii) **(Payment):** on and from the Operational Commencement Date of the Existing Facility:
    - A. review invoices in relation to all Utilities consumed or used at the Site or the Correctional Complex in accordance with the agreements entered into with the Utility providers; and
    - B. arrange and pay for all Utilities consumed or used at the Site or the Correctional Complex in accordance with the agreements entered into with the Utility providers;
  - (iii) **(Efficiency):** use the Utilities provided to the Site or the Correctional Complex:
    - A. efficiently; and
    - B. solely for the provision of the Project Activities; and
  - (iv) **(Supply):** ensure the continuous supply of Utilities to the Correctional Complex.

#### 17.5 Liability under the NGER Legislation

- (a) Manage Co acknowledges and agrees that if:

- (i) **(Operational control)**: 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
  - (ii) **(Controlling corporation)**: Manage Co is part of a group (as defined in the NGER Legislation), the controlling corporation (as defined in the NGER Legislation) of which is registered under the NGER Legislation, Manage Co will use reasonable endeavours to procure that the relevant controlling corporation complies with the NGER Legislation in relation to the Services; and
  - (iii) **(Transfer of Liability)**: the State incurs 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.
- (b) **(Compliance)**: Manage Co must assist the State to comply with the NGER Legislation in relation to any aspect of the Services.
- (c) **(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; and
    - B. in accordance with the requirements or approvals of any Authority and any directions given by the State and to allow the State to discharge any obligations to provide Emissions and Energy Data to any Authority;
  - (ii) keep all such Manage Co's Emissions and Energy Data as may be required to enable it to discharge its obligations under clause 17.5(c)(i); and
  - (iii) 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 clause 17.5(c)(ii)) and answering questions.
- (d) **(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.

## 17.6 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.

## 17.7 Benchmarking of Utilities

- (a) Manage Co must, for each Utility:
  - (i) following a request from the State (which request may not be given more frequently than once in any 12 Month period), commence a tender process acceptable to the State (without limiting clause 17.7(b)) to obtain separate tenders for the Utility from no fewer than three retailers (or, to the extent that there are fewer than three retailers able to supply or provide the required Utility, Manage Co must use reasonable endeavours to obtain quotations from as many retailers as possible) providing price quotations:
    - A. of the price per unit of volume for the Utility or where the price per unit of volume for the Utility varies depending on usage or time of usage, the applicable prices per unit of volume for the Utility for each usage or time of usage range; and
    - B. to the extent it is market practice to include fixed components of pricing, fixed component pricing,and, in each case, which price must be:
    - C. inclusive of all costs, charges, fees and loss adjustment factors which the Utility retailer proposes to pass on to the purchaser;
    - D. valid for a nominated period acceptable to the State; and
    - E. based upon consumption of the Utility which does not exceed the Volumetric Units for the kth Utility provided in Annexure 2 to the Payment Schedule;
  - (ii) demonstrate to the reasonable satisfaction of the State that the Utility retailer it intends to select and engage is the best choice having regard to:
    - A. the price quoted in the prevailing market conditions; and
    - B. the experience, capability, financial and regulatory standing of the Utility retailer in the context of the Project; and

- (iii) select a Utility retailer acceptable to the State from the Utility retailers who have provided tenders to Manage Co pursuant to this clause 17.7(a).
- (b) For the purposes of any tender process required under clause 17.7(a)(i):
- (i) Manage Co must permit the State to review all materials that are prepared or received in the process of obtaining tenders and provide any other information that the State reasonably requires. This includes any consumption data for the Correctional Complex, which if requested by the State, must be provided at the end of each Operating Year;
  - (ii) the State may (but is not obliged to) specify the information that tenderers are required to provide in their responses to a request for tender;
  - (iii) Manage Co will retain responsibility for undertaking the tender process including retaining primary responsibility for:
    - A. the preparation of the tender documents and collation of the information required to be provided to prospective tenderers;
    - B. general management of the tender process such as co-ordinating meetings and advertising or compiling the list of prospective tenderers and notifying tenderers to be invited to submit tenders; and
    - C. evaluating the tender responses received by Manage Co; and
  - (iv) the State will have the right to object to the selection of any person as a prospective tenderer if the State reasonably believes:
    - A. that person does not (or could not reasonably be considered to) comply with any of the criteria referred to in this clause 17.7; or
    - B. the selection of that person as a prospective tenderer would give rise to a potential or perceived conflict of interest.
- (c) If requested by the State (acting reasonably), Manage Co must select, and enter into, a Retail Utility Contract acceptable to the State with a Utility retailer in accordance with clause 17.7(a)(iii).
- (d) By no later than 1 month after the request from the State pursuant to clause 17.7(c), Manage Co must provide the State with the Retail Utility Contracts it has entered into in accordance with this clause 17.7.
- (e) If requested by the State, Manage Co must provide the State with a statement from each provider under each Retail Utility Contract it has entered into identifying the forecast maximum demand or capacity on which the pricing in each Retail Utility Contract is based. This will include, as applicable, any notification under the terms of the Retail Utility Contract by Manage Co or any of its Associates to the retailer on its expected, forecast or anticipated demand.

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## 18. Access

### 18.1 Licence

- (a) **(Licence for Project Activities):** The State grants to Manage Co a non-exclusive licence to enter upon and access the Site on the terms set out in clause 18.1(b).

- (b) **(Terms of Licence):** The Licence granted under clause 18.1(a):
  - (i) commences on Commercial Close and terminates on the Expiry Date;
  - (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;
  - (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 Deed or any other State Project Document;
  - (iv) is given only to the extent necessary to carry out the Project Activities and to exercise or discharge their powers, rights and obligations under the Project Documents; and
  - (v) during the Transition Phase is subject to the State or its Associates access, work, health, safety and interface protocols provided to Manage Co from time to time.
- (c) **(Other access):** Except as set out in clause 18.1(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 Project Activities.
- (d) **(Coordination):** During the Term, Manage Co bears the risk of coordinating its access to the Site with any other person that uses the access ways to the Site.
- (e) **(Transition Phase):** Manage Co must not interfere with or delay the operation and maintenance of the Correctional Complex or any other activity undertaken by the State, or an Associate of the State, during the Transition Phase.
- (f) **(No parting with interest):** Subject to clause 18.1(g), 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 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 Licence is to a Subcontractor approved by the State or otherwise permitted under this Deed for the purposes of the Project), trust or the grant of any Security Interest.
- (g) **(Manage Co Associates may access):** Subject to any Manage Co Associates being approved by the State in accordance with this Deed, 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.

## 18.2 State access during the Transition Phase

- (a) **(State Inspection of Transition Phase Activities):** During the Transition Phase, the State, any of its Associates and any other person authorised by it may inspect, observe or test any part of the Transition Requirements, the Operational Readiness Criteria and 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).
- (b) **(Access to sites):** Manage Co must allow the State, any of the State's Associates and any other person authorised by the State access to any part of the Site, any other site where the Transition Phase Activities are being carried out and access to any Manage Co Material.
- (c) **(Manage Co assistance):** If requested by the State, Manage Co must assist the State in connection with any inspection or testing in accordance with clause 18.2(a) and under the Corrections Legislation.

### 18.3 State access during the Operating Phase (Correctional Complex, 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, Approval or Policy in connection with the Correctional Complex, Inmates or Staff,
- has free and unfettered access:
- (iii) to the Correctional Complex:
    - A. as required in accordance with the State Project Documents;
    - B. to review, inspect, test and monitor the provision of the Services;
    - C. to attend any test or investigation that is being carried out at the Correctional Complex;
    - D. in accordance with the Services Requirements, any Laws or any Policies;
    - E. to undertake any audits in accordance with clause 9;
    - F. in connection with any matter which the State deems relevant to the performance of the Services;
    - G. to discharge a function under Law, Policy or an Approval; and
    - H. to perform the Expansion Works;
  - (iv) except to the extent it is prohibited from doing so pursuant to any Law, 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 Complex, 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 18.3, except:



- (i) where a Defect is revealed (other than any Unidentified Pre-Existing Defect or Defect (EW)) during the Operating 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; or
  - (ii) in respect of any audit undertaken in accordance with clause 9 to which clause 9(g) applies.
- (d) **(Facilities)**: During the Operating Phase, Manage Co must, provide persons requiring access to the Correctional Complex or Inmates to perform a function contemplated by Law, Policy or an Approval with the use of appropriate facilities at the Correctional Complex when required to fulfil their functions.
  - (e) **(Access)**: During the Operating Phase, give all Utility providers reasonable access to any part of the Site required by the Utility provider to properly maintain and repair the Utilities on the Site.

#### 18.4 Access to the Correctional Complex and Inmates by third parties

Without limiting the remainder of this clause 18, during the Operating Phase, Manage Co must only permit access to the Correctional Complex and Inmates in accordance with the Correctional Complex Access Protocols to a person who is:

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

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

#### 18.5 Correctional Complex Access Protocols

- (a) **(Access Protocols requirements)**: Manage Co must:
  - (i) develop and update the Correctional Complex Access Protocols in accordance with the relevant requirements of the Plans and Reports Schedule, for those people entitled to access the Correctional Complex and any Inmates under this Deed; and
  - (ii) during the Operating Phase, ensure that all people who access the Correctional Complex and any Inmates as referred to in clauses 18.3 and 18.4 (other than those people referred to in clause 18.5(b)) do so in accordance with the Correctional Complex Access Protocols.
- (b) **(State access)**: Subject to any applicable Laws and the State's rights in accordance with this Deed (including pursuant to clause 29), if the State wishes to access the Correctional Complex or any Inmates during the Operating Phase, it must and must ensure that its Associates, and any other person authorised by the State (in its capacity as a party to this Deed) under clause 18.3(a)(ii), does so in accordance with the Correctional Complex Access Protocols.

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## 18A Manage Co Works

### 18A.1 General

- (a) **(General):** Manage Co:
- (i) must not perform any Manage Co Works without the State's prior written consent in accordance with this clause 18A.1; and
  - (ii) agrees that if the State consents to Manage Co performing any Manage Co Works in accordance with this clause 18A.1, Manage Co will:
    - A. bear all risks and costs associated with any Manage Co Works; and
    - B. not be entitled to make any Claim against the State arising out of, or in any way in connection with, any Manage Co Works;
- (b) **(Manage Co Works Proposal):** If Manage Co wishes to perform any Manage Co Works it must provide written notice to the State seeking the State's prior written consent, which notice must:
- (i) specify that it is a notice pursuant to clause 18A.1 of this Deed;
  - (ii) include details of the proposed Manage Co Works, including any relevant drawings and specifications;
  - (iii) include any proposed staging of the Manage Co Works;
  - (iv) include the proposed completion date of the Manage Co Works;
  - (v) specify the part (or parts) of the Site where the Manage Co Works will be performed;
  - (vi) specify how Manage Co will perform the Manage Co Works so as to cause minimal disturbance to the operations of the Correctional Complex; and
  - (vii) include details of any impacts which the Manage Co Works will have on the ongoing operation of the Correctional Complex,
- (Manage Co Works Proposal).**
- (c) **(Further information):** Following receipt of a Manage Co Works Proposal:
- (i) if requested by the State, Manage Co must meet with the State to discuss the relevant Manage Co Works; and
  - (ii) the State may (acting reasonably) request further information from Manage Co required by the State to assess the relevant Manage Co Works Proposal and Manage Co must promptly provide such further information to the State.
- (d) **(Instruction):** Following:
- (i) receipt of a Manage Co Works Proposal; or
  - (ii) if the State requests any further information pursuant to clause 18A.1(c), receipt by the State of such further information as is requested by the State under clause 18A.1(c),

the State must issue a notice to Manage Co advising Manage Co that the State either:

- (iii) consents to Manage Co performing the relevant Manage Co Works, in which case:
  - A. the relevant Manage Co Works will form part of the Project Activities; and
  - B. without limiting Manage Co's obligations pursuant to this Deed, Manage Co must perform the relevant Manage Co Works:
    - 1) in accordance with the Manage Co Works Proposal;
    - 2) so as to cause minimal disturbance to the operations of the Correctional Complex; and
    - 3) in accordance with any other requirements or conditions which the State imposes on Manage Co or its Associates in respect of the performance of the relevant Manage Co Works; and
  - C. on completion of the relevant Manage Co Works, Manage Co must give the State a written notice confirming that the relevant Manage Co Works have been completed in accordance with this Deed; or
- (iv) does not consent to Manage Co performing the relevant Manage Co Works, in which case Manage Co must not perform the relevant Manage Co Works.

Manage Co acknowledges and agrees that the State may:

- (v) consent to Manage Co Works in its absolute discretion; and
- (vi) impose any conditions which it sees fit in respect of the performance of Manage Co Works.

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## 18B State Works

### 18B.1 General

- (a) **(Execution of State Works):** The parties acknowledge and agree that the State may, from time to time, undertake State Works on the Site or land adjacent to the Site at the same time as Manage Co is performing the Services.
- (b) **(Notice of State Works):** Prior to the commencement of the State Works, the State must provide Manage Co with not less than 10 Business Days prior written notice.
- (c) **(Arrangements for State Works):** If the State issues a notice pursuant to clause 18B.1(b), the parties must, within 5 Business Days after the date of the notice, meet in good faith to discuss any concerns Manage Co has in relation to the impact the State Works may have on Manage Co's ability to comply with its obligations pursuant to this Deed.
- (d) **(Relief):** Within 10 Business Days of receipt by Manage Co of a notice pursuant to clause 18B.1(b), Manage Co must provide the State with a written notice setting out

any relief sought, or which may be sought, by Manage Co in respect of the relevant State Works.

- (e) **(Manage Co obligations):** Manage Co must:
  - (i) permit the State and its Associates to access the Site to the extent necessary to perform the State Works;
  - (ii) cooperate with the State and its Associates in relation to the performance of the State Works;
  - (iii) coordinate the performance of the Project Activities with the State's performance of the State Works;
  - (iv) not do anything that will cause or contribute to the State Works being delayed or damaged; and
  - (v) attend coordination meetings between the State and its Associates as the State may request (acting reasonably).
- (f) **(Updates):** The State must provide Manage Co with regular updates as to the status and staging of the State Works.

## 18B.2 Completion of the State Works

Following completion of the State Works, the State must promptly give written notice to Manage Co advising Manage Co of the date on which the relevant State Works achieved completion.

## 18B.3 State Works Escorts

- (a) **(Notice):** Prior to, or during, the performance of any State Works, the State may, by notice in writing to Manage Co, request that Manage Co provide State Works Escorts, which notice must specify:
  - (i) the number of State Works Escorts which the State requires; and
  - (ii) the duration for which the State requires the State Works Escorts.

For the avoidance of doubt, the State may, from time to time during the performance of any State Works, issue additional notices pursuant to this clause 18B.3(a) which amend the number of State Works Escorts which are required.
- (b) **(State Works Escorts):** If the State provides a notice pursuant to clause 18B.3(a):
  - (i) the parties must, within 5 Business Days after the date of the notice, meet to discuss the State's requirements for State Works Escorts; and
  - (ii) Manage Co must use best endeavours exercising Best Industry Practices to provide the number of State Works Escorts specified in the State's notice pursuant to clause 18B.3(a).
- (c) **(Payment):** To the extent Manage Co provides any State Works Escorts, the cost incurred by Manage Co will be paid by the State to Manage Co in accordance with Section 15 of the Payment Schedule as though the State Works Escort was an Additional Security Escort.

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## 18C Confidential design information

Manage Co must:

- (a) (**Access**): only provide access to Confidential Design Information to Relevant Persons who:
  - (i) are not Uncleared Personnel;
  - (ii) are permitted to receive Confidential Design Information in accordance with clause 51.2;
  - (iii) where required by the State, have satisfied any Probity Investigation under clause 52.2; and
  - (iv) require access to that Confidential Design Information to carry out the Project Activities or perform the Services;
- (b) (**Limited portion**): where it is necessary to grant access to Confidential Design Information in accordance with clause 18C(a), grant access to the most limited portion of the Confidential Design Information possible; and
- (c) (**Records**): keep, and make available to the State on request, records detailing the recipient of any Confidential Design Information, the date of disclosure and the Confidential Design Information that has been disclosed.

## Part F – Personnel

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### 19. Parties, personnel and community

#### 19.1 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.

#### 19.2 State Representative

- (a) **(Natural person)**: The State will ensure that at all times throughout the Term there is a natural person appointed by it as the State Representative for the Project.
- (b) **(Identity)**: As at the date of this Deed, the State Representative is the party nominated as such in the Contract Particulars.
- (c) **(Agent of the State)**: The State Representative will administer this Deed on behalf of the State and will exercise all rights, powers, authority and functions of the State under this Deed as the State's agent.
- (d) **(Oral directions)**: The State Representative may give a direction orally but will as soon as practicable confirm that direction in writing.
- (e) **(Replacement)**: The State may at any time replace the State Representative, in which event the State will appoint another person as the State Representative and notify 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.

#### 19.3 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 Deed, 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 19.7.
- (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 Deed, 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 Deed; 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 Deed, 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.

#### 19.4 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 (EW), 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 19.7.
- (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 Deed 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 19.4(g) and elsewhere in this Deed; and
  - (ii) a detailed knowledge of the Project and sufficient experience and skills to undertake the role of Operational Readiness Co-ordinator.
- (g) **(Role of the Operational Readiness Co-ordinator):** The role of the Operational Readiness Co-ordinator under this Deed includes the following functions:
- (i) **(Manage transition process):** manage and be heavily engaged in the process of preparing the Correctional Complex for commencement of the Services;
  - (ii) **(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;
  - (iii) **(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 Plans and Reports Schedule;
  - (iv) **(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;
  - (v) **(Liaison):** attend and liaise with the persons performing the testing and commissioning of the Correctional Complex;
  - (vi) **(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 Date for Operational Readiness (EW) (as applicable) and delivery of the Services; and
  - (vii) **(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.

## 19.5 Governor

- (a) **(Governor competent):** The Governor must be competent to exercise the functions and to perform the duties of the Governor of the Correctional Complex 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 Complex and the Inmates.
- (b) **(Appointment under Corrections Act):** Manage Co acknowledges that the appointment or engagement by Manage Co of a Governor is subject to the authorisation of the Commissioner under section 240 of the Corrections Act.
- (c) **(Restrictions on replacement):** The Governor will be one of the Key People and accordingly can only be replaced in accordance with clause 19.7 and the Corrections Legislation.



- (d) (**Duties**): The Governor 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 Governor of any powers, authorities, duties and functions imposed or conferred on the Governor by the Corrections Legislation or this Deed.
- (f) (**Termination**): Manage Co must, if directed by the Commissioner, terminate the appointment of the Governor.

## 19.6 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 Deed, 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.

## 19.7 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 19.7(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 Governor, only replace the Governor in accordance with the Corrections Legislation.

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## 20. Meetings

### 20.1 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) until the date being 12 months after the Date of Operational Readiness (EW), the Operational Readiness Co-ordinator;
  - (iv) the Governor (or a delegate of the Governor); and
  - (v) three other representatives that the State nominates from time to time.
- (b) **(Chairperson):** The State Representative will be the chairperson of the Project Control Group.
- (c) **(Functions):** The functions of the Project Control Group will be to:
- (i) monitor the overall progress of the Project Activities and compliance with this Deed;
  - (ii) assist in the resolution of any matters referred to the Project Control Group by a party including Disputes in accordance with clause 40;
  - (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 from Commercial Close until the Operational Commencement Date of the Existing Facility;
    - B. monthly (and not later than 15 Business Days after the end of each Month) from the day after the Operational Commencement Date of the Existing Facility until the first anniversary of the Operational Commencement Date of the Expanded Facility;
    - C. quarterly (not later than 15 Business Days after the end of each Quarter) following the first anniversary of the Operational Commencement Date of the Expanded Facility; and
    - D. when otherwise called to meet on 10 Business Days' notice by the State or Manage Co. Without limiting this clause 20.1(d)(i)D, Manage Co acknowledges and agrees that the State may call a meeting if the State is dissatisfied with Manage Co's performance,unless otherwise agreed 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 20.1(d), give each member of the Project Control Group:
  - (i) prior to the Operational Commencement Date of the Existing Facility, the Fortnightly Transition Report for the previous Month and the latest Transition Phase Program; and
  - (ii) thereafter, the Monthly Performance Report.
- (f) **(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.

## 20.2 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 Deed may, where strictly necessary, be changed by the party they are representing, from time to time on notice to the other parties, together with details of the reason for the change.
- (e) **(Liability of Project Control Group):** The Project Control Group:
  - (i) is advisory only and its decisions or recommendations are not binding on the parties; and
  - (ii) does not have any legal responsibilities, Liability or right to require any of the parties to act or refrain from acting in any way.
- (f) **(No limitation):** The parties' involvement in the Project Control Group does not affect their respective rights and obligations under this Deed.
- (g) **(Further information):** The State may require 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 Deed within 5 Business Days.

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## 21. 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;
  - (iv) reasonably requested by the State from time to time; and
- (c) **(Communications approach):** Without limiting the generality of clause 21(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 Blacktown City Council in relation to matters in connection with traffic management, staff recruitment and economic opportunities in the area.

## 21.2 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 Part B of Schedule 7, its draft and final Aboriginal Participation Plan.
- (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 21.2(a) to 21.2(c).

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## 22. Subcontracting and third party arrangements

### 22.1 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 22; and
  - (ii) in respect of any Subcontract in respect of the management of the Correctional Complex, with the prior written approval of the Commissioner under the Corrections Act and on such conditions as 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.

### 22.2 Significant Subcontracts

- (a) **(Employment):** Manage Co must employ the 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 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 any Significant Subcontract,
 

without the prior consent of the State (which will not be unreasonably withheld).
- (c) **(Side Deed):** Manage Co must procure from any Significant Subcontractor (if required by the State) an executed deed substantially in the form of the Side Deed.

### 22.3 Requirements for subcontracting

- (a) **(Engagement of subcontractors):** Without limiting clause 22.2, 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 52 are satisfied;
  - (ii) the proposed Subcontractor has the financial capacity, applicable registrations and certifications, experience and capability to perform the subcontracted obligations to at least the standards required by this Deed; and
  - (iii) in respect of a Significant Subcontract, the 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 18.2, 18.3, 29, 38, 47, 48, 50, 51 and 52.
- (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 Significant Subcontractors, comply with their respective obligations under each Subcontract they enter into.

## 22.4 Payment of amounts owed to Subcontractors

If any amount is:

- (a) certified as payable; or
- (b) 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.

## 22.5 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.

## 22.6 Industrial issues

Manage Co:

- (a) **(Solely responsible):** has sole responsibility for, and must manage, all aspects of industrial relations:
  - (i) from Commercial Close up to the Operational Commencement Date of the Existing Facility, in relation to the performance of the Transition Phase Activities; and
  - (ii) on and after the Operational Commencement Date of the Existing Facility, 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.

## 22.7 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):** Without limiting its rights at Law, 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 22.7(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.

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## 23. Workforce

### 23.1 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 promptly make the results of:
  - (i) any Employee Checks; or
  - (ii) any Probity Investigation that Manage Co is required to undertake in accordance with clause 52.2,  
available to the State.
- (c) **(Denial of employment):** Without prejudice to clause 52.2(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 Deed;
  - (ii) Employee Requirements are not met at all times by that person;
  - (iii) employee fails an Employee Check; or
  - (iv) State considers that that person is unsuitable or unqualified to provide the Project Activities assigned to that person.



## 23.2 Principal contractor

- (a) **(Definitions):** In this clause 23.2 and 23.3, the terms 'construction project', 'construction work', 'notifiable incident', 'principal contractor' and 'workplace' have the same meanings given to them in the WHS Act and WHS Regulations.
- (b) **(Manage Co is principal contractor or appoints principal contractor):** Where any part of the Project Activities 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 principal contractor for the construction project (**Relevant Entity**);
  - (ii) if an entity comprising Manage Co is not the principal contractor, Manage Co must confirm to the State that the Subcontract with the Relevant Entity engages the Relevant Entity as the principal contractor for the construction project, authorises the Relevant Entity to have management or control of the workplace at which the construction project is undertaken and to discharge the duties of a principal contractor under the WHS Legislation, the Side Deeds and the State Project Documents (as applicable).
- (c) **(Manage Co warranty):** Manage Co warrants to the State that the Relevant Entity 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.
- (d) **(Documents to be provided):** Without limiting Manage Co's reporting or other obligations elsewhere under this Deed, Manage Co must procure that the Relevant Entity will provide Manage Co with a copy of any documents or records relating to WHS in its possession or control (or in the possession or control of any subcontractor engaged by the principal contractor).

## 23.3 Work Health and Safety (WHS)

- (a) Manage Co must:
    - (i) **(Compliance with WHS obligations):** in carrying out the Project Activities:
      - A. comply with all Laws, this Deed and State Project Documents (as applicable) and the WHS Management Plan, in respect of WHS; and
      - B. require all Subcontractors to comply with their WHS obligations in the Subcontract, 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 Project Activities, in relation to the Transition Phase; and
      - B. prior to the Operational Commencement Date of the Existing Facility, 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 accurate, appropriate and up to date (taking into account changes in the Project Activities) at all times;

- (iii) **(Notification of matters and incidents)**: in addition to notifying the relevant Authority (whether required to be notified by a Subcontractor or other party performing the Project Activities), notify the State immediately (and in any event within 12 hours) of any notifiable incident arising in connection with the Project Activities;
  - (iv) **(Notices issued by Authorities)**: notify the State within 1 Business Day of receipt, of any safety related prohibition, improvement or other notice or correspondence 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 obligations in the Subcontract, WHS Legislation 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 23.3(a)(v) to the State, together with written assurances from Manage Co about Manage Co's ongoing compliance with the WHS Legislation, their obligations under this Deed, the Side Deeds and the State Project Documents (as applicable) in relation to WHS, and its WHS Management Plan;
  - (vii) **(Directions)**: comply with any direction about WHS from an Authority or the State (which may include a direction to issue a direction to a Subcontractor);
  - (viii) **(Cooperate in discharge of obligations)**: cooperate with the State in respect of the discharge of any WHS obligations of the State in connection with the Project under the WHS Legislation 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
  - (ix) **(Equivalent Subcontract clause)**: procure that each Subcontractor (and subcontractor of any Subcontractor) is required to comply with provisions equivalent to this clause 23.3(a) and clause 23.3(b).
- (b) **(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 Deed, the Side Deeds and the State Project Documents (as applicable) in relation to WHS;
  - (ii) immediately undertake any corrective work or action identified in the audit as a departure from the WHS Legislation, the WHS Management Plan and its obligations under this Deed, the Side Deeds and the State Project Documents (as applicable) in relation to WHS, at its expense; and
  - (iii) report to the State about the outcome of any auditing and monitoring under this clause 23.3(b), as required by the State.

- (c) **(Manage Co Responsible)**: Except in relation to the obligations of any principal contractor under the WHS Legislation appointed in accordance with this clause 23 or in relation to the Expansion Works Space Manage Co accepts that it is:
  - (i) **(Health and Safety)**: responsible for all aspects of WHS relating to the Correctional Complex, the Site and the Project Activities from Operational Commencement Date of the Existing Facility 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 23.

## 23.4 Expansion Works

During the Expansion Works:

- (a) Manage Co acknowledges and agrees that, subject to clause 23.4(b), if the principal contractor for the Expansion Works requires access to part of the Site to perform the Expansion Works, the principal contractor will have (and Manage Co will cease to have) management and control of that part of the Site for the duration of the Expansion Works (**Expansion Works Space**);
- (b) if the Expansion Works Space is an area for which a principal contractor has been appointed by Manage Co under clause 23.2, Manage Co will consult, co-ordinate and co-operate with both principal contractors and agree arrangements that ensure both parties continue to be validly engaged as principal contractor and are not unreasonably delayed in their works;
- (c) Manage Co must clearly demarcate the Expansion Works Space for the duration of the Expansion Works being undertaken; and
- (d) Manage Co must ensure there are appropriate arrangements in place between Manage Co and the principal contractor for the Expansion Works for access and egress to the Expansion Works Space.

## 23.5 State may act if Manage Co fails to comply

To the extent that Manage Co fails to comply with any obligation under this clause 23, the State may, in addition to any other remedies under this Deed or at Law, on reasonable prior notice (where practicable to give 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.

## 23.6 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 Complex prior to them commencing such Project Activities or prior to them otherwise having access to Personal Information;
  - (ii) is not obliged to obtain a National Police Certificate for a Relevant Person pursuant to clause 23.6(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 23.6(a)(iv), must obtain an updated National Police Certificate for any Relevant Person to which clause 23.6(a)(i) or 23.6(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 23.6(a)(i) or 23.6(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 23.6(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 23.6(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 23.6(a) is required by the State to undergo a security clearance pursuant to clause 23.6(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 52.1(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):** Without limiting its rights at Law, 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 23.6(e).

## 23.7 Offers of employment to Incumbent Operator's employees

- (a) **(Offers of employment):** Manage Co, Manage Co's Associates and the State will cooperate to the extent necessary to facilitate Manage Co making offers of

employment to employees of the Incumbent Operator who are working at the Correctional Complex (**Existing Employees**).

- (b) (**Process of offers**): Manage Co must:
  - (i) invite each of the Existing Employees to participate in a merit selection process for available positions at Manage Co; and
  - (ii) give preference to each of the Existing Employees who applies for an available position at Manage Co and who is of at least equal merit to any candidate for the position who is not an Existing Employee.
- (c) (**Reasonable assistance**): The State will ensure that, to the extent necessary, the Incumbent Operator provides Manage Co with reasonable assistance to comply with this clause 23.7.

Part G – Payment Provisions

**24. Payments Adjustments & Taxes**

**24.1 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 for the Existing Facility**) and Manage Co is entitled to claim each such amount on the relevant date in that table:

	Transition Phase Payments for the Existing Facility (\$)	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 Commercial Close
4		End of the fourth Month after Commercial Close
5		date of issue of the Certificate of Operational Readiness of the Existing Facility

(ii) performing the Operational Readiness Activities, the State will only be obliged to pay Manage Co the fixed amounts as set out in the following table (**Transition Phase Payments for the Expanded Facility**) and Manage Co is entitled to claim each such amount on the relevant date set out in the table below:

	Transition Phase Payments for the Expanded Facility (\$)	Date
1		1 May 2019
2		1 June 2019
3		1 July 2019
4		1 August 2019
5		1 September 2019
6		1 October 2019

(iii) providing the Additional Officers or State Works Escorts pursuant to clause 14.2(d), 14.2(e) or 18B.3, the State will pay Manage Co monthly in arrears in accordance with the Payment Schedule (**Additional Security Services Payment**); and

(iv) providing the Services (other than the Additional Officers pursuant to clause 14.2 and the Operational Readiness 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 Initial Operating Phase,

in each case in accordance with the procedures identified in this clause 24;

(b) **(Other payments):** other than the Transition Payments, Additional Security Services Payment 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 Deed or the relevant State Project Document for the particular payment; or

(ii) if no time is specified for the payment of the relevant amount, the payment will be made:

A. by the State, in the case of a payment to 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.

## 24.2 Transition Payments, Additional Security Services Payment and Monthly Service Payments

(a) **(Payment Claims):** Within 5 Business Days:

(i) after each of the relevant dates set out in the tables in clause 24.1(a)(i) or 24.1(a)(ii) for the Transition Payments;

(ii) after the end of each calendar month after the Operational Commencement Date of the Existing Facility until the Operational Commencement Date of the Expanded Facility for the Additional Security Services Payment or at all relevant times when the State is performing State Works and Manage Co is providing State Works Escorts; 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 Deed,

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

- (iv) the Transition Payments, Additional Security Services Payment 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 Deed.
- (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 Deed and that each party will notify the other party if it (or the relevant entity) ceases to be registered.
- (e) **(Tax Invoice):** Without limiting 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 24.2, 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 24.6, 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 24.2(e) or clause 24.2(f).
- (h) **(Payment not evidence of proper performance):** Neither payment of Transition Payments nor the Monthly Service Payments nor the Additional Security Services Payment 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.



## 24.3 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 24.3(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 24.3(e) and those Liabilities are in excess of the Monthly Service Payments, then in addition to any other remedies of the State or its Associates under this Deed or at Law, the future Monthly Service Payments will be reduced to the extent necessary for the State or its Associates to be compensated for those Liabilities in full. To the extent that the State and its Associates are unable to recover such compensation by the reduction of future Monthly Service Payments, any shortfall in such compensation will be a debt due and payable by Manage Co to the State.
- (c) **(Manage Co acknowledgements):** Manage Co acknowledges and agrees that if clause 24.3(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 24.3(a) and the Performance Regime and the Payment Schedule will not limit Manage Co's Liability to the State under this Deed or otherwise at Law for any Liability suffered by the State up to an amount equal to the amount that would have been applied as a consequence of the Quality Failure had it not been held to be void or unenforceable.
- (d) **(Sole remedy):** Subject to clauses 24.3(c) and 24.3(e), adjustment of the Monthly Service Payments by application of the Performance Regime or Payment Schedule under clause 24.3(a), will be the only monetary consequence for Manage Co for any Quality Failure to which the Performance Regime or Payment Schedule applies.
- (e) **(Exclusions to sole remedy):** Clause 24.3(d) does not limit or affect:
- (i) any other right or remedy under this Deed or at Law (other than, subject to this clause 24.3(e), for monetary compensation to the extent such right or remedy applies to the same events as the 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 a Quality Failure under clauses 34 (other than clause 34.1), to the extent that the State has not been fully compensated for that loss or damage;
  - (iii) the State's rights under clause 34.5;
  - (iv) the State's entitlement to recover any costs, expenses or Liabilities incurred by the State as a consequence of exercising its rights under clause 29;
  - (v) the State's rights under this Deed or any other State Project Document in respect of the event that caused or contributed to the Quality Failure (as opposed to the Quality Failure itself);

- (vi) any payment on termination of this Deed (including a Termination Payment);
- (vii) any Liability of Manage Co under clauses 7.7, 7.8 and 14.4 for the rectification of a Defect, Unidentified Pre-Existing Defect or Defect (EW) (as applicable); or
- (viii) 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 24.3(a).
- (f) **(Genuine pre-estimate):** Manage Co acknowledges and agrees that:
  - (i) it is difficult, and in some instances impossible, to calculate with precision the diminution in value the State may suffer in connection with each Quality Failure or Charge Event; and
  - (ii) notwithstanding clause 24.3(f)(i), the application and escalation of the Performance Regime and Payment Regime associated with each Quality Failure or Charge Event is proportionate and not extravagant and reflects a genuine pre-estimate of the diminution in value of the Services to the State in connection with such Quality Failures or Charge Events.

#### 24.4 Refund

If:

- (a) **(Payment):** the State pays Manage Co, or Manage Co pays the State any amount under clause 24.2(g) or otherwise; and
- (b) **(Entitlement):** it is subsequently agreed or determined for any reason that the recipient was not entitled to that payment under this Deed,

the recipient will immediately refund to the party which made the payment, that payment plus interest at the Overdue Rate from the day the payment was paid under clause 24.2(g) or otherwise to (and including) the date of repayment under this clause 24.4.

#### 24.5 Interest

- (a) **(Interest):** Subject to clause 24.6, 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 Deed, then it must pay interest on that amount:
  - (i) from the date on which payment was due and payable until the date on which payment is made;
  - (ii) calculated on daily balances at the Overdue Rate; and
  - (iii) capitalised monthly.
- (b) **(Sole entitlement):** The amount specified in this clause 24.5 will be a party's sole entitlement to interest including damages for loss of, use of, or the cost of borrowing, money.

## 24.6 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 Manage Co to the State;
  - (ii) any Liabilities contemplated by the exclusions in clause 24.3(e); and
  - (iii) the amount of any Claim that the State may make in good faith against Manage Co.
- (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 24.6(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.

## 24.7 GST

- (a) **(Interpretation):**
- (i) Except where the context suggests otherwise, terms used in this clause 24.7 have the meanings given to those terms by the GST Act (as amended from time to time).
  - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 24.7.
  - (iii) Unless otherwise expressly stated, all consideration to be provided under this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 24.7.
  - (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) **(Reimbursements):** Any payment or reimbursement required to be made under this 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 24.7(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 24.7), for that supply is exclusive of GST;
  - (ii) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and

- (iii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 24.7(c)(ii).
- (d) **(Variation of GST):**
  - (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 24.7(c) and clause 24.7(e)), varies from the additional amount paid by the Recipient under clause 24.7(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 24.7(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 24.7(c).
  - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) **(Exchange of non-monetary consideration):**
  - (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 24.7(c) applies is a Taxable Supply made by the Recipient (the **Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 24.7(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
  - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 24.7(c) (or the time at which such GST Amount would have been payable in accordance with clause 24.7(c) but for the operation of clause 24.7(e)(i)).
- (f) **(No merger):** This clause 24.7 will not merge on completion or termination of this Deed.

## Part H - Change in Circumstances

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### 25. Relief Events

#### 25.1 Early warning

- (a) **(Early Warning):** If Manage Co becomes aware of a Relief Event or any other matter which has prevented, or will prevent it from performing the Project Activities, it must promptly give the State notice of the matter and the delay or effect it is likely to cause (**Early Warning**).
- (b) **(Prevent):** Subject to this clause 25, 'prevent' or 'prevented' does not mean that Manage Co is permanently prevented from performing its obligations and includes delays in performing its obligations.

#### 25.2 Entitlement to Claim

If, during the Term, a Relief Event prevents, or will prevent, Manage Co from:

- (a) meeting any of the Services Requirements in accordance with this Deed; or
- (b) otherwise performing any of the Project Activities,

Manage Co will be entitled to claim relief from performance of its obligations (including an extension of time) in accordance with this clause 25.

#### 25.3 Conditions precedent to extension of time or relief

It is a condition precedent to Manage Co's entitlement to relief from performance of its obligations:

- (a) **(Notices):** that Manage Co submits to the State:
  - (i) a notice (with reference to the Early Warning, if relevant) which includes the Relief Event Effects and any Mitigating Factors, within 10 Business Days after the date on which it first became aware of the occurrence of the Relief Event; and
  - (ii) where the delay or period that Manage Co is prevented from performing any of the Project Activities extends beyond the period set out in the notice submitted in accordance with clause 25.3(a)(i), an updated notice, once the consequences of the Relief Event have ceased, promptly (and in any event, within 5 Business Days after the consequences of the Relief Event have ceased); and
- (b) **(Relief):** Manage Co's performance of all or any part of the Project Activities is actually prevented, or will actually be prevented, by the relevant Relief Event.

#### 25.4 Relief determined by State

- (a) **(State determination):** Subject to clause 25.4(b), if the conditions precedent in clause 25.3 have been satisfied, the State will grant Manage Co such reasonable relief from the Project Activities (which may include an extension of time or suspension) taking into account all relevant evidence presented by the parties.
- (b) **(Limitations):** Notwithstanding anything in this Deed, the State is not required to:
  - (i) grant Manage Co relief from any Project Activity from which Manage Co has not claimed relief; or

- (ii) use the Transition Phase Program for any purpose, including for the purpose of assessing the impact of any Relief Event or Claim made by Manage Co.
- (c) **(Compensable Relief Event):** To the extent that Manage Co is granted relief under clause 25.4(a) in respect of a Compensable Relief Event, the State will pay Manage Co the amount calculated in accordance with clause 30, other than in connection with any costs of repairing or rebuilding the Correctional Complex which will be determined under clause 33.
- (d) **(Payment):** If Manage Co is granted relief under clause 25.4(a):
- (i) the State must continue to pay Manage Co the Monthly Service Payment in connection with the Services affected by the Relief Event which are suspended in accordance with clause 25.4(e) 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 Relief 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 25.3.
- (e) **(Services suspended and no breach):** Subject to clause 25.5, to the extent that:
- (i) a Relief Event prevents Manage Co from meeting any of the Services Requirements in accordance with this Deed; and
  - (ii) the conditions precedent in clause 25.3 have been satisfied,
- then:
- (iii) the relevant obligation of Manage Co will be suspended; and
  - (iv) the failure to perform the affected Services will not be a breach of this Deed by Manage Co, a Manage Co Act or Omission, a Major Default or a Default Termination Event,
- but only until the earlier of:
- (v) the date the Relief Event and its consequences cease to prevent performance of the relevant Services; and
  - (vi) the date on which the Relief 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 26.1(b).
- (f) **(Continue to provide Services):** Subject to clause 25.5, if a Relief Event prevents Manage Co from meeting any of the Services Requirements in accordance with this Deed, then Manage Co:
- (i) **(Perform obligations):** must, subject to clause 25.4(a) and unless it is actually or practically impossible to do so at the Correctional Complex given the nature of the Relief Event, continue to provide the Services and otherwise perform its obligations under this Deed;

- (ii) **(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 Relief Event; and
- (iii) **(Best Industry Practices)**: subject to clause 12.2(a)(ii), must perform the Services in accordance with Best Industry Practices.

## 25.5 Essential Services

Notwithstanding the occurrence of a Relief Event, Manage Co must continue to perform the Essential Services except to the extent and for the duration that the State exercises its right under clause 29.2 to perform the Essential Services as a consequence of a Step-in Event.

## 25.6 Alternative arrangements

- (a) **(Alternative arrangements or method)**: Without limiting clause 29, during the period of suspension of any Project Activities as a result of a Relief Event, the State may:
  - (i) make alternative arrangements for the performance of those Project Activities 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 Project Activities by an alternative method or 'work around' from that contemplated in the then current 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 Project Activities by an alternative method or 'work around' in accordance with clause 25.6(a)(ii), the State must pay Manage Co an amount calculated in accordance with clause 30 in respect of such alternative method or 'work around'.

## 25.7 Cessation of Relief Event

Manage Co must:

- (a) **(Notification)**: notify the State; and
- (b) **(Performance of Services)**: recommence performing all Project Activities suspended as a result of the Relief Event,

immediately after it ceases to be prevented from performing those Project Activities as a result of the relevant Relief Event or its consequences.

## 25.8 Sole Remedy

Subject to clauses 7.3(b) and 7.3(c):

- (a) **(Relief Event)**: Manage Co's sole remedy for a prevention, delay or disruption during the Term is as set out in this clause 25; 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 delayed or prevented from providing the Project Activities (including delay to Operational Readiness) in accordance with this Deed other than for the relief and compensation in accordance with this clause 25.

## 25.9 Time not at large

None of:

- (a) (**Breach**): a breach of this Deed or any other State Project Document by the State or any of its Associates;
- (b) (**Variation**): a Variation directed, or Variation 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 25.4 or to do so within the time required by that clause;
- (e) (**Time bar**): any operation of any time bar, including clause 25.3(a); or
- (f) (**Other default**): any other default, act or omission of the State or any of the State's Associates,

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

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## 26. Relevant Relief Events

### 26.1 Reduction in State liability for Relief Events

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

- (a) (**Caused by Manage Co**): to the extent that the Relevant 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 Deed;
- (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, costs, consequences or duration of the Relevant 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, costs, consequences or duration of the Relevant Relief Event;
- (c) (**Insurance proceeds**): by any insurance proceeds:
  - (i) from any Insurances which respond to the relevant event or any other insurance proceeds or compensation payable to Manage Co, or any of its Associates; or
  - (ii) which would have been payable to Manage Co or any of its Associates in accordance with any Insurances but for any failure by Manage Co or any of its Associates to comply with this Deed, any Project Documents,



the terms of those Insurances or to make or pursue a claim under any Insurances; or

- (d) **(Knowledge):** to the extent Manage Co ought reasonably to have become aware of the occurrence of the Relevant Relief Event prior to the date 10 Business Days before submitting its notice under clause 25.3(a).

## 26.2 Meetings and other information

If requested by the State (acting reasonably), the parties will, from time to time within 5 Business Days of a request from the State (in writing), meet to discuss the consequences of a Relevant 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 Relevant 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 Relevant 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 Relevant 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 Relevant Relief Event.

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## 26A Impact of Expansion Works and LAN Remediation Works

- (a) **(Notice):** If, during the performance of the Expansion Works or LAN Remediation Works, Manage Co becomes aware that:
  - (i) the Monthly Service Payment is to be adjusted in accordance with clause 24.3 as a result of Manage Co failing to achieve the Key Performance Indicators; and
  - (ii) such adjustment would not have occurred except for the performance by the State of the Expansion Works or LAN Remediation Works preventing it from achieving the Key Performance Indicators,

Manage Co may promptly upon becoming aware give the State a notice, which notice must:

- (iii) state that it is a notice pursuant to this clause 26A; and
- (iv) include details of:
  - A. the extent to which the Monthly Service Payment will be adjusted;
  - B. the manner in which the Expansion Works or LAN Remediation Works has prevented it from achieving the Key Performance Indicators; and
  - C. the steps which Manage Co has taken, or will take, to mitigate, minimise or avoid the Expansion Works or LAN Remediation Works preventing it from achieving the Key Performance Indicators.

- (b) **(Additional information):** Following receipt of a notice from Manage Co in accordance with clause 26A(a), the State may request additional information from Manage Co.
- (c) **(Meeting):** If requested by the State, the parties will, within 5 Business Days of a request from the State (in writing), meet to discuss Manage Co's notice pursuant to clause 26A(a).
- (d) **(Relief):** Within 20 Business Days of receipt by the State of:
  - (i) Manage Co's notice pursuant to clause 26A(a); and
  - (ii) the additional information requested by the State pursuant to clause 26A(b),
 the State will:
  - (iii) in good faith, consider whether Manage Co would have achieved the Key Performance Indicators except for performance by the State of the Expansion Works or LAN Remediation Works (as the case may be); and
  - (iv) by notice to Manage Co, advise Manage Co whether the State intends to adjust the Monthly Service Payment in accordance with the clause 24.3.
- (e) **(Charge Events):** For the avoidance of doubt, the parties agree that the regime in this clause 26A does not apply to:
  - (i) adjustments to the Monthly Service Payment; or
  - (ii) payments from Manage Co to the State,
 in respect of the Charge Events.
- (f) **(Definition):** In this clause 26A, **LAN Remediation Works** means the works to be performed by, or on behalf of, the State to upgrade and remediate the local area network within the Correctional Complex.

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## 27. Variations

### 27.1 Variation Request

- (a) Either party may issue a notice entitled "Variation Request" to the other party which must include details of:
  - (i) **(Proposed Variation):** the proposed Variation; and
  - (ii) **(Specific information):** in the case of a Variation proposed by the State, any information the State requires that Manage Co include in its Variation Proposal,**(Variation Request).**
- (b) **(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 Variation 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 Variation proposed by Manage Co,

including where the State issues a Variation Order requiring Manage Co to implement the Variation in accordance with the Variation Proposal.

## 27.2 Variation Proposal

Within 20 Business Days after receipt or issue (as applicable) of a Variation Request, Manage Co must submit a notice entitled "Variation Proposal" to the State (**Variation Proposal**). The Variation Proposal must:

- (a) be signed by the Manage Co Representative;
- (b) describe any Mitigating Factors; and
- (c) provide details of the Relief Event Effects (if any).

## 27.3 Variation Order

- (a) (**Further information**): After receipt of a Variation Proposal, the State may request further information from Manage Co required by the State (acting reasonably) to assess the relevant Variation Proposal.
- (b) (**Provision of information**): Where the State requests further information under clause 27.3(a), Manage Co must promptly provide such further information to the State.
- (c) (**Instruction**): Following:
  - (i) receipt of a Variation Proposal; or
  - (ii) if further information is requested under clause 27.3(a), receipt by the State from Manage Co of all such further information reasonably requested,

the State must issue a notice to Manage Co advising Manage Co that the State:

- (iii) accepts the Variation Proposal and directs Manage Co to proceed with the Variation in accordance with the Variation Proposal by issuing a notice entitled "Variation Order";
- (iv) does not accept the Variation Proposal but directs Manage Co to proceed with the Variation by issuing a notice entitled "Variation Order" in which case Manage Co's entitlement to:
  - A. compensation will be determined in accordance with clause 30.1; and
  - B. relief will be determined by the State (acting reasonably); or
- (v) does not wish to proceed with the proposed Variation and confirms that the Variation Request is withdrawn.
- (d) (**Unilateral Variation**): Whether or not either party has issued a Variation Request under clause 27.1, the State may at any time instruct Manage Co to implement a Variation by issuing a notice entitled "Variation Order" in which case Manage Co's entitlement to:
  - (i) compensation will be determined in accordance with clause 30.1; and
  - (ii) relief will be determined by the State (acting reasonably).

## 27.4 Right to proceed

- (a) **(Variation Order):** Manage Co must not proceed with any Variation, and will not have any entitlement to make any Claim in respect of a Variation unless a Variation Order requiring Manage Co to proceed with the Variation has been issued by the State.
- (b) **(State may approve or reject):** The State will be under no obligation to issue a Variation Order requiring Manage Co to proceed with a Variation proposed by Manage Co under clause 27.1(a)(i).

## 27.5 Omission by State

- (a) **(Omitted Project Activities):** The parties acknowledge and agree that the State may issue a Variation Request that seeks to decrease, omit, delete or remove any part of the Project Activities (**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).

## 27.6 Implementation

If the State issues a Variation Order in accordance with this clause 26.2(d):

- (a) Manage Co must implement the Variation in accordance with the terms of the Variation Order;
- (b) in respect of a Variation proposed by Manage Co under clause 27.1 and the Variation will give rise to a saving, the State and Manage Co will share any saving between the parties as determined in accordance with clause 30; and
- (c) where Manage Co is entitled to compensation under clause 30.1, the State will pay Manage Co the amount:
  - (i) if the State issues a notice under clause 27.3(c)(iii), set out in the Variation Proposal; or
  - (ii) otherwise calculated in accordance with clause 30.

## 27.7 Directions

- (a) **(State direction):** If Manage Co considers that a direction, determination or decision (**Direction**) by the State constitutes or involves a Variation and the State has not given that Direction expressly by way of a Variation Order, and Manage Co intends to make a Claim that the Direction is a Variation, Manage Co must:
  - (i) within 5 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 Variation; and

- (ii) within 10 Business Days after giving the notice under clause 27.7(a)(i) and before commencing any work the subject matter of the Direction, give the State a Variation Proposal in respect of the alleged Variation.
- (b) **(Confirmation):** Within 10 Business Days of the State receiving a Variation Proposal under clause 27.7(a) the State must:
  - (i) confirm by notice in writing that the Direction is in fact a Variation, in which case the State will issue a notice entitled "Variation Order";
  - (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 Variation in which case Manage Co must comply with the Direction but may refer the matter to dispute resolution in accordance with clause 40.
- (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 Variation of the type described in clause 27.7(a) unless it has given the notices under clause 27.7(a).

## 27.8 Pre-Agreed Variation

- (a) The State may direct Manage Co to perform the Pre-Agreed Variation by giving a notice to Manage Co entitled "Pre-Agreed Variation Notice" (**Pre-Agreed Variation Notice**).
- (b) Where the State issues a Pre-Agreed Variation Notice in accordance with clause 27.8(a), the State and Manage Co:
  - (i) must agree the terms of the Pre-Agreed Variation (except where the terms of the Pre-Agreed Variation are set out in the Contract Particulars) and document that agreement; and
  - (ii) agree that this Deed will be amended to reflect the terms of the Pre-Agreed Variation set out in the Contract Particulars and agreed in accordance with clause 27.8(b)(i) from the date agreed between the parties.
- (c) Where the parties agree the terms of a Pre-Agreed Variation pursuant to clause 27.8(b)(i), Manage Co:
  - (i) must carry out its obligations under this Deed as amended in accordance with clause 27.8(b)(ii); and
  - (ii) acknowledges that its entitlement to compensation in respect of the Pre-Agreed Variation is as set out in the Contract Particulars and payment of such compensation will be full compensation for any Liability Manage Co suffers or incurs arising out of or in connection with the issue of such a notice and Manage Co will not be entitled to be paid any further amount in respect of the Pre-Agreed Variation.
- (d) The State may, except where the parties have agreed the terms of a Pre-Agreed Variation pursuant to clause 27.8(b)(i), at any time and in its absolute discretion, issue a notice to Manage Co advising Manage Co that it does not wish to proceed with the Pre-Agreed Variation and confirms that the Pre-Agreed Variation Notice is withdrawn.
- (e) Where a Pre-Agreed Variation Notice is withdrawn by the State pursuant to clause 27.8(d), the State may issue a further Pre-Agreed Variation Notice in respect of the same Pre-Agreed Variation.

- (f) The parties agree that nothing in this clause 27.8 prohibits the State from issuing a Variation Request or Variation Order under clause 26.2(d) for the same (or a similar) Variation to a Pre-Agreed Variation.

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## 28. 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 within 20 Business Days after becoming aware of that Change in Mandatory Requirements, a notice in respect of the relevant Change in Mandatory Requirements which:
- (i) is signed by the Manage Co Representative;
  - (ii) describes any Mitigating Factors; and
  - (iii) provides details of the Relief Event Effects (if any),
- (Change Proposal).**
- (c) **(State action):** On receipt of a Change Proposal, the State must issue a notice to Manage Co advising Manage Co that the State:
- (i) in the case of a Change in Policy:
    - A. accepts the Change Proposal and directs Manage Co to comply with the relevant Change in Mandatory Requirements by issuing a notice entitled "Variation Order";
    - B. does not accept the Change Proposal but directs Manage Co to comply with the relevant Change in Mandatory Requirements by issuing a notice entitled "Variation Order" in which case Manage Co's entitlement to:
      - 1) compensation will be determined in accordance with clause 30.1; and
      - 2) relief will be determined by the State (acting reasonably); or
    - C. unless a failure to comply with that Change in Mandatory Requirements would result in Manage Co being in breach of Legislation or any Approval, directs Manage Co not to comply with the relevant Change in Mandatory Requirements; and
  - (ii) in the case of a Change in Mandatory Requirements that is not a Change in Policy:
    - A. accepts the Change Proposal and directs Manage Co to comply with the Change in Mandatory Requirements by issuing a notice entitled "Variation Order";
    - B. does not accept the Change Proposal but directs Manage Co to comply with the relevant Change in Mandatory Requirements by issuing a notice entitled "Variation Order" in which case Manage Co's entitlement to:
      - 1) compensation will be determined in accordance with clause 30.1; and

- 2) relief will be determined by the State (acting reasonably); or
- C. rejects Manage Co's notice under clause 28(b) on the basis that the event the subject of the notice is not a Change in Mandatory Requirements.
- (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 notices in accordance with clause 28(a) and 28(b).
- (e) **(Implementation):** If the State issues a Variation Order in accordance with this clause 28:
  - (i) Manage Co must comply with the relevant Change in Mandatory Requirements; and
  - (ii) where Manage Co is entitled to compensation under clause 30.1, the State will pay Manage Co the amount:
    - A. if the State issues a notice under clause 28(c)(i)A or 28(c)(ii)A, set out in the Change Proposal; or
    - B. otherwise calculated in accordance with clause 30.

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## 29. Emergencies and Step-In by the State

### 29.1 State may instruct

If an Emergency occurs which the State considers cannot be dealt with by the normal performance of the Project Activities, the State may instruct Manage Co to immediately:

- (a) **(Suspend performance):** suspend performance of all or any part of the Project Activities; or
- (b) **(Additional activities):** undertake additional or alternative services as and when required by the State,

in each case to ensure that the Emergency is dealt with, and normal performance of the Project Activities resumes, as soon as is reasonably practicable.

### 29.2 Right of Step-In

If:

- (a) **(Major Default):** a Major Default occurs;
- (b) **(Default Termination Event):** a Default Termination Event occurs;
- (c) **(Request):** Manage Co requests, in writing;
- (d) **(Relief Event):** a Relief Event occurs;
- (e) **(Additional services):** an event or circumstance occurs which requires additional or alternate services materially greater than the Services required by the Services Requirements;
- (f) **(Emergency):** an Emergency occurs; or
- (g) **(Entitled by Law):** the State is entitled by Law (including the Corrections Legislation) to act to discharge a statutory power or duty,

(each a **Step-In Event**), the State may elect to do any or all of the following:

- (h) **(Management)**: to the extent that the State does not have control, assume total or partial management and control of the whole or any part of the Site, the Correctional Complex or the Project Activities;
- (i) **(Site access)**: to the extent that the State does not have control, access those parts of the Site and the Correctional Complex to which Manage Co has access or is entitled to have access; and
- (j) **(Minimise effect)**: take such other steps as are necessary in the reasonable opinion of the State for it to carry out the Project Activities and minimise the effect of the relevant Step-In Event,

provided that the State must not exercise its rights under this clause 29.2 on the occurrence of a Major Default for so long as Manage Co is complying with its obligations under clauses 38.3 and 38.4 in respect of that Major Default.

### 29.3 Notice

The State must, if it is reasonably practicable to do so, give prior notice of any exercise of its rights under clause 29.2 and in any event must, as soon as practicable, provide notice to Manage Co that it is exercising those rights.

### 29.4 Consequences of the State exercising its rights

- (a) **(Suspension of State rights)**: During the exercise of the State's rights under clause 29.2, Manage Co's rights and obligations under this Deed are suspended to the extent necessary to permit the State to exercise its rights.
- (b) **(No limitation)**: Except to the extent that Manage Co's obligations are suspended under clause 29.4(a), the exercise by the State of its rights under clause 29.2 (or the cessation of such exercise) will not affect any other right of the State under this Deed or any other State Project Document or at Law.

### 29.5 Payments

- (a) **(Step-in caused by Manage Co)**: Where the State has exercised its rights under clause 29.2 as a consequence of any Step-In Event:

- (i) contemplated by clauses 29.2(a) to 29.2(c); or
- (ii) contemplated by clauses 29.2(d) to 29.2(g), which was the result of 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 Deed,

then:

- (iii) where the State exercises its rights during the Transition Phase, any Step-in Liability will be a debt due and payable by Manage Co to the State and may be set off against the Transition Payments, other than to the extent the Step-in Liability is incurred as a consequence of any breach of the State Project Documents by the State or a negligent act or omission of the State or its Associates;
- (iv) where the State exercises those rights during the Operating Phase,
  - A. the Monthly Service Payment will be adjusted in accordance with the Performance Regime and the Payment Schedule to the extent the Services are not being provided in accordance with this Deed; and



- B. any Step-in Liability in excess of the Monthly Service Payment amount (as adjusted in accordance with the Performance Regime and the Payment Schedule under clause 29.5(a)(iv)A), will be a debt due and payable by Manage Co to the State, other than to the extent the State's Liability is incurred as a consequence of any breach of the State Project Documents by the State or a negligent act or omission of the State or its Associates.

## 29.6 Manage Co to assist the State

Manage Co must:

- (a) **(Access to be granted):** grant such access rights as are necessary, and take all action that is required by the State, to assist the State in exercising its rights under clause 29.2;
- (b) **(Sufficient resources):** provide sufficient resources, including personnel, to enable the State to exercise its rights under clause 29.2;
- (c) **(Not to hinder):** not do anything to hinder, disrupt or prevent the State in exercising its rights under clause 29.2; and
- (d) **(Manage Co Equipment):** provide Manage Co Equipment to the State so that the State may use that Manage Co Equipment when exercising its rights arising from or in connection with this clause 29.

## 29.7 Undertake Project consistent with this Deed

When exercising its rights under clause 29.2, the State must use its reasonable endeavours to carry out the relevant Project Activities in a manner which is consistent with the State Project Documents, but taking into account the State's statutory rights and obligations and the circumstances that prompted the State to exercise those rights.

## 29.8 Limits on State liability during step-in

Manage Co acknowledges and agrees that:

- (a) **(No obligation to remedy):** the State is not obliged to:
  - (i) exercise its rights under clause 29.2; or
  - (ii) remedy any breach, or to overcome or mitigate any risk or risk consequences, in connection with which the State exercises its rights under clause 29.2; and
- (b) **(No claim):** Manage Co will not be entitled to make any Claim against the State, arising in connection with the exercise by the State of its rights under clause 29.2, except:
  - (i) as expressly provided in this Deed;
  - (ii) if the State has acted fraudulently or in bad faith in exercising its rights under clause 29.2; or
  - (iii) if, in the course of exercising its rights under clause 29.2, the State has acted in breach of its obligations under this Deed.

## 29.9 Cessation of step-in rights

- (a) **(State may cease):** The State may, at any time, cease to exercise its rights in accordance with this clause upon giving 5 Business Days' notice to Manage Co.
- (b) **(State must cease):** The State must cease to exercise its rights in accordance with this clause 29 where the State has exercised its rights as a consequence of any of the Step-In Events under:
  - (i) clauses 29.2(a) or 29.2(b) and the Major Default or Default Termination Event (as the case may be) has been cured or its consequences have been remedied or overcome; or
  - (ii) clause 29.2(c) and the relevant event has ceased and its consequences have been remedied or overcome; or
  - (iii) clauses 29.2(d) to 29.2(g) and the relevant event has ceased and its consequences have been remedied or overcome.
- (c) **(Manage Co to recommence):** If the State ceases to exercise its rights under clause 29.2 in accordance with this clause 29.9:
  - (i) Manage Co must immediately recommence carrying out any obligations suspended due to the exercise by the State of those rights; and
  - (ii) the State must give reasonable assistance to Manage Co to ensure that this process of transition is effected as smoothly as possible.

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## 30. Compensation

### 30.1 Compensation

Where this Deed requires compensation to be calculated in accordance with clause 30, the compensation payable to, or by, Manage Co will be calculated in accordance with this clause 30, including 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;

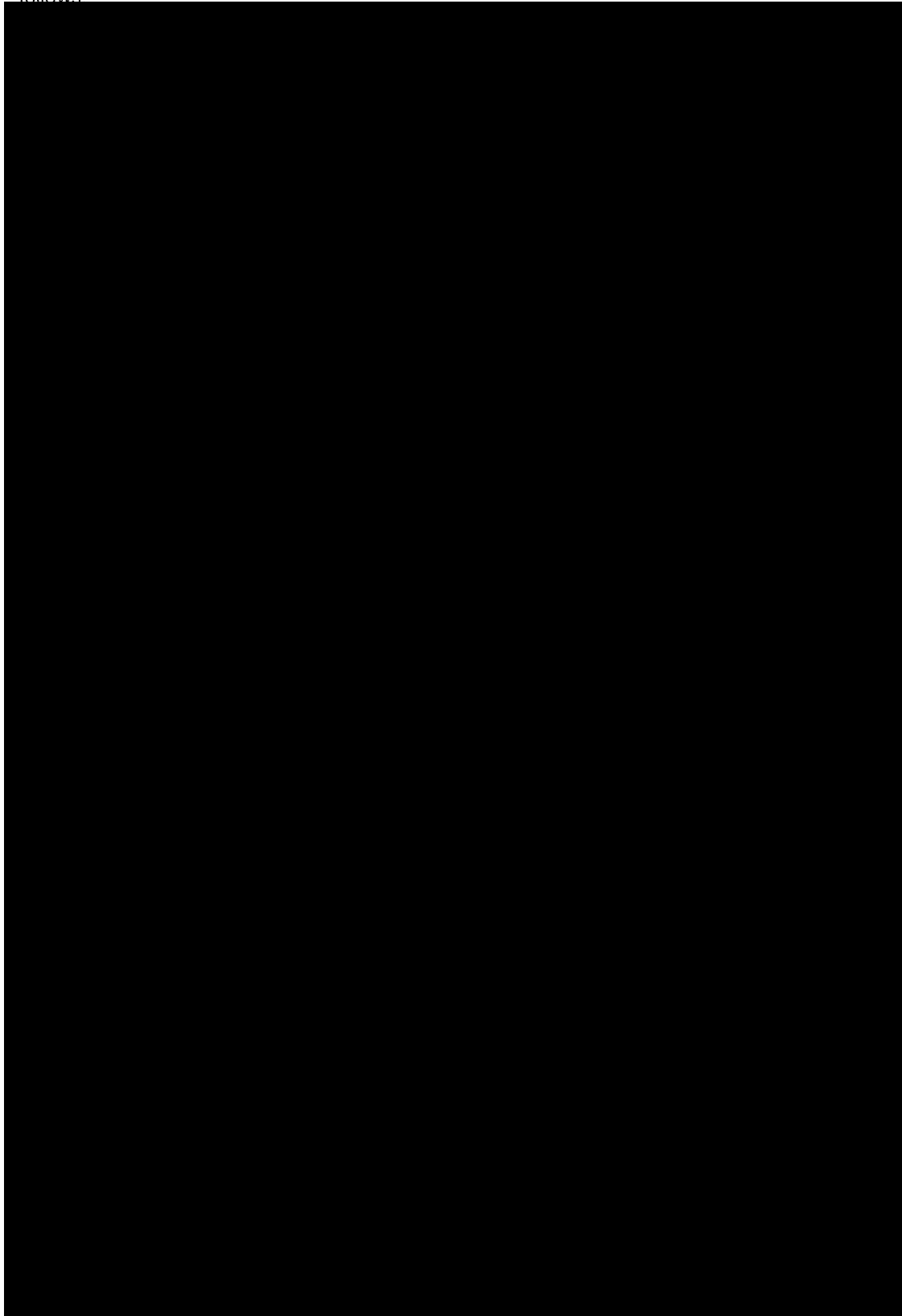
C = the net incremental, actual, verified costs which have, or will be, incurred by Manage Co directly attributable to the relevant event and which would not have been incurred but for the relevant event, multiplied by, if clause 30.2 specifies that Manage Co Margin is applicable, the applicable Manage Co Margin specified in the Contract Particulars;

D = the amount of any savings which Manage Co or any of its Associates have, or will, receive as a result of the relevant event which will be multiplied by, if clause 30.2 specifies that Manage Co Margin is applicable, the applicable Manage Co Margin specified in the Contract Particulars (in order to increase the amounts of the Savings); and

I = proceeds from any Insurances which respond to the relevant 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 Relief Event but for any failure by Manage Co or any of its Associates to effect and maintain any Insurances in accordance with clause 37 (Insurance) and Schedule 13 (Insurance Schedule) of this Deed, or to make or pursue a claim under any Insurances or to comply with any Project Documents or insurance policy.

## 30.2 Applicable Manage Co Margin

Where this Deed requires compensation to be calculated in accordance with clause 30, the applicable Manage Co Margin relevant to the calculation of 'C' and 'D' under clause 30.1 is as follows:



### 30.3 General principles for calculating compensation

The extent (if any) to which compensation will be payable by the State in accordance with this Deed will be determined as follows:

- (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) **(Open Book Basis):** Manage Co must and must procure that its Associates:
  - (i) provide all information referred to in this clause 30 on an Open Book Basis;
  - (ii) make available the appropriate personnel to explain the basis on which a particular calculation has been made; and
  - (iii) allow the State to review and undertake audits,  
  
in order to enable the State to verify compliance with this Deed and make an accurate assessment of compensation;
- (c) **(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);
- (d) **(No double counting):** no amounts will be double counted and no costs will be payable more than once;
- (e) **(Costs and Margin):** any costs which have, or will be, incurred by Manage Co as a result of the relevant event will not include any Margin; and
- (f) **(Margin):** except where Manage Co is expressly entitled to be paid a Margin, the State will not pay or otherwise compensate Manage Co (or any Significant Subcontractor) for any Margin (or loss of Margin) in respect of a Compensable Relief Event.

In this clause 30.3, 'Open Book Basis' includes Manage Co 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.

### 30.4 Savings for Manage Co Variations

For the purposes of clause 27.6(b), the amount of any saving payable to the State in respect of a Variation proposed by Manage Co that will give rise to a saving will be:

- (a) as agreed between the parties at the time; or
- (b) if the parties are unable to agree within 20 Business Days of Manage Co issuing the relevant Variation Proposal, 50%.

### 30.5 Unidentified Pre-Existing Defects

Where Manage Co is entitled to compensation under clause 30.1 due to an Unidentified Pre-Existing Defect Manage Co must bear the first \$5000 (Indexed) incurred in respect of each Unidentified Pre-Existing Defect.

## 30.6 Annual review of ongoing compensation

- (a) **(Annual review):** If compensation is payable to Manage Co under this clause 30 and 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 clause 30.6 to reflect actual costs incurred for the relevant event entitling Manage Co to compensation under this clause 30 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 event entitling Manage Co to compensation under this clause 30 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 event entitling Manage Co to compensation under this clause 30 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 clause 30.6(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 40.

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## 31. Tender process during Operating Phase

- (a) The State may require Manage Co to carry out a tender process in respect of a Variation in accordance with this clause 31 if, during the Operating Phase:
  - (i) the relevant event involves capital costs that are likely to exceed \$100,000 (Indexed); or
  - (ii) the State notifies Manage Co that it does not accept or rejects a Variation Request issued by Manage Co and that it requires Manage Co to carry out a tender process in respect of the relevant Variation.
- (b) If a tender process is required to be carried out in accordance with clause 31:
  - (i) **(Tender Process):** Manage Co must 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 event (unless the State agrees otherwise);
  - (ii) **(Tender Process Material):** Manage Co must 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 intends to select and engage is the best choice having regard to the:
    - A. price quoted;
    - B. experience and capability of that Subcontractor;

- C. the extent to which the Subcontractor provides value for money to the State when compared with other quotes;
  - D. the terms of the proposed Subcontract; and
  - E. ability of the Subcontractor to carry out the work or the services in the manner required by this Deed;
- (iv) **(Subcontracting requirements):** the Subcontractor must meet the requirements in respect of Subcontractors set out in this Deed; and
- (v) **(State not satisfied):** if, following the conduct of the tender process, the State is not reasonably satisfied with the tenders, it may direct Manage Co not to accept any tender offer:
- A. except where expressly stated otherwise in this Deed, direct Manage Co not to proceed with the relevant Variation; or
  - B. instruct Manage Co to proceed with the work or the services, but on another basis under this Deed.

## Part I - Expiry and Handover obligations

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### 32. Expiry obligations

#### 32.1 Manage Co obligations up to and including the Expiry Date

- (a) **(Transfer of responsibility):** Subject to clause 32.1(b), Manage Co must:
- (i) in the period commencing 12 Months prior to the Final Expiry Date; or
  - (ii) where Manage Co is given less than 12 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:
    - A. sufficient resources for the time required to facilitate the transfer of the Project to the State or its nominee; and
    - B. a dedicated person, with appropriate expertise and experience, to manage the transition out and handover of the Project;
  - (vii) complying with the Disengagement Plan;
  - (viii) 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;
  - (ix) training personnel nominated by the State in all aspects of the operation, maintenance and repair of the Correctional Complex to a level of competency that will allow those personnel to operate, maintain and repair the Correctional Complex to the standards required of Manage Co under this Deed from the relevant Expiry Date;
  - (x) not doing any act or thing to frustrate the transfer of responsibility for delivering the Project to the State or its nominee;
  - (xi) doing all other acts and things to enable the State (or its nominee) to be in a position to deliver the Project to the standards specified in this Deed, with minimum disruption;
  - (xii) by the Expiry Date, having:
    - A. procured the novation or, if such novation cannot be procured, the assignment to the State or its nominee of:
      - 1) such Subcontracts as the State may nominate;

- 2) any leases, subleases and licences requested by the State;
  - 3) any warranties provided in respect of the Project that are capable of assignment; and
  - 4) all Approvals necessary to deliver the Project;
- B. delivered to the State all items required as contemplated by the Handover Package;
  - C. transferred to the State or its nominee, all rights, title and interest, free from any Security Interests, in any Assets (excluding Manage Co Equipment but including any Retained 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 Deed; and
  - D. paid to the State or its nominee, any insurance proceeds Manage Co has received from any Insurances for the reinstatement or replacement of the Correctional Complex (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 Correctional Complex (excluding Manage Co Equipment); and
- (xiii) on the Expiry Date, handing over the Correctional Complex (excluding Manage Co Equipment but including any Retained 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.
- (b) **(Expiry Date):** Where the Expiry Date is prior to the Final Expiry Date, Manage Co must meet the requirements under clause 32.1(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).

## 32.2 Manage Co Equipment

- (a) **(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.
- (b) **(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.
- (c) **(Remove Manage Co Equipment)**: Within 20 Business Days after the Expiry Date, Manage Co must remove from the Correctional Complex 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 Complex 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 promptly make good any damage caused to the Correctional Complex or Site by Manage Co removing any of Manage Co Equipment to the State's satisfaction.

### 32.3 Appointment of Handover Reviewer

- (a) **(Handover Reviewer)**: No later than 12 Months before the inspections to be undertaken in accordance with clause 32.4 (or where clause 32.4(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 32.4.
- (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.
- (c) **(Appointment)**: The State and Manage Co must jointly engage the Handover Reviewer pursuant to a deed agreed between the parties or, where the parties cannot agree on the form of the deed, within 10 Business Days of the Handover Reviewer being appointed on terms determined by the State acting reasonably.
- (d) **(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 Deed) will be paid by the State to the Handover Reviewer.
  - (ii) Manage Co must pay as a debt due and payable to the State, on demand, from time to time, 50% of the costs and expenses of the Handover Reviewer paid by the State under clause 32.3(d)(i).

## 32.4 Handover Reviewer Role

- (a) **(Joint inspection):** Manage Co, the State and the Handover Reviewer appointed under clause 32.3 must carry out joint inspections of the Correctional Complex (excluding Manage Co Equipment):
- (i) at least 2 years before the Final Expiry Date and every 6 Months thereafter 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 32.4(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 32.4(d)(i), the Dispute may be referred by either party to expert determination in accordance with clause 42.

## 32.5 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 32.4; and
    - B. submit the updated Operating Phase Plans to the State for review in accordance with clause 11; 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.

## 32.6 State election

- (a) **(State discretion):** Notwithstanding the terms of this clause 32, 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 2 years 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 Correctional Complex (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 32.6(a)(ii):
- (i) the Output Specification, the relevant Operating Phase Plans and any other relevant parts of this Deed will be varied; and
  - (ii) any subsequent Monthly Service Payment will be reduced by the cost of the relevant Final Refurbishment Works,

as agreed by the parties or, where not agreed within 5 Business Days after the date on which the State gives the relevant notice under clause 32.6(a)(ii), as determined by expert determination under clause 42.

## 32.7 Security for Final Refurbishment Works

- (a) **(Security threshold):** After a Condition Review Date, if the aggregate of the remaining Monthly Service Payments is equal to or less than the sum of 120% of the estimated total cost of the remaining Final Refurbishment Works specified in the then current Outstanding Matters Report (**Threshold Amount**) Manage Co must either:
- (i) notify the State that the State may deposit into a registered bank account opened by the State in the State's name (the **Handover Escrow Account**) each subsequent Monthly Service Payment until the balance of the Handover Escrow Account equals or exceeds the Threshold

Amount (in which case the State must proceed accordingly) and clause 32.8 will apply; or

- (ii) provide to the State a Handover Bond having a face value equal to the Threshold Amount within 10 Business Days of the Condition Review Date and clause 32.9 will apply,

as security for the performance of Manage Co's obligations under this clause 32.

- (b) **(Manage Co makes no election):** If Manage Co fails to make an election in accordance with clause 32.7(a) within 10 Business Days of the Condition Review Date, Manage Co will be deemed to have elected that clause 32.7(a)(i) will apply.
- (c) **(Changes to Outstanding Matters Report):** If the scope or estimated cost of the Final Refurbishment Works are amended in accordance with clause 32.4 or clause 32.6, the Threshold Amount will be adjusted accordingly.

### 32.8 Handover Escrow Account

Where the State opens a Handover Escrow Account in accordance with clause 32.7(a)(i):

- (a) **(Interest earned):** interest earned on money in the Handover Escrow Account must be deposited into the Handover Escrow Account and Manage Co is entitled, on request, to receive copies of the statements for the Handover Escrow Account;
- (b) **(Cost of Final Refurbishment Works):** the State must draw upon the Handover Escrow Account to pay Manage Co the cost of the Final Refurbishment Works completed by Manage Co, where the Handover Reviewer determines (following a Condition Review Date) that the relevant Final Refurbishment Works required to be performed by Manage Co by the date of the review have been satisfactorily performed, provided that after drawing such amount the balance of the Handover Escrow Account equals or exceeds the then current Threshold Amount;
- (c) **(State benefit):** if any Final Refurbishment Works have not been satisfactorily completed as at the Expiry Date, as determined by the Handover Reviewer, the State may draw upon the Handover Escrow Account for its own benefit in respect of the aggregate of the total cost of carrying out the remaining Final Refurbishment Works as set out in the then current Outstanding Matters Report; and
- (d) **(Remaining balance):** where there are moneys remaining in the Handover Escrow Account after all amounts that Manage Co is entitled to have been drawn and paid to Manage Co in accordance with clause 32.8(b) and all amounts that the State is entitled to have been drawn in accordance with clause 32.8(c), the State must pay any moneys remaining in the Handover Escrow Account (including any interest on that amount) to Manage Co.

### 32.9 Handover Bond

Where Manage Co provides a Handover Bond under clause 32.7(a)(ii):

- (a) the State:
  - (i) **(Return after completion):** must return the Handover Bond to Manage Co 10 Business Days after completion of all Final Refurbishment Works to the satisfaction of the Handover Reviewer; and
  - (ii) **(Drawing on bond):** may draw on the Handover Bond for the full amount of the Handover Bond remaining after the Expiry Date to the extent required to perform the Final Refurbishment Works;
- (b) **(One annual reduction):** Manage Co may reduce the amount of the Handover Bond in the manner stated in clause 32.9(c) no more than once an Operating Year

and then at the Expiry Date to account for Final Refurbishment Works completed to the satisfaction of the Handover Reviewer, provided that the amount of the Handover Bond is no less than the then current Threshold Amount;

(c) **(Replacement Handover Bond)**: where the amount of the Handover Bond is reduced pursuant to clause 32.9(b), subject to any right of the State to have recourse to the existing Handover Bond, the State must return that Handover Bond to Manage Co in exchange for the delivery to the State by Manage Co of a replacement Handover Bond that complies in all respects with this Deed and is for an amount which is not less than the relevant reduced amount; and

(d) **(Notice and replacement)**: if:

(i) the issuer of a Handover Bond ceases to hold a current licence issued by the Australian Prudential Regulation Authority or have the Required Rating; or

(ii) the specified location within Sydney (or such other place as approved by the State) is no longer available for demand to be given or for payment to be made under a Handover Bond,

then Manage Co must:

(iii) promptly notify the State of that circumstance; and

(iv) within 5 Business Days after being requested to do so, procure the issue to the State of a replacement Handover Bond that complies in all respects with this Deed and is for the same amount.

## Part J - Risk, Indemnity and Insurance

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### 33. Loss or Damage

#### 33.1 Risk of loss or damage

Subject to this clause 33, on and from the Operational Commencement Date of the Existing Facility, Manage Co bears the risk of loss or damage to the Correctional Complex (including loss or damage caused by Inmates).

#### 33.2 Substantial loss or damage

(a) **(Notification):** On and from the Operational Commencement Date of the Existing Facility, Manage Co must promptly notify the State of any loss or damage to the Correctional Complex which notice must include:

- (i) details of the nature and extent of such loss or damage; and
- (ii) whether the loss or damage is State Damage,

**(Damage Notice).**

(b) **(State election):** If:

- (i) the loss or damage to the Correctional Complex is State Damage, within 60 Business Days of receipt by the State of the Damage Notice, the State must notify Manage Co whether:
  - A. it requires Manage Co to repair or rebuild any Correctional Complex, in which case clauses 33.3 and 33.5 will apply;
  - B. it intends to repair or remedy any destruction, loss or damage, or replace or reinstate the Correctional Complex (or procure a third party to do so), in which case clauses 33.4 and 33.5 will apply; or
  - C. it elects for the Correctional Complex not to be repaired or rebuilt, in which case clause 33.6 applies;
- (ii) the loss or damage to the Correctional Complex is not State Damage, Manage Co must repair or rebuild the Correctional Complex in accordance with clause 33.3, unless the State elects, by notice in writing to Manage Co, for the Correctional Complex not to be repaired or rebuilt, in which case clause 33.6 applies.

#### 33.3 Manage Co to repair or rebuild

(a) **(Manage Co to repair or rebuild):** Unless the State has:

- (i) provided Manage Co with notice in accordance with clause 33.2(b)(i)B or 33.2(b)(i)C; or
- (ii) elected for the Correctional Complex not to be repaired or rebuilt in accordance with clause 33.6,

Manage Co must:

- (iii) subject to allowing reasonable time for inspection by insurers, take immediate steps to clear any debris and begin initial repair work;
- (iv) promptly repair or rebuild the Correctional Complex;

- (v) ensure that the Correctional Complex is repaired or rebuilt to a design specification and standard which is the same as that of the lost or damaged Correctional Complex as at the date on which the loss or damage occurred (**Current Design Standard**); and
  - (vi) ensure:
    - A. there is minimal disruption to the Correctional Complex, the Site and the Project Activities; and
    - B. to the greatest extent possible, continue to comply with its obligations under the Project Documents; and
  - (vii) keep the State fully informed of the progress of the repair or rebuilding of the Correctional Complex; and
  - (viii) if requested by the State, consult with the State regarding Manage Co's program of repairs or rebuilding throughout the repair or rebuilding process.
- (b) (**Failure by Manage Co**): Without limiting any other provision of this Deed, if Manage Co does not repair or rebuild the Correctional Complex where required to do so in accordance with this clause 33.3:
- (i) the State may notify Manage Co that the State intends to repair or remedy any destruction, loss or damage, or replace or reinstate the Correctional Complex (or procure a third party to do so); and
  - (ii) if Manage Co does not comply with its obligations under clause 33.3, the State may, without further notice, elect to remedy or repair any destruction, loss or damage, or replace or reinstate the Correctional Complex (or procure a third party to do so) in which case, the Liability for the costs and expenses incurred in doing that work will be as set out in clause 33.5.

### 33.4 State to repair or reinstate

Without limiting clause 33.5, if the State notifies Manage Co that the State intends to repair or rebuild the Correctional Complex (or procure a third party to do so) in accordance with clause 33.2(b)(i)B or 33.3(b)(ii):

- (a) Manage Co must provide the State and its Associates which such assistance as is requested by the State (acting reasonably), including, without limiting clause 18.3, sufficient access to the Site and the Correctional Complex so that the State or an Associate of the State can repair or rebuild the Correctional Complex; and
- (b) the Liability for the costs and expenses incurred in doing that work will be as set out in clause 33.5.

### 33.5 Liability for repair or rebuild of the Correctional Complex

- (a) (**Liability for repair and rebuilding**): Without limiting clauses 33.5(b), 33.5(c), 33.9 and 37.10, if:
  - (i) the Correctional Complex is repaired or rebuilt in accordance with clause 33.3 or 33.4; and
  - (ii) the insurance proceeds are insufficient to repair or rebuild the Correctional Complex in accordance with this Deed due to an exclusionary provision in the insurance policy (**Insufficient Damage Costs**):

then:

(iii) to the extent that the loss or damage is State Damage, the Insufficient Damage Costs will be borne by the State and, if Manage Co is repairing or rebuilding the Correctional Complex, the State must pay Manage Co the Insufficient Damage Costs in accordance with clause 30; or

(iv) where the loss or damage was caused by an event other than State Damage, including loss or damage caused by:

A. an act or omission of Manage Co or an Inmate; or

B. a Force Majeure Event,

the Insufficient Damage Costs will be borne by Manage Co and if Manage Co is not repairing or rebuilding the Correctional Complex such costs must be paid by Manage Co to State as a debt due and payable.

(b) **(Cost impact on Correctional Complex):** Without limiting clause 33.5(c), if:

(i) Manage Co is required to repair or rebuild the Correctional Complex in accordance with clause 33.3;

(ii) the State directs Manage Co to repair or rebuild the Correctional Complex to a design specification and standards which is different to the Current Design Standard (**Different Design Standard**); and

(iii) the cost to Manage Co of repairing or rebuilding the Correctional Complex to the Different Design Standard exceeds the cost to Manage Co of repairing or rebuilding the Correctional Complex to the Current Design Standard (**Incremental Damage Costs**),

the State must pay Manage Co the Incremental Damage Costs in accordance with clause 30.

(c) **(Cost impact on Project Activities):** If the repairing or rebuilding of the Correctional Complex 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 Variation in accordance with clause 26.2(d) but only in respect of such increase or decrease.

### 33.6 State election not to repair or rebuild

If the State notifies Manage Co that it elects for the Correctional Complex not to be repaired or rebuilt in accordance with clause 33.2(b)(i)C or 33.2(b)(ii), the State must:

(a) **(Variation):** where the Correctional Complex has not been wholly destroyed or substantially damaged, omit the relevant part of the Correctional Complex from the Project by directing a Variation in accordance with clause 26.2(d); or

(b) **(Wholly destroyed or substantially damaged):** if the Correctional Complex 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 Deed for default in accordance with clause 39.4;

(ii) any act or omission of the State, the State must issue a notice to voluntarily terminate this Deed in accordance with clause 39.2; or



- (iii) any other event, including a Force Majeure Event, this will be deemed to be a Force Majeure Termination Event and the State must issue a notice to terminate this Deed for Force Majeure in accordance with clause 39.3.

### 33.7 Inmates

If:

- (a) an Inmate causes any loss of or damage to the Correctional Complex as a result of committing a Correctional Centre Offence (as that term is defined in the Corrections Act); and
- (b) the Governor 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.

### 33.8 Damage to third party property

- (a) **(Manage Co interference):** Other than in accordance with its obligations under this Deed, 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 Correctional Complex) on, under, over, in or in the vicinity of, the Site, other than in accordance with its obligations under this Deed, 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.

### 33.9 Minor damage

If any loss of, or damage to, the Correctional Complex for which the State would, but for this clause 33.9, 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).

### 33.10 Application of Insurance proceeds

To the extent applicable, all proceeds of any insurances maintained in connection with the Project (including the Insurances) must be applied:

- (a) **(Repair):** towards replacement or repair of the Correctional Complex;
- (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.

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## 34. Indemnities and Consequential or Indirect Loss

### 34.1 Indemnity for Manage Co breach

Subject to clauses 24.3(d) and 25.8, 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 Deed)** any breach by Manage Co of this Deed; or
- (b) **(Breach State Project Document):** any breach by Manage Co or any of its Associates of any State Project Document.

### 34.2 General indemnity

Manage Co indemnifies the Indemnified Persons from and against any Claim (including any 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 Correctional Complex addressed in clauses 33.3 to 33.6);
- (b) **(Injury, illness or death):** any injury to, illness or death of, any person; or
- (c) **(Third parties):** to the extent not covered under clause 34.2(a) or 34.2(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.

### 34.3 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 Complex 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 Complex or an Inmate (or former Inmate) during the Operating Phase.

### 34.4 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 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 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.

### 34.5 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 analogous rights of any person but excluding State Background IP in connection with:
  - (i) delivery of the Project;
  - (ii) any Use of Developed IP by the State, its Associates or any person nominated or authorised by the State;
  - (iii) any Use of Developed IP by or on behalf of Manage Co as referred to in clause 50.3(b);
  - (iv) any Use of other Manage Co Material, Manage Co Background IP or part of the Correctional Complex 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 Correctional Complex (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 Deed.
- (b) **(Manage Co obligations to replace, modify or obtain new licence)**: If a Claim referred to in clause 34.5(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 Correctional Complex (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 Correctional Complex, 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 Correctional Complex 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 Correctional Complex 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 Correctional Complex 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 Correctional Complex (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 Deed or otherwise according to Law, in connection with Intellectual Property Rights, are limited by the terms of this clause 34.5.

### 34.6 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.

### 34.7 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.

### 34.8 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 Deed will be reduced to the extent that any such Claim or Liability is caused or contributed to by:

- (a) **(Breach):** any breach by the State of any State Project Documents;
- (b) **(Fraud):** any fraudulent, negligent, reckless, unlawful or malicious act or omission of the Indemnified Persons or the Indemnified IP Parties (as applicable); or
- (c) **(Relief Event):** a Relief Event, but only to the extent that the reduction in Manage Co's Liability to indemnify or release is agreed by the parties or determined in accordance with this Deed (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:

- (d) but for any breach by Manage Co or any of its Associates of this Deed or the relevant insurance policy; or
- (e) if Manage Co had submitted a Claim under the relevant Insurances where there was a legitimate entitlement to do so and taken reasonable steps to pursue the claim.

### 34.9 Third party claim under indemnity

- (a) **(Management of Claims):** Subject to clause 34.9(b) and 34.9(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 Deed, 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 34.9(a)(i)B and 34.9(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 34.9(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.

### 34.10 Continuing obligation

- (a) **(Indemnities):** Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties.
- (b) **(Enforcement):** It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity under this Deed.
- (c) **(Payment):** A party must pay on demand any amount it must pay under an indemnity in this Deed.

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## 35. Exclusion of Consequential or Indirect Loss

### 35.1 Exclusion of Consequential or Indirect Loss – Manage Co

- (a) **(No liability of Manage Co):** Subject to clause 35.1(b) but notwithstanding any other provision of the State Project Documents, 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 35.1(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 Deed or Liability for which Manage Co or its Associates would have been insured under such Insurances if:
    - A. this clause 35 did not exist; and
    - B. Manage Co and its Associates had:
      - 1) effected and maintained the relevant Insurances as required by this Deed;
      - 2) complied with the relevant Insurances;
      - 3) submitted a claim under the relevant Insurances where there was a legitimate entitlement to do so; and
      - 4) taken reasonable steps to pursue the claim;
  - (ii) for which Manage Co recovers pursuant to an indemnity under any Project Documents;
  - (iii) to the extent that Manage Co has recovered that liability from a third party;
  - (iv) arising from any criminal act or fraud on the part of Manage Co or any of its Associates;
  - (v) arising from any wilful misconduct on the part of Manage Co or any of its Associates;
  - (vi) arising from any loss of or damage to property or injury to, illness or death of any person;
  - (vii) in respect of a deductible or excess under any Insurance;
  - (viii) arising in respect of the application of the Performance Regime or the Payment Schedule;
  - (ix) 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. any interest under clause 24.5;
  - B. any amounts payable under clause 24.4 or 48.8;
  - C. any amounts expressly stated to be payable as a debt due and payable under the State Project Documents;
  - D. any amounts payable by Manage Co to an Indemnified IP Party under clause 34.5;
  - E. without limiting clause 35.1(b)(vi), any amounts payable by Manage Co to the State or an Indemnified Person under clause 34.2(c);
  - F. any amounts payable under and calculated in accordance with the Performance Regime or the Payment Schedule (including under clause 24.3);
  - G. any amounts payable under and calculated in accordance with clause 30; or
  - H. any amounts payable under and calculated in accordance with the Termination Payments Schedule;
- (x) imposed on Manage Co under clause 27.6(b) to pay or allow to the State any share of savings;
  - (xi) in respect of any statutory fine or civil penalty arising from any breach of Law by Manage Co or any of its Associates;
  - (xii) arising from abandonment of the whole or a substantial part of the Transition Phase Activities, the Operational Readiness Activities or the Services by Manage Co or any of its Associates; or
  - (xiii) in respect of costs incurred by the State in rectifying Defects for which Manage Co is liable under this Deed.

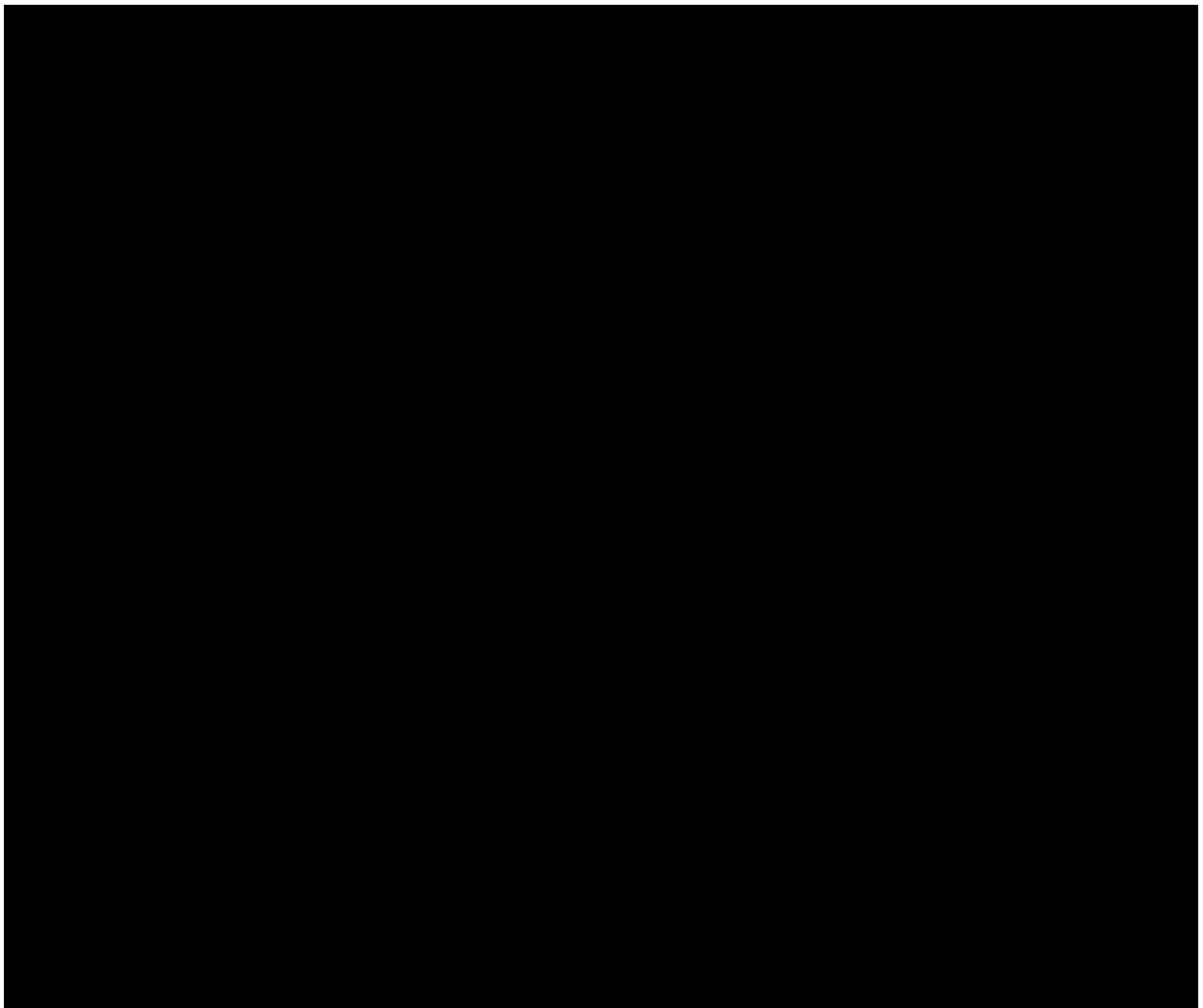
## 35.2 Exclusion of Consequential or Indirect Loss – State

- (a) **(No liability of State):** Subject to clause 35.2(b) but notwithstanding any other provision of the State Project Documents, neither the State nor any of its Associates has any Liability to Manage Co or any of its Associates (whether in contract, tort or otherwise), in respect of Consequential or Indirect Loss incurred or sustained by Manage Co or its Associates:
  - (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 35.2(a) does not apply to:
  - (i) Liability arising from any criminal act or fraud on the part of the State or its Associates;
  - (ii) Liability arising from any wilful misconduct on the part of the State (in its capacity as a party to this Deed) or its Associates in connection with the Project;

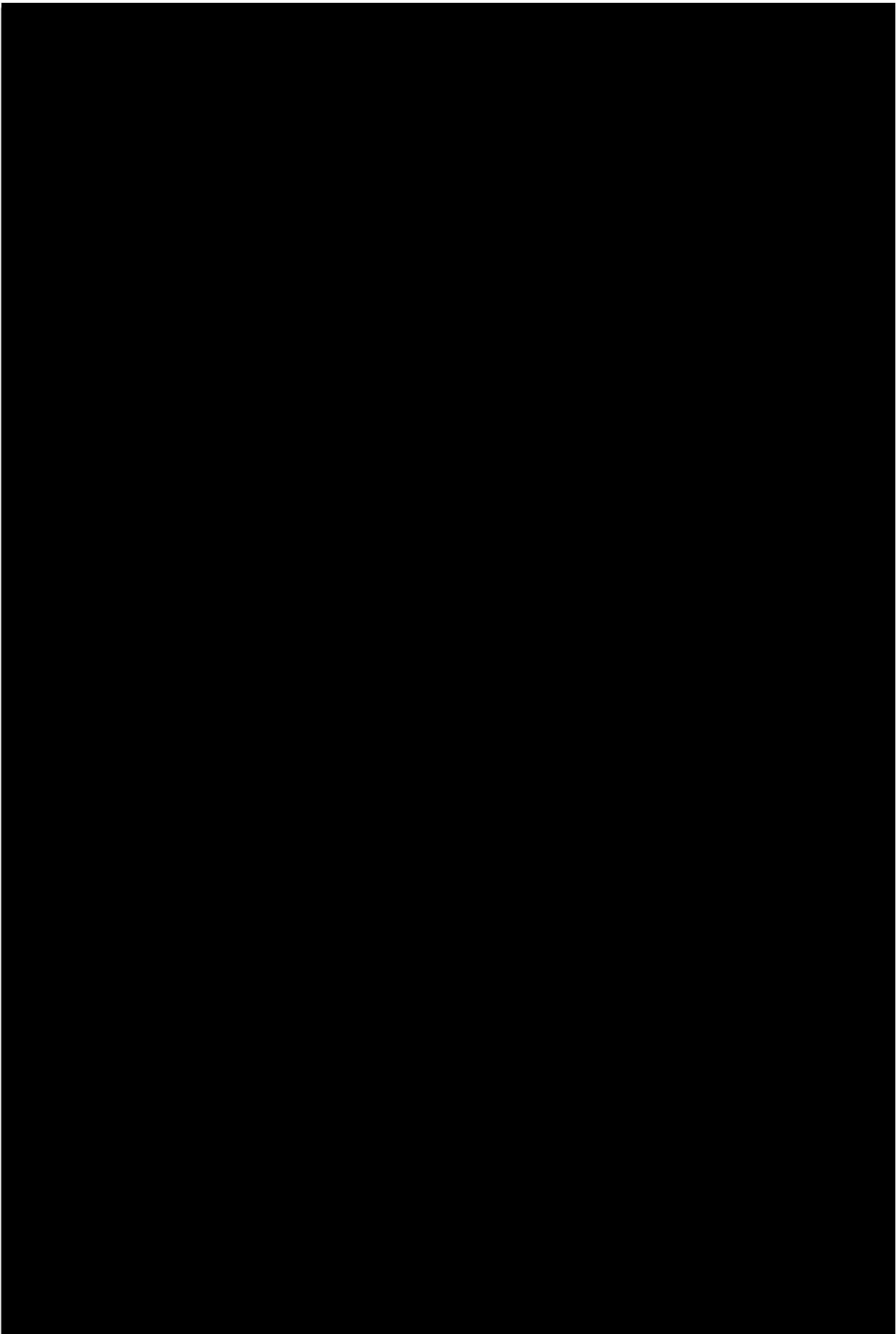
- (iii) Liability arising from any loss of or damage to property or any injury to, illness or death of, any person caused or contributed to by the State or its Associates;
- (iv) Liability expressly imposed on the State under any of the State Project Documents to pay to Manage Co any of the following amounts:
  - A. any Transition Payments, Additional Security Services Payment or Monthly Service Payment;
  - B. any interest under clause 24.5;
  - C. any amounts payable under and calculated in accordance with clause 30; or
  - D. any amounts payable in accordance with the Termination Payments Schedule;
- (v) Liability imposed on the State under clause 30.2 to pay or allow Manage Co any share of savings; or
- (vi) payment of any excess or deductible payable by the State under clause 37.10(b).

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**36. Limitation of liability**







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## 37. Insurance

### 37.1 Insurances

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

- (a) **(Insurance Schedule)**: the Insurances at the times, in the manner and on the terms specified in this clause 37 and the Insurance Schedule; and
- (b) **(Additional insurance)**: any additional insurance required by Law or which a prudent, competent, experienced contractor would maintain when carrying out activities of a similar nature to the Project Activities.

### 37.2 General insurance requirements

Manage Co must or where relevant, must procure that its Subcontractors:

- (a) **(Reputable Insurers)**: effect all Insurances with Reputable Insurers;
- (b) **(Premiums)**: punctually pay all premiums and other amounts payable in connection with the Insurances, and give the State copies of receipts for payment of premiums if and when requested by the State;
- (c) **(No alteration)**: not alter, extend, discontinue or cancel any Insurance, or allow any such Insurance to lapse, where this would result in the relevant Insurance not meeting the requirements of this Deed, without the prior approval of the State;
- (d) **(Not prejudice)**: not do or permit, or omit to do, anything which prejudices any Insurance;
- (e) **(Rectify)**: promptly rectify anything which might, if not rectified, prejudice any Insurance;
- (f) **(Fully disclose)**: fully and promptly disclose all material information to all relevant insurers (and any persons acting on their behalf) relating to the Insurances;
- (g) **(Comply)**: comply at all times with the terms of each Insurance;
- (h) **(State recovery)**: do everything reasonably required by the State or any of its Associates to whom the benefit of any Insurance extends, to enable the State or its Associates (as the case may be) to claim, and to collect or recover, money due under that Insurance; and
- (i) **(Notice of cancellation)**: notify the State of any amendment or cancellation of an Insurance, within 30 Business Days of Manage Co becoming aware of the amendment or cancellation.

### 37.3 Terms of Insurances

Manage Co must ensure that each of the Insurances:

- (a) **(Terms)**: contains terms that, if not specified in the Deed are:
  - (i) acceptable to the State, acting reasonably; and
  - (ii) to the effect that the relevant insurer:
    - A. does not require the State or its Associates to exhaust indemnities given by Manage Co or its Associates to the State or its Associates under any State Project Document, before

the insurer pays proceeds in respect of any claim under that Insurance;

- B. will not impute to any Insured any knowledge or intention or a state of mind possessed or allegedly possessed by any other Insured;
  - C. in the case of Insurances under which the State or its Associates are also Insureds, agrees that the interests of the Insured include the entire assets of the Project and waives any rights of subrogation which it may have against any Insured;
  - D. in the case of liability insurances, agrees to treat each Insured as a separate Insured as though a separate contract of insurance had been entered into with each of the Insured, without increasing the deductibles or reducing the overall limit of indemnity; and
  - E. agrees that no reduction in limits or coverage affecting the Project or the Correctional Complex will be made during the period of insurance, except under the circumstances and to the extent permitted by the *Insurance Contracts Act 1984* (Cth) and with not less than 20 Business Days prior notice to the State and Manage Co; and
- (b) **(Objectives of Project):** is appropriate given the nature and objectives of the Project and the responsibilities and entitlements of the various Insureds in connection with this Deed.

#### 37.4 Insurances primary

- (a) **(Enforceability of rights under indemnities):** The State is not obliged to make a claim or institute proceedings against any insurer under the Insurances before enforcing any of its rights or remedies under the indemnities referred to in this Deed or generally.
- (b) **(Manage Co's obligations not affected):** Other than as expressly stated in this Deed, Manage Co is not relieved from, and remains fully responsible for, its obligations under this Deed, regardless of whether the Insurances respond or fail to respond to any claim and regardless of the reason why any Insurance responds or fails to respond.

#### 37.5 Notification and making of claims

Manage Co must in relation to any Insurances other than workers compensation or motor vehicle Insurances:

- (a) **(Notification):** promptly notify the State of any occurrence that may give rise to a claim in connection with the Project under any Insurance, except where an Insured's right of indemnity under the relevant Insurances would be prejudiced by giving such notice;
- (b) **(Subsequent developments):** keep the State informed of subsequent developments concerning the occurrence under clause 37.5(a);
- (c) **(Pursue claims):** subject to clause 37.5(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 37.5(a) under any Insurance without the prior consent of the State (which must not be unreasonably withheld).

### 37.6 Ongoing obligations

- (a) **(Manage Co to provide):** No less than 30 Business Days prior to the Date for Operational Readiness and prior to the date on which any Insurance is due to be effected or renewed (as detailed in the Insurance Schedule), Manage Co must provide the State with copies of the proposed Insurances for the State's approval.
- (b) **(Terms and evidence):** If Manage Co is unable to provide copies of the Insurances to the State in accordance with clause 37.6(a), it must:
  - (i) make the terms of such Insurances available to the State's insurance broker to review confidentially and approve on behalf of the State; and
  - (ii) provide the evidence in respect of that Insurance required under clause 37.7(b) to 37.7(d).
- (c) **(Acknowledgement):** The parties acknowledge and agree that:
  - (i) the terms and requirements specified in the Insurance Schedule for the Insurances are a reflection of the insurance market at Commercial Close;
  - (ii) if prior to the Date of Operational Readiness and throughout the Operating Phase, either party considers (acting reasonably) that the terms relating to an Insurance set out in the Insurance Schedule are no longer a reflection of the terms of the insurance that an operator of facilities similar to the Correctional Complex providing services similar to the Services and exercising Best Industry Practices would procure and maintain, then that party may send a written notice to the other party advising it of the same and the parties must promptly confer in good faith and acting reasonably with a view to reaching agreement on the replacement terms or requirements (as applicable); and
  - (iii) if the parties do not reach agreement on any replacement terms or requirements in accordance with clause 37.6(c)(ii) within 5 Business Days after the date on which a written notice was first given under that clause, either party may refer the matter to dispute resolution in accordance with clause 40.

### 37.7 Evidence of Insurances

Whenever reasonably requested by the State, Manage Co must give the State evidence satisfactory to the State that the Insurances have been procured and continue to be maintained in accordance with this Deed, including:

- (a) **(Policies):** certified copies of each insurance policy, or if Manage Co is unable to provide certified copies of an insurance policy, Manage Co must make the terms of such Insurances available to the State's insurance broker to review confidentially and approve on behalf of the State;
- (b) **(Certificate):** signed certificates of currency;
- (c) **(All requirements):** confirmation that all the requirements of those Insurances specified in the Insurance Schedule are included in those Insurances; and
- (d) **(Deductibles):** details of deductibles, terms of coverage, erosion and reinstatement of limits that the State reasonably requires,

to enable the State to satisfy itself that all of the insurance requirements of the Project under this Deed are being complied with.

### 37.8 State may effect Insurances

- (a) **(State may effect insurance):** The State may procure or effect and maintain the relevant Insurances and pay the relevant premiums in connection with those Insurances:
  - (i) if Manage Co fails to provide evidence satisfactory to the State within 20 Business Days of a request under clause 37.7; or
  - (ii) in the event of any default by Manage Co or its Associates in obtaining or maintaining Insurances in accordance with this clause 37.
- (b) **(Costs to be recoverable from Manage Co):** Without limiting any other remedies of the State under this Deed or at Law, the costs reasonably incurred by the State in connection with taking action in accordance with clause 37.8(a) will be a debt due and payable by Manage Co to the State.

### 37.9 Proportionate liability

Manage Co must ensure that all relevant policies of Insurance which are effected on a project specific basis, do not reduce or exclude the insurance cover in connection with liabilities governed by Part 4 of the *Civil Liability Act 2002* (NSW) or any corresponding legislation of another Australian jurisdiction, by reason of the manner in which that legislation operates or does not operate, as the case may be, in light of any of the provisions of this Deed and the obligations undertaken by Manage Co in connection with it.

### 37.10 Deductibles

- (a) **(Payment of claims):** Subject to clause 37.10(b), Manage Co must pay or bear all amounts by way of deductibles or excesses which apply to a claim made under any Insurances.
- (b) **(Loss or damage):** Where the event that is insured under any Insurances is State Damage or is caused by a Compensable Relief Event for which Manage Co is entitled to relief in accordance with this Deed, the State will pay the related deductible or excess.

### 37.11 Benchmarking of Insurance Component of Monthly Service Payment

- (a) **(Quotes):** Three months prior to each Insurance Review Date, Manage Co must obtain separate quotes from three Reputable Insurers for annual premium costs of obtaining the Benchmarked Insurance (with the insurance broker's fee component identified separately in each quote).
- (b) **(Selection of quote):** The State will select one quote for the Benchmarked Insurance (**Quoted Insurance Component**), (which shall, for the avoidance of doubt, include each component of the Insurance Component), and that quote will form the basis for benchmarking the Insurance Component relating to that Benchmarked Insurance.
- (c) **(Adjustment):** On each Insurance Review Date, if the total Quoted Insurance Component for the Benchmarked Insurance (as specified in the quote selected by the State in accordance with clause 37.11(b)) is greater or less than the total Insurance Component (Indexed to the relevant Insurance Review Date) for that Benchmarked Insurance at the then most recent of:
  - (i) the Operational Commencement Date of the Existing Facility; or
  - (ii) the last Insurance Review Date on which an adjustment to the relevant Insurance Component occurred under this clause 37.11,

(as applicable), the total Insurance Component relating to that Benchmarked Insurance will be adjusted by the amount by which the total Quoted Insurance Component for that Benchmarked Insurance:

- (iii) exceed the total Insurance Component relating to that Benchmarked Insurance; or
- (iv) are less than the total Insurance Component relating to that Benchmarked Insurance,

as determined in accordance with clause 37.11(c)(i) or 37.11(c)(ii) as applicable, provided that any increase or decrease in the cost of obtaining the Benchmarked Insurance which is directly attributable to Manage Co's or its Associates' performance of the Services which has resulted in claims on the Benchmarked Insurance will be disregarded.

(d) **(Mitigation):** Manage Co must, and must procure that its Subcontractors, use all reasonable endeavours to:

- (i) mitigate cost increases; and
- (ii) maximise cost savings,

in respect of the Benchmarked Insurance.

## Part K - Default, Termination and Disputes

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### 38. Major Default

#### 38.1 Meaning of remedy or cure

Where the word 'remedy' or 'cure' or any other grammatical form of those words is used in this clause 38, it means to cure or redress the relevant breach or Major Default, or overcome its consequences so that:

- (a) there ceases to be any continuing detrimental effect of that breach or Major Default;
- (b) any prior detrimental effect is rectified; and
- (c) the State and its Associates are in the position they would have been in had the relevant breach or Major Default not taken place.

#### 38.2 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 38.2(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 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
      - 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 Significant Subcontractor, if:
  - (i) the relevant Significant Subcontractor is responsible for the Major Default; and
  - (ii) the cure period under the relevant Significant Subcontract has expired,
 and Manage Co must comply with the requirements of this clause 38 requiring such a replacement, within 3 Months of notice being given by the State and, where the State requires such a replacement, diligently pursuing a replacement Significant Subcontractor and implementing all reasonable measures to perform the Services in accordance with this Deed.
- (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 38.2(d) 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 38.2(d), 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 38.2(e); or
  - (ii) the State's determination under clause 38.2(f),
 then:
  - (iii) Manage Co may refer the matter to expert determination in accordance with clause 42; and
  - (iv) if clause 38.2(f) applies, the Major Default will not be deemed to be a Default Termination Event unless and until determined by expert determination in accordance with clause 42,

and Manage Co must act in accordance with the Major Default Notice while the matter is being determined in accordance with clause 42.

### **38.3 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 38.2(d) to 38.2(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 approval by the State.

- (b) **(Content of remedy program):** Any program provided to the State under clause 38.3(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 38.3(a)(i), to remedy the Major Default; or
    - B. in respect of 38.3(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 38.2(d) to 38.2(g), Manage Co must comply with any program provided under clause 38.3(a) in the form approved by the State.
- (d) **(Maximum remedy period):** Subject to clause 38.4(a), the maximum period of time (including any extension under clause 38.4(c)) which Manage Co may be given to remedy a Major Default will be, where the applicable Major Default occurs during the Operating Phase 6 Months in the aggregate from the date of the applicable Major Default Notice.

#### 38.4 Extension of remedy program

- (a) **(Impact of Relief Event):** Subject to clause 38.4(b), if Manage Co is prevented from carrying out its obligations in accordance with clause 38.3(c) as a direct result of a Relief Event for which Manage Co is entitled to relief in accordance with this Deed, then the program to remedy or comply (including the time to remedy the Major Default or comply with the State's requirements), the periods identified in clause 38.3(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 33, 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 38.4(a) must not exceed the period of relief granted under clause 25 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 38.3.
- (b) **(Relief from provision of Essential Services):** If the Major Default the subject of the Major Default Notice relates to the failure to provide an Essential Service, then clause 38.4(a) will not apply where Manage Co is entitled to relief in accordance with this Deed due to a Relief Event that falls:
- (i) within paragraph (c), (d) or (f) of the definition of Relief Event; or
  - (ii) within paragraphs (c), (e), (f) or (g) of the definition of Compensable Relief Event.
- (c) **(Extension of Major Default Notice):** Subject to clauses 38.3(d) and 38.4(e), 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.
- (d) **(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 38.4(c).
- (e) **(Limitation):** Manage Co is only entitled to one extension in accordance with clause 38.4(c) in connection with the same Major Default.

### 38.5 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.

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## 39. Termination

### 39.1 Sole basis

- (a) **(Sole basis):** Clause 3.4 and this clause 39 set out the sole basis at Law or otherwise upon which the State is entitled to terminate, rescind or accept a repudiation of this Deed.
- (b) **(No limitation):** Subject only to clauses 24.3(d) and 39.1(a):
  - (i) nothing in clause 3.4 or this clause 39 in any way prejudices or limits any other rights or remedies of the State, whether under this Deed or any

other State Project Document or otherwise at Law, and whether against 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 Deed on any basis, and any payment of the relevant Termination Payment, will not in any way prejudice or limit either party's Liability to the other in respect of the events giving rise to the termination.
- (c) **(No right to terminate):** Subject to clause 39.3 but notwithstanding any other provision of this Deed or any rights Manage Co has at Law or otherwise but for this clause 39.1(c), Manage Co acknowledges that it has no right under this Deed, at Law, or otherwise, to terminate this Deed.

## 39.2 Voluntary Termination

- (a) **(Voluntary termination notice):** The State may:
  - (i) at any time and in its sole and absolute discretion, terminate this Deed by giving 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 Deed under clause 39.2(a) will take effect upon the date specified in the notice given under clause 39.2(a).

## 39.3 Termination for Force Majeure

- (a) **(Force Majeure Termination Event notice):** Subject to clause 39.3(c), if a Force Majeure Termination Event occurs (or is deemed to occur), then either party may terminate this Deed by giving notice to the other party.
- (b) **(Date of termination):** Termination of this Deed for a Force Majeure Termination Event will take effect upon the date specified in the notice given under clause 39.3(a).
- (c) **(Restrictions on termination):** Manage Co is not entitled to terminate this Deed under clause 39.3(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 industrial special risks or other business interruption insurance for the relevant Force Majeure Termination Event.

## 39.4 Default Termination Event

- (a) **(Rights):** If any Default Termination Event occurs, the State may, without limiting any rights or remedies it has under this Deed or at Law (other than rights of termination), elect to:
  - (i) terminate this Deed by giving written notice to Manage Co; or
  - (ii) exercise its rights under clause 29.2 to cure or attempt to cure the Default Termination Event.
- (b) **(Date of termination):** Termination of this Deed for a Default Termination Event will take effect upon the date specified in the notice given under clause 39.4(a)(i).

## 39.5 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 39.

## 39.6 Payment on termination

- (a) **(Payment):** Subject to clause 39.6(b), where this Deed is terminated in accordance with this clause 39, no later than the Termination Payment Date the State must pay to Manage Co or Manage Co must pay to the State the relevant Termination Payment in accordance with the Termination Payments Schedule.
- (b) **(Manage Co obligations):** The State's obligation to pay a Termination Payment under clause 39.6(a) is subject to Manage Co having delivered up the vacated Site and the Correctional Complex to the State in accordance with clause 32 and this clause 39.6.
- (c) **(State's rights):** If the State is not satisfied that Manage Co has satisfied its obligations in clause 39.6(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 39.6 and the Termination Payments Schedule.
- (d) **(Payment obligations cease):** Upon termination under this clause 39, the State's future obligations under State Project Documents to pay the Transition Payments, Additional Security Services Payment and Monthly Service Payment will cease.

## 39.7 Waiver

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

- (a) **(Liability):** subject to clause 39.7(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 other than any Claim previously notified to the State in accordance with this Deed which is not otherwise due and payable under this Deed;
- (b) **(Exclusive entitlement):** Manage Co's sole and exclusive entitlement to make a Claim against the State following termination of this Deed will be in connection with its rights to a Termination Payment; and
- (c) **(Wrongful termination):** if the State terminates this Deed for a Default Termination Event and it is subsequently determined that such termination was wrongful (including if the State has terminated this Deed for a deemed Default Termination Event under clause 38.2(f) and it is subsequently determined that the State had no right to terminate this Deed on that basis), then, unless the parties agree otherwise, such exercise shall be deemed to have been a voluntary termination in accordance with clause 39.2 and Manage Co's sole rights in such circumstances will be those set out in clause 39.6(a).

## 39.8 Additional rights and obligations on Termination

The additional rights and obligations of the parties on a termination of this Deed are set out in clause 32.

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## 40. Dispute Resolution procedure

### 40.1 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 Deed's existence, meaning, validity or termination); or
  - (ii) any decision of or report of the Handover Reviewer which is not stated in this Deed to be final and binding on the parties,

(each a **Dispute**) must be resolved in accordance with this clause 40 and clauses 41 to 43.

- (b) (**Procedure**): Subject to clause 40.2, 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 41;
- (ii) secondly, if the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 41(c)(i), within 10 Business Days (or such longer period as the Executive Representatives have agreed in writing) after the expiration of that period:

- A. the parties may agree that the Dispute will be referred to an expert for determination under clause 42;
- B. where the Dispute is expressed in this Deed to be a Dispute which may be referred to an expert under clause 42, either party may refer the Dispute to an expert for determination under clause 42; or
- C. otherwise either party may refer the Dispute to arbitration under clause 43; and

- (iii) thirdly, if:

- A. the Dispute has been referred to expert determination in accordance with clause 42 and a determination is not made by the expert within 20 Business Days after the expert's acceptance of appointment (or such longer period as the parties and the expert may agree); or
- B. the Dispute is referred to expert determination and a notice of dissatisfaction is given under clause 42.3(a),

then the Dispute must be referred to arbitration under clause 43.

### 40.2 Selection of resolution process

Where this Deed provides that either party 'may' refer a Dispute to expert determination in accordance with clause 42:

- (a) (**Negotiations**): the parties must first follow the process set out in clause 41 before either party refers the matter for expert determination in accordance with clause 42;

- (b) **(Expert Determination):** the use of the term 'may' means that if the parties have failed to resolve the Dispute in accordance with clause 41 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 42; and
- (c) **(Arbitration):** subject to clause 42.3, if a party has referred a Dispute for expert determination in accordance with clause 42, neither party may refer the Dispute to arbitration (other than in accordance with clause 42.3), or take any steps to enjoin or otherwise restrain the referral of the Dispute to an expert.

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## 41. Senior Negotiations

- (a) **(Notification):** If a Dispute arises then a party may give notice to the other party requesting that the Dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of the State and Manage Co (**Executive Representatives**).
- (b) **(Contents of Notice):** A notice under clause 41(a) must:
  - (i) state that it is a notice under this clause 41; 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 41(a), then:
  - (i) the Executive Representatives must meet and attempt in good faith to resolve the Dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 41(a) is received (or such later date as the parties may agree); and
  - (ii) any agreement reached between the Executive Representatives will be reduced to writing, signed by or on behalf of each party and will be contractually binding on the parties.

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## 42. Expert determination

### 42.1 Expert determination

If:

- (a) **(Dispute unresolved by Executive Representatives):** a Dispute which has been referred to the Executive Representatives for negotiation in accordance with clause 41(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 41(c)(i); and
- (b) **(Referral to expert):** within 10 Business Days after the expiration of the period for negotiation referred to in clause 41(c)(i) either:
  - (i) the parties agree that the Dispute be referred to an expert for determination in accordance with this clause 42; or
  - (ii) where the Dispute is expressed in this Deed to be a Dispute which may be referred to an expert under clause 42, either party refers the Dispute to an expert for determination under clause 42,

then those parts of the Dispute which remain unresolved will be referred to an expert for determination under this clause 42.

## 42.2 Selection of expert

- (a) **(Exchange of lists of three preferred experts):** Within 10 Business Days after the date on which a Dispute is referred to an expert for determination under clause 42.1, if the State and Manage Co are unable to agree on an expert to determine the Dispute, the State and Manage Co must exchange lists of three persons (in order of preference) who, if appointed, would satisfy the requirements of clause 42.2(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists):** Any person that appears on both lists under clause 42.2(a) will be appointed as the expert to determine a Dispute and if more than one person appears on both lists the person given the highest order of priority by the party that gave the notice under clause 41(a) will be appointed.
- (c) **(Appointment if no person appears on both lists):** If no person appears on both lists, the party which gave the notice under clause 41(a) must procure the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 42.2(a) within 10 Business Days of the exchange of lists under clause 42.2(a).
- (d) **(Appropriate skills):** It is the intention of the parties that the expert appointed to determine a Dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment):** Neither party will be entitled to challenge the appointment of an expert under this clause 42.2 on the basis that the expert does not satisfy the requirements of clause 42.2(d).
- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Deed will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2010* (NSW).
- (g) **(Agreement):** Within 10 Business Days of the expert being agreed, deemed or nominated, the State and Manage Co must enter into an agreement with the expert on such reasonable terms as the expert may require.

## 42.3 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on the State and Manage Co unless:
  - (i) the expert determination includes:
    - A. payment of compensation and the amount claimed, or subsequently determined by the expert, to be payable is equal to or greater than \$1,000,000 (Indexed); or
    - B. an extension of a Date for Operational Readiness or Date for Operational Readiness (EW) or rejection of an extension to a Date for Operational Readiness or Date for Operational Readiness (EW) and the period of the extension that was claimed in the notice under clause 41(a) is more than 5 Business Days; and
  - (ii) within 10 Business Days of receipt of the determination, a party gives notice to the other party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 43.
- (b) **(Amendment to determination):** Upon submission by any party, the expert may amend the determination to correct:

- (i) a clerical mistake;
- (ii) an error from an accidental slip or omission;
- (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
- (iv) a defect in form.

#### 42.4 Liability of expert

- (a) **(Liability of expert):** The parties agree:
  - (i) that the expert will have no liability in connection with the expert determination, except in the case of fraud on the part of the expert; and
  - (ii) to indemnify the expert against any Claim or Liability in connection with the determination, (except in the case of fraud on the part of the expert) in which case a Claim may be made against the expert by any party to the Dispute.
- (b) **(Engagement):** The State and Manage Co will jointly engage the expert services in connection with the expert determination proceedings and each party will seek a separate Tax Invoice equal to its share of the costs of the expert.

#### 42.5 Costs

The State and Manage Co must:

- (a) **(Proceedings):** bear their own costs in connection with the expert determination proceedings; and
- (b) **(Cost apportionment):** pay an equal portion of the costs of the expert.

#### 42.6 Proportional Liability

To the extent permitted by Law, the expert will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 42.6, have applied to any Dispute referred to expert determination in accordance with this clause 42.

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### 43. Arbitration

#### 43.1 Reference to Arbitration

- (a) **(Dispute):** If:
  - (i) a Dispute:
    - A. which has been referred to the parties' Executive Representatives for negotiation in accordance with clause 41 remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 41(c)(i); and
    - B. is not a Dispute which the parties have agreed to refer to or must be referred to an expert for determination in accordance with clause 42; or
  - (ii) in the case of a Dispute which is or must be referred to an expert for determination in accordance with clause 42:



- A. a determination is not made within 30 Business Days after the expert's acceptance of the appointment; or
- B. a notice of dissatisfaction is given in accordance with clause 42.3,

then the State or Manage Co may notify the other that it requires the Dispute to be referred to arbitration.

- (b) (**Referral**): Upon receipt by the other party of a notice under clause 43.1(a), the Dispute will be referred to arbitration.

### 43.2 Arbitration

- (a) (**ACICA Rules**): Arbitration in accordance with this clause 43 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) subject to this clause 43.
- (b) (**Seat**): The seat of the arbitration will be Sydney, New South Wales.
- (c) (**Language**): The language of the arbitration will be English.

### 43.3 Appointment of arbitrator

The parties will endeavour to agree on the person to be appointed as arbitrator, but if no such agreement is reached within 10 Business Days of the Dispute being referred to arbitration in accordance with clause 43.1(b), the arbitrator will be appointed by the Australian Centre for International Commercial Arbitration.

### 43.4 General Principles for conduct of arbitration

- (a) (**Conduct of arbitration**): The parties agree that:
  - (i) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
  - (ii) any arbitration conducted in accordance with this clause 43 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
  - (iii) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 43.4(a)(i) and 43.4(a)(ii).
- (b) (**Evidence in writing**): All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) (**Evidence and discovery**): The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration.
- (d) (**Oral hearing**): The oral hearing must be conducted as follows:
  - (i) any oral hearing must take place in Sydney, New South Wales and all outstanding issues must be addressed at the oral hearing;
  - (ii) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 43.4(a) when determining the duration of the oral hearing;

- (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
  - (iv) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
  - (v) not less than 28 days prior to the date fixed for oral hearing each party must give notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross examination;
  - (vi) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set pursuant to clause 43.4(d)(ii);
  - (vii) a party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross-examination; and
  - (viii) each party is expected to put its case on significant issues in cross examination of a relevant witness called by the opposing party or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the opposing party may know the nature of and basis for the challenge to the written evidence of a witness.
- (e) **(Experts):** Unless otherwise ordered each party may only rely upon one expert witness in connection with any recognised area of specialisation.

#### **43.5 Civil Liability Act 2002 (NSW)**

- (a) **(Part 4):** The powers conferred, and restrictions imposed, on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on an arbitrator appointed in accordance with this clause 43.
- (b) **(Determination):** The arbitrator has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (or any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to the arbitrator.

#### **43.6 Proportional liability**

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 43.6, have applied to any Dispute referred to arbitration in accordance with this clause 43.

#### **43.7 Continue to perform**

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

#### **43.8 Governing law of arbitration agreement**

The Law governing this arbitration agreement is the law of New South Wales, Australia.

### **43.9 Interlocutory relief**

This clause 43 does not prevent a party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that party's reasonable opinion, that action is necessary to protect that party's rights.

### **43.10 Jurisdiction of courts**

Without limiting clauses 40 to 43, each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed.

## Part L - Corporate obligations

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### 44. Representations and warranties

#### 44.1 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.

#### 44.2 Manage Co's representations and warranties

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

- (a) **(Incorporation):** it is duly incorporated in Australia and is existing under Australian Law;
- (b) **(Power to execute):** it has the capacity and power to execute, deliver and perform its obligations under the Project Documents to which it is a party and all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
- (c) **(Legality):** the execution, delivery and performance of each Project Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
- (d) **(Validity):** each of the Project Documents to which it is a party constitutes a valid and legally binding obligation on it, enforceable in accordance with its terms;
- (e) **(No trust relationship):** except as stated in this Deed, it is not the trustee or Responsible Entity of any trust nor does it hold any property subject to or impressed, by any trust;
- (f) **(No subsidiaries):** it has no subsidiaries;
- (g) **(No tax consolidation):** it is not part of any tax consolidation arrangement contemplated by the *Income Tax Assessment Act 1997* (Cth) or GST grouping arrangement contemplated by the GST Law, except with the consent of the State;
- (h) **(Residency):** it is a resident in Australia and has not transferred any of its business outside of Australia;
- (i) **(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 Deed with Manage Co;
- (j) **(No immunity):** it does not (in any capacity) have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);

- (k) **(No default)**: it is not in default of its material obligations under any Project Document to which it is expressed to be a party;
- (l) **(No knowledge of other proposals)**: prior to the date of this Deed, it had no knowledge of any part of the proposal by any other proponent for the Project and has not directly or indirectly communicated any part of its proposal for the Project to any other proponent; and
- (m) **(No arrangement)**: it has not entered into any contract or arrangement or arrived at any understanding with any other proponent in relation to the Project to the effect that it will pay money to or confer any benefit upon any other proponent as a result of entering into this Deed or providing its proposal for the Project.

#### 44.3 Repetition of representation and warranties

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

- (a) **(Date of Deed)**: is made on the date of this Deed; and
- (b) **(Repetition)**: other than those set out in clauses 44.2(l) and 44.2(m), will be deemed to be repeated each day during the period from the date of this Deed to the Expiry Date,

with reference to the facts and circumstances then subsisting.

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#### 45. 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 Deed in favour of the Indemnified Person or Indemnified IP Party (as the case may be); and
  - (ii) each of its Associates and the NSW Government and its Associates, each right in this Deed to the extent that such right is expressly stated to be for the benefit of the State's Associates, NSW Government or NSW Government Associates.
- (b) **(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 Deed.

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#### 46. 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 ability to perform its obligations under the Project Documents, have been commenced or threatened, give the State written notice of such litigation, arbitration, administrative, adjudication or mediation proceedings; and
  - (ii) **(Restrictions)**: not:

- A. cease to be resident in Australia or transfer in whole or in part its undertaking, business or trade outside Australia; or
- B. engage in any tax consolidation arrangement contemplated by the *Income Tax Assessment Act 1997* (Cth) or GST grouping arrangement contemplated by the GST Law,

without the State's prior consent.

- (b) **(State consent):** The State must not unreasonably withhold its consent under clause 46(a)(ii) if the relevant transaction is on arm's length commercial terms.

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## 47. Assignment and amendments

### 47.1 Assignment, amendments and other dealings by Manage Co

- (a) **(Restrictions on Manage Co):** Except as expressly permitted by this Deed, Manage Co must not:
  - (i) 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
  - (ii) 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 Correctional Complex,

without the State's prior consent (each an **Amendment** for the purposes of this clause 47).

- (b) **(Exceptions):** Clause 47.1(a) does not apply in respect of:
  - (i) a Change in Control, which is to be dealt with in accordance with clauses 48.2 to 48.8; or
  - (ii) a 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 47.1(f), the State must advise Manage Co, within:
  - (i) 15 Business Days of receiving its request under clause 47.1(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) 15 Business Days of receiving its request under clause 47.1(c) or the additional information requested by the State under clause 47.1(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 47.1(d)(ii) 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.

## 47.2 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.

## 47.3 Assignment by the State

- (a) **(Manage Co consent required):** Subject to clause 47.3(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' which is an agent of the NSW Government (**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 47.3(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 Deed will be deemed to include reference to the State Nominee in place of the State.

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## 48. Change in Control

### 48.1 Initial status of ownership

Manage Co represents and warrants that, as at the date of this Deed and at Commercial Close, Manage Co will be indirectly and beneficially owned and Controlled as set out in the Ownership Schedule.

### 48.2 Notification of changes in control / management

- (a) **(Notification):** Manage Co must give the Commissioner written notice immediately if Manage Co becomes aware of a change in control or change of management of Manage Co or any entity that comprises Manage Co.
- (b) **(Definitions):** For the purpose of this clause 48.2 only:
  - (i) a change in control of an entity occurs where:
    - A. an entity that Controls (as that term is defined in the Corporations Act) ceases to Control (as that term is defined in the Corporations Act) that entity; or
    - B. an entity that does not Control (as that term is defined in the Corporations Act) an entity comes to Control that entity (as that term is defined in the Corporations Act); and
  - (ii) change of management means the appointment, resignation or termination of:
    - A. an officer of Manage Co or any entity that comprises Manage Co; or
    - B. the Governor.

### 48.3 Restrictions on Changes in Control

Manage Co must not permit or suffer any Change in Control of Manage Co, any entity that comprises Manage Co or a Parent Guarantor without the State's prior consent which must be requested by notice from Manage Co to the State.

### 48.4 Notice to State

Any notice under clause 48.3 seeking the consent of the State to a Change in Control must include:

- (a) **(Nature of proposed change):** the extent and nature of the proposed Change in Control, including the identity and address of each person proposed to acquire Control; and
- (b) **(Necessary information):** all other information necessary for the State to determine:
  - (i) whether to consent to the Change in Control; or
  - (ii) the probity or other investigations (if any) the State wants to undertake in respect of the persons to whom clause 48.4(a) refers.

### 48.5 State's right to withhold consent

Subject to clause 48.7, the State may only refuse to consent to a proposed Change in Control if the State is of the opinion (acting reasonably) that the proposed Change in Control:



- (a) is against the public interest;
- (b) would adversely affect the ability or capability of Manage Co or a Parent Guarantor to carry out its obligations in accordance with any Project Document;
- (c) would result in a Probity Event;
- (d) would, result in Manage Co, any entity that comprises Manage Co or a Parent Guarantor being Controlled by an entity that:
  - (i) is not a reputable Entity or person to properly carry out the obligations of Manage Co or a Parent Guarantor under the relevant Project Documents;
  - (ii) is an unsuitable Entity or person, having regard to the activities or business of that entity or person, and their compatibility with the obligations of Manage Co or a Parent Guarantor under the Project Documents; or
  - (iii) has an interest or duty which conflicts or may conflict in a material way with the interests of the State; or
  - (iv) does not have a sufficient level of financial, managerial or technical expertise or capacity to deliver the Project;
- (e) would have a material adverse effect on the Project;
- (f) would increase the Liability of, or risks accepted by the State under the State Project Documents or in any other way in connection with the Project; or
- (g) would result in a new Controlling Entity that is not Solvent and reputable.

#### 48.6 Consent to a Change in Control

The State must advise Manage Co, within 15 Business Days (or such longer period as the State reasonably requests given the nature of the proposed Change in Control) of receiving Manage Co's request for consent in accordance with clause 48.3 or clause 48.7, whether:

- (a) **(Consent)**: it consents to the Change in Control;
- (b) **(Unacceptable)**: it does not consent to the Change in Control in which case it must provide reasons for doing so in accordance with clause 48.5; or
- (c) **(Further information)**: it requires further information from Manage Co regarding the Change in Control, in which case Manage Co must provide the additional information sought by the State within a further period of 10 Business Days, after which the State must respond in terms of clause 48.5 or this clause 48.6 within 10 Business Days after the State receives that additional information.

#### 48.7 On-market acquisitions

If:

- (a) **(Change in Control)**: a Change in Control occurs due to the transfer of shares or other interests which are listed on a recognised stock exchange; and
- (b) **(Prior consent not possible)**: the consent of the State is required under this Deed but could not have been obtained prior to the Change in Control,

that consent must be sought immediately after the Change in Control, and Manage Co must procure that the Controlling Entity ceases to have the Control which resulted in the Change in

Control within 60 Business Days after receiving any notice under clause 48.5 that the State withholds its consent to the Change in Control.

#### 48.8 Costs relating to a Change in Control

Manage Co must pay the State its costs (including legal and financial advisers' fees) reasonably incurred in relation to considering or consenting to a proposed Change in Control.

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### 49. Records and Accounts

#### 49.1 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.
- (b) **(Annual audit):** Manage Co must have its accounts audited annually on both an unconsolidated basis and on a consolidated basis (to the extent that Manage Co is part of a consolidated entity, within the meaning of the Corporations Act) and must ensure that each Parent Guarantor in respect of Manage Co does likewise.
- (c) **(Accounting principles):** Manage Co must ensure that its Accounts and Records are prepared in accordance with the Corporations Act and generally accepted Australian accounting principles and practices consistently applied, and fairly represent its operations and financial condition or consolidated financial position (as the case may be).
- (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.
- (e) **(Availability of accounting records if Deed is terminated):** Without limiting its obligations in accordance with clause 32, if this Deed 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.
- (f) **(Access to accounting records):** The State must give Manage Co access to any Accounts and Records given to it for a period of 7 years after the date they are given.

#### 49.2 Financial statements

- (a) **(Audited financial statements):** As soon as practicable (and in any event not later than 120 days) after the close of each Financial Year, Manage Co must give to the State certified copies of the consolidated (if applicable) and unconsolidated audited 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, and, if requested by the State.

#### 49.3 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.

#### 49.4 Other information

Manage Co must give to the State the following information:

- (a) **(Copies):** copies of all documents or information given or received by Manage Co to or from the Australian Securities & Investments Commission or Australian Stock Exchange Limited, promptly after the information is first given or received;
- (b) **(Counterparty changes):** details of any changes to the Counterparty Details within 20 Business Days after the change;
- (c) **(Material changes):** details of any material change in the financial condition of Manage Co (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 Complex, the Inmates and other users of the Services (including former Inmates)).

#### 49.5 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.

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## 50. Intellectual Property Rights

### 50.1 Warranties

Manage Co warrants to the State that:

- (a) undertaking the Project Activities; or
- (b) the Use of any Developed IP any Manage Co Material, Manage Co Background IP as permitted or contemplated by this Deed by the State, its Associates or any person nominated or authorised by the State,

will not infringe or breach the Intellectual Property Rights or Moral Rights or other rights of any person.

## 50.2 Background IP

- (a) Manage Co acknowledges and agrees that 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 nothing in this Deed will transfer any ownership rights in such State Background IP to Manage Co.
- (b) The State acknowledges and agrees that 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 nothing in this Deed will transfer any ownership rights in such Manage Co Background IP to the State.

## 50.3 Developed IP

- (a) **(Developed IP):** Any Developed IP will vest, upon creation, in the State and Manage Co assigns to the State, on creation, ownership of all such Developed IP.
- (b) **(Worldwide licence):** The State grants to Manage Co a non-exclusive, royalty-free, non-transferable, worldwide licence (including a right to sub-licence to each of its Associates engaged in the performance of the Project Activities) to Use the Developed IP solely as necessary for the performance of the Project Activities and for no other purpose.

## 50.4 Manage Co licence for Manage Co Background IP

Manage Co hereby grants (and without limiting Manage Co's obligations under clause 50.9, must procure that each of its Associates legally entitled to do so grants) to the State and its Associates 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:

- (a) the Project;
- (b) the operation, maintenance, repair and alteration of the Correctional Complex on and from the Expiry Date; and
- (c) for any purpose arising out of or in connection with the Site.

## 50.5 Proprietary Software

- (a) Before installing and using any Proprietary Software at the Correctional Complex, Manage Co must procure licences for the State and the State's Associates to Use that Proprietary Software in accordance with clause 50.5(b).
- (b) The licences to Use the Proprietary Software must give the State and the State's Associates the same rights as those specified in clause 50.4.

## 50.6 Third Party Materials

- (a) **(Obligation):** Notwithstanding this clause 50, to the extent that Manage Co Uses any commercially available off-the-shelf third party software in connection with this Deed, Manage Co must:
  - (i) if Manage Co is legally able to do so, licence that item of software to the State and the State's Associates and on the terms of the licence granted to Manage Co or its Associates by the third party licensor; or
  - (ii) if Manage Co is not legally able to do, procure a licence of that item of software 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 commercially available off-the-shelf third party software to the State and the State's Associates, as required under clause 50.6(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 Correctional Complex and its use or the Project more generally.

## 50.7 Manage Co Material and Correctional Complex

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

## 50.8 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 Deed.
- (b) **(No sub-licence):** The licence granted by the State under clause 50.8(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.

## 50.9 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.

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## 51. Confidential Information and disclosure

### 51.1 Confidential Information and disclosure by the State

- (a) **(Disclosure):** Subject to clause 51.1(b), the State and any Authority may disclose any information in connection with the Project, including Project Information.
- (b) **(Requirements):** The State may only disclose the Commercially Sensitive Information:
  - (i) in accordance with Laws or for the enforcement of any criminal law;
  - (ii) in accordance with clause 51.5;
  - (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) to any advisor of the State to the extent necessary for the State to properly undertake future projects, provided they agree to maintain the confidentiality of any Commercially Sensitive Information;
- (viii) in annual reports of the State or the NSW Government;
- (ix) in accordance with policies of the State or the NSW Government or any Authority;
- (x) for any tender process required to be conducted under the Termination Payments Schedule; or
- (xi) 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 Deed.

## 51.2 Confidential Information and disclosure by Manage Co

- (a) **(Confidentiality obligation):** Subject to clauses 51.2(b) and clause 51.4(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 51.2(a) and subject to clause 51.2(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 51.4.
- (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 51.
- (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 51.2(a) or 51.3(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.

### 51.3 Public announcements by Manage Co

Subject to clause 51.2(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 51.3 or for which the State's consent or approval was not required in accordance with clause 51.4.

### 51.4 Information public or known

Notwithstanding anything in this clause 51, 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 51; 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.

### 51.5 Disclosure by the State under GIPA Act

- (a) Notwithstanding the other provisions of this clause 51, 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 Significant 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 51.5(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 51.5(b)(i); or
- B. consultation between the State and Manage Co in accordance with clause 51.5(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 51.5(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 51.5 will limit or otherwise affect the discharge of the State's obligations under the GIPA Act.

## 51.6 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.

## 51.7 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 Deed or with the Subcontract (as the case may be), in



the same way as the State would be bound by the Privacy Legislation, in connection with that act or practice had it been directly done or engaged in by the State.

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## 52. Probity Events and Probity Investigations

### 52.1 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 52.1(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 52.1(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 52.1(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 52.1(c) (including where Manage Co fails to meet with the State in accordance with clause 52.1(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.

### 52.2 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, Manage Co, a Parent Guarantor or any person who is proposed to become a Relevant Person, Manage Co or a Parent Guarantor.
- (b) **(Promptly):** Where the State requires Manage Co to conduct a Probity Investigation in accordance with clause 52.2(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.

### 52.3 State costs of Probity Events and Probity Investigation

- (a) **(State Costs):** Subject to clause 52.3(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.

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## 53. Notices and bar to Claims

### 53.1 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(In writing)**: must be in writing;
  - (b) **(Addressed)**: must be addressed as specified in the Contract Particulars (as the case may be), or as otherwise notified by that party to each other party from time to time;
  - (c) **(Signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
  - (d) **(Form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in the Contract Particulars;
  - (e) **(Taken to be received)**: are taken to be received by the addressee at the address set out in the Contract Particulars:
    - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
    - (ii) subject to clause 53.1(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.

### 53.2 Notices of Claims

- (a) **(Liability)**: Subject to clause 53.2(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 Correctional Complex or the Project unless Manage Co gives the State the notices required by clause 53.3 and, if applicable, clause 53.4.

- (b) **(Notice requirements):** Where any provision of this Deed contains specific notice requirements (including a requirement to submit or update a Variation Proposal):

- (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 Deed, 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 Variation Proposal) set out in those relevant provisions.

### 53.3 Prescribed notices

The required notices referred to in clause 53.2(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 53.3(a).

#### 53.4 Continuing events

If the event upon which the Claim under clause 53.3(b) is based, or the consequences of that event, are continuing, Manage Co must continue to give the information required by clause 53.3(b) every 20 Business Days after the notice under clause 53.3(b) was submitted, until after the event or consequences of the event have ceased.

#### 53.5 Power of attorney

Manage Co irrevocably:

- (a) **(Appointment):** appoints the State, and the State's nominees from time to time, jointly and severally, as its attorneys with full power and authority:
  - (i) with effect from the end of the Operating Phase, to execute any assignment or novation contemplated by clauses 32.1(a)(xii)A; and
  - (ii) to exercise the State's rights in accordance with clause 29; and
- (b) **(Ratification of action):** agrees to ratify and confirm whatever action is taken by the attorney appointed by Manage Co under clause 53.5(a).

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#### 54. 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 Deed, 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 54(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 Deed, the amount or performance obligation secured by the State's Security Interest in

Relevant Personal Property and the other information mentioned in section 275(1) of the PPSA pursuant to section 275(4) of the PPSA;

- (f) **(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 54, 'registration', 'secured party', 'verification statement', 'financing statement', 'personal property' and 'financing change statement' each have the meaning given to those terms in the PPSA.

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## 55. NSW Code and Guidelines

### 55.1 Reference

In addition to terms defined in this Deed, terms used in this clause 55 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](http://www.industrialrelations.nsw.gov.au).

### 55.2 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 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 55 (under the heading 'NSW Code and NSW 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.

### 55.3 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 Complex;
  - (ii) inspect any work, material, machinery, appliance, article or facility;
  - (iii) access information and documents;
  - (iv) inspect and copy any record relevant to the Project;
  - (v) have access to personnel; and
  - (vi) interview any person,
- as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and the NSW Guidelines, by 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.

#### 55.4 Sanctions

- (a) **(Manage Co not subject to a sanction):** Manage Co warrants that at the time of entering into this Deed, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or the NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and the NSW Guidelines apply.
- (b) **(Sanctions may be imposed):** If 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.

#### 55.5 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 Deed, or from Liability for any Defect in the Correctional Complex or from any other legal liability, whether or not arising from its compliance with the NSW Code and the NSW Guidelines.
- (c) **(Proposed Variation):** Where a Variation is proposed, and that Variation 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 Variation:
  - (i) the extent to which compliance with the NSW Code or the NSW Guidelines will be, or is likely to be, affected by the Variation; and
  - (ii) what steps Manage Co proposes to take to mitigate any adverse impact of the Variation (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.

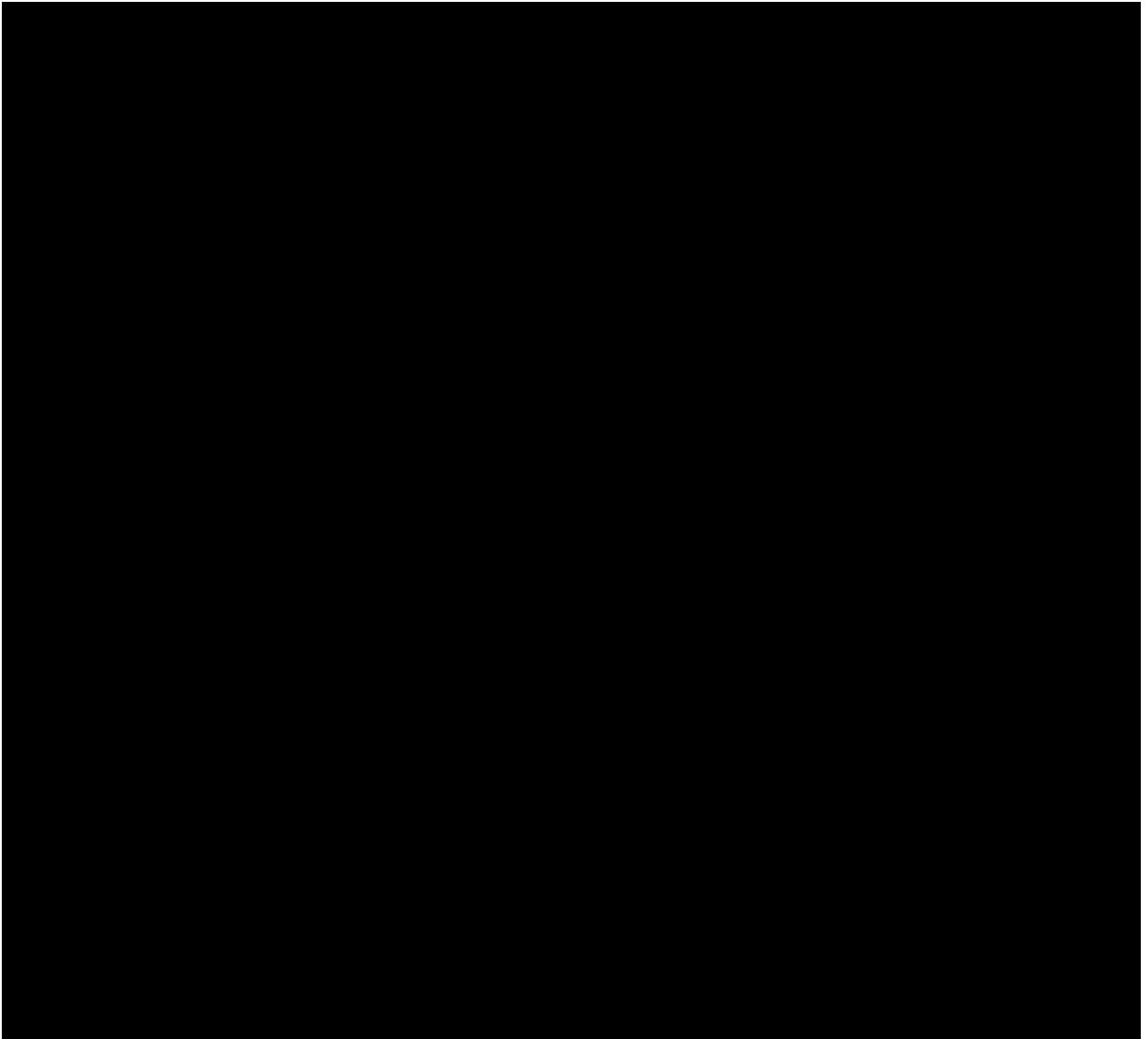
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## 56. Long Service Leave Levy

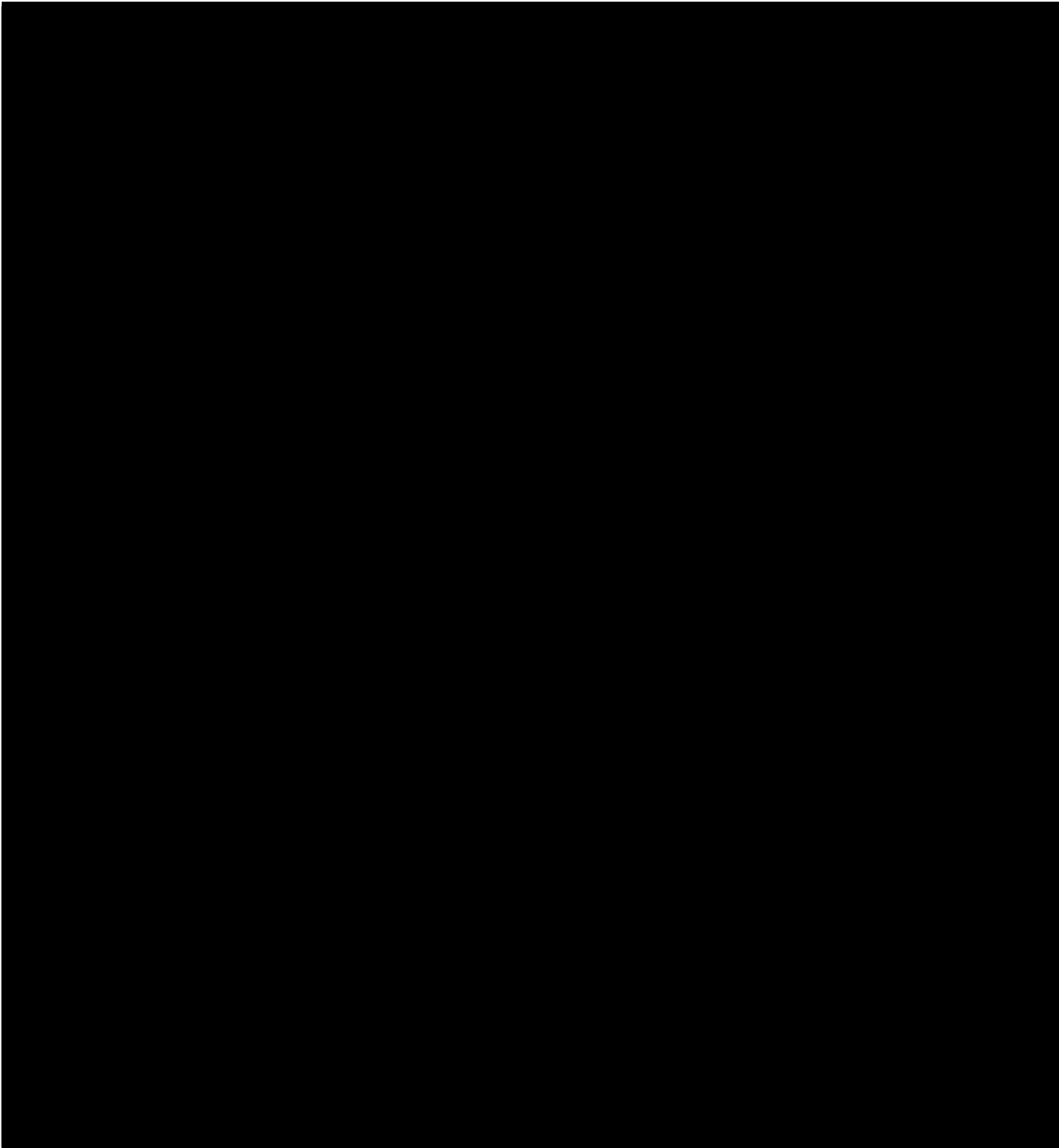
Before commencing construction of any building and/or construction work under the *Building and Construction Industry Long Service Payments Act 1986* (NSW) in connection with the Project, Manage Co must:

- (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.

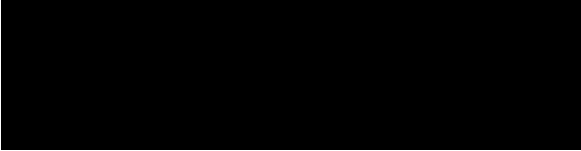
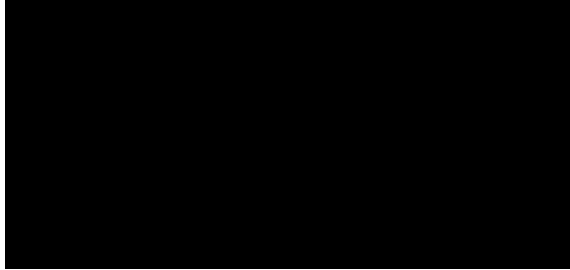
Executed as a deed.


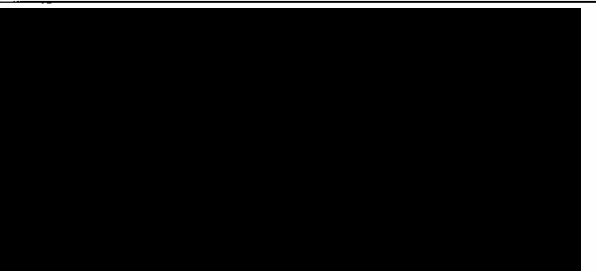



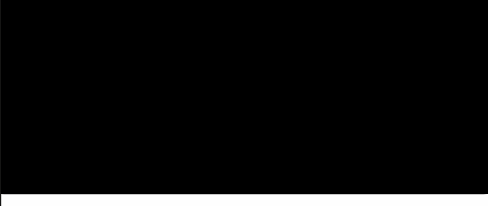


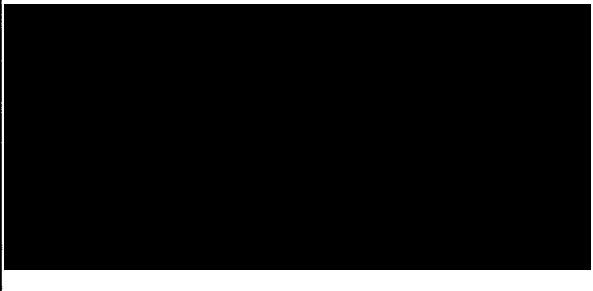
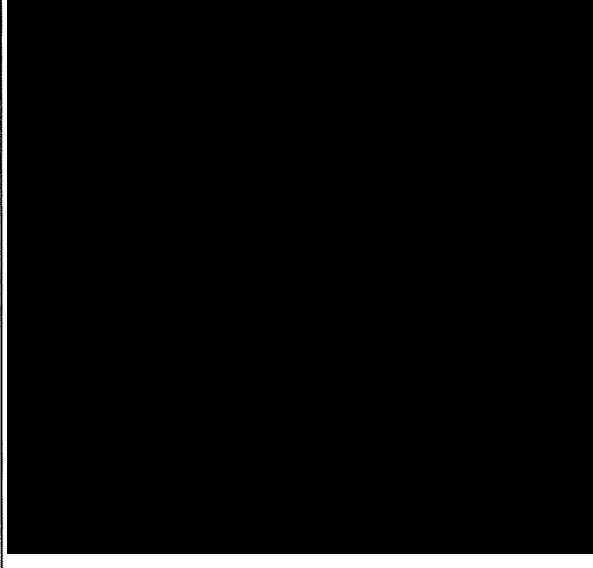


## Schedule 1 — Contract Particulars

Item	Subject	Particulars
<b>Clause 1 — Definitions and interpretation</b>		
1.	Change in Law ( <i>Paragraph (f) of the definition of 'Change in Law'</i> )	Nil
2.	Change in Policy ( <i>Paragraph (f) of the definition of 'Change in Policy'</i> )	<ol style="list-style-type: none"> <li>1. The Australian Building and Construction Commission or the Building Code 2013 (Cth), 'Supporting Guidelines for Commonwealth Funding Entities' (1 February 2013).</li> <li>2. 'Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction' (July 2013).</li> </ol>
3.	Condition Precedent Deadline ( <i>Definition of 'Condition Precedent Deadline'</i> )	10 Business Days after the date of execution of this Deed
4.	Employee Checks ( <i>Definition of 'Employee Checks'</i> )	Refer to the Output Specification.
5.	Employee Requirements ( <i>Definition of 'Employee Requirements'</i> )	Refer to the Output Specification.
6.	Key People ( <i>Definition of 'Key People'</i> )	<p><b>Role:</b> Governor</p>  <p><b>Role:</b> Operational Readiness Co-ordinator</p> 
7.	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"> <li>• Australian Council on Healthcare Standards accreditation</li> <li>• EQUIP</li> </ul>

Item	Subject	Particulars
		<ul style="list-style-type: none"> <li>• Accreditation as a Registered Training Organisation</li> <li>• Accreditation under the National Safety and Quality Health Service Standards</li> <li>• Accreditation under the NSW Methadone Clinic Accreditation Standards</li> <li>• Accreditation of Community Prescribers</li> <li>• Accreditation under the Australian Health Service Safety and Quality Accreditation Scheme</li> </ul>
8.	Licences which if Manage Co fails to obtain and maintain amount to a Major Default ( <i>Definition of 'Major Default'</i> )	Firearms permit
9.	Manage Co Representative ( <i>Definition of 'Manage Co Representative'</i> )	
10.	Operational Readiness Co-ordinator ( <i>Definition of 'Operational Readiness Co-ordinator'</i> )	
11.	Parent Guarantor ( <i>Definition of 'Parent Guarantor'</i> )	Name: 

Item	Subject	Particulars		
				
12.	Pre-Agreed Variation ( <i>Definition of 'Pre-Agreed Variation'</i> )  (including details of any agreed terms ( <i>clause 27.8</i> ))	Refer to Schedule 22.		
13.	Project Objectives ( <i>Definition of 'Project Objectives'</i> )	The Project will: <ol style="list-style-type: none"> <li>1. ensure decency and respect in the treatment and management of Inmates;</li> <li>2. optimise the reintegration and rehabilitation of Inmates;</li> <li>3. ensure that the Correctional Complex is safe and secure;</li> <li>4. ensure professionalism and accountability in the delivery of the Services;</li> <li>5. provide Health Services which reflect the needs of Custodial Patients;</li> <li>6. provide Facilities Management Services that support the uninterrupted availability of the Correctional Complex through a whole-of-life Asset management approach; and</li> <li>7. deliver value for money to the State and transparency for outcomes.</li> </ol>		
14.	Significant Subcontracts ( <i>Paragraph (a) of the definition of 'Significant Subcontract'</i> )	<table border="1" style="width: 100%;"> <tr> <td style="width: 150px; vertical-align: top;"> <b>Role:</b>   <b>Name:</b> </td> <td style="background-color: black; width: 100%; height: 100px;"></td> </tr> </table>	<b>Role:</b>  <b>Name:</b>	
<b>Role:</b>  <b>Name:</b>				
15.	Health Services Provider ( <i>Definition of 'Health Services Provider'</i> )	See Item 14		

Item	Subject	Particulars
16.	CSI Contact Person ( <i>Definition of 'CSI Contact Person'</i> )	
17.	State Representative ( <i>Definition of 'State Representative'</i> )	
<b>Clause 8 –Quality Assurance</b>		
18.	Required certifications	<ol style="list-style-type: none"> <li>1. AS/NZS ISO 9001;</li> <li>2. AS/NZS ISO 14001;</li> <li>3. ISO 55001 – quality assurance for asset management;</li> <li>4. AS/NZS ISO 4801 – quality assurance for occupational health &amp; safety management systems; and</li> <li>5. ISO 22000 – quality assurance for food safety.</li> </ol>
<b>Clause 21.2- Aboriginal participation (operations)</b>		
19.	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.

Item	Subject	Particulars
<b>Clause 30 – Manage Co Margin</b>		
20.	Manage Co Margin – additional work or services	[REDACTED]
21.	Manage Co Margin – savings	[REDACTED]
<b>Clause 64.1 - Notices</b>		
22.	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 9 and 17).

## Schedule 2 — Conditions Precedent Schedule

	Condition Precedent	Benefiting Party	Party to satisfy
1.	<p><b>State Project Documents</b></p> <p>Each of the State Project Documents, each in form and substance satisfactory to the State, has been validly executed by all parties to them (other than the State) and delivered and at least one original counterpart of each of those documents has been provided to the State.</p>	State	Manage Co
2.	<p><b>Other Project Documents</b></p> <p>The valid execution, delivery and provision to the State of a certified copy of each other Project Document, each in form and substance satisfactory to the State, together with evidence that all conditions precedent to such Project Documents have been satisfied or waived (other than any condition precedent that requires the satisfaction or waiver of the conditions precedent to this document).</p>	State	Manage Co
3.	<p><b>Counterparty Details</b></p> <p>The State receiving the Counterparty Details.</p>	State	Manage Co
4.	<p><b>Legal Opinions</b></p> <p>The State receiving legal opinions given for the benefit of the State, each in form and substance satisfactory to the State, from Solicitors acting for Manage Co and the Parent Guarantor as to:</p> <p>(a) the legal capacity and corporate power of that Manage Co or the Parent Guarantor to enter into and perform its obligations under the Project Documents to which it is a party;</p> <p>(b) the enforceability against the relevant Manage Co or the Parent Guarantor of the Project Documents to which it is a party; and</p> <p>(c) due execution by the Manage Co or the Parent Guarantor of the Project Documents to which it is a party.</p>	State	Manage Co
5.	<p><b>Authorised Officers</b></p> <p>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</p>	State	Manage Co

	<b>Condition Precedent</b>	<b>Benefiting Party</b>	<b>Party to satisfy</b>
	State Project Documents.		
6.	<p><b>Other requirements</b></p> <p>Manage Co delivering to the State any other opinion, certificate or other document that the State reasonably requests.</p>	State	Manage Co



# Schedule 4 — Transition Phase Program Requirements

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## 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.

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## 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 clause 11 of the Deed.

### 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 and activities associated with Operational Readiness for the Existing Facility;

- (c) (**other information**): contain the information specified in and otherwise satisfy the requirements of this Deed;
- (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 Readiness;
- (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 50% of the duration of the Predecessor Activity of the Lag;
  - (iii) any Free Float Constraints or Total Float Constraints;
  - (iv) any other programming Activities or methodologies which have the effect of creating false Criticality or constraining the program from reacting dynamically to changes;
  - (v) any Logic Links containing negative Lags (except where a negative Lag is used to indicate the time for an action by the State);
  - (vi) Activities without finish Successors (except for the overall finish Milestone); or
  - (vii) Activities without start Predecessors (except for the overall start Milestone); 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.

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### 3. Updating the Transition Phase Program

Manage Co must also provide regular updates to the Transition Phase Program as required by clause 10 of the Deed and Schedule 7 and such updates must be submitted to the State for review in accordance with clause 11 of the Deed. In addition to the requirements stipulated in section 2.2 and Schedule 7:

- (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 Deed;
  - (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 Manage Co will not achieve Operational Readiness until after the Date for Operational Readiness; 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, Manage 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 Date for Operational Readiness;
  - (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.

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### **Operational Readiness of the Expanded Facility**

For the purpose of developing a program as required in section A (Operational Readiness and Commissioning Report – Expanded Facility), point 2 of Table 8 of Schedule 7, all references to:

- (a) Transition Phase Activities in this Schedule 4, will be read as references to Operational Readiness Activities; and
- (b) Date for Operational Readiness in this Schedule 4, will be read as references to Date for Operational Readiness (EW).

## Schedule 6 — Moral Rights Consent

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### 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 for and on behalf of the Crown in right of the State of New South Wales,

(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 Management Deed) (**Project**).
- B     Manage Co is responsible for the Project under the deed entitled '*Parklea Correctional Complex - Management Deed*' between the State and Manage Co dated [insert date] (**Management Deed**).
- C     The Author may create or has created material in which copyright subsists for the purposes of the *Copyright Act 1968* (Cth) (as amended from time to time) for the purposes of, or otherwise for use in connection with, the Project (**Copyright Material**).

#### THE AUTHOR COVENANTS as follows:

The Author in consideration of the State or Manage Co paying the Author \$1.00 (inclusive of GST) (receipt of which is hereby acknowledged):

1.     agrees, to the extent permitted by law, not to sue, enforce any claim, bring any action or exercise any remedy in respect of any, or any alleged, breach, infringement or other wrongdoing, howsoever or whatsoever occurring, including without limitation for the breach or alleged breach of any of the Author's 'moral rights' under the *Copyright Act 1968* (Cth) (as amended from time to time) whether before or after the date of this deed poll by:
  - (a)     the State or 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 7 – Plans and Reports Schedule

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

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

### Part A – Transition Phase and Operational Readiness Plans and Reports

#### 1. Transition Phase and Operational Readiness Reports

Table 1: Transition Phase and Operational Readiness 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"> <li>1) <b>(Transition Phase Activities):</b> details of the progress of the Transition Phase Activities and compliance with the Transition Phase Program, including:                             <ol style="list-style-type: none"> <li>a) <b>(Transition Phase Activities completed):</b> details of Transition Phase Activities completed in the previous month; and</li> <li>b) <b>(Transition Phase Activities underway):</b> details of Transition Phase Activities scheduled for the current month;</li> </ol> </li> <li>2) <b>(updated Transition Phase Program):</b> a copy of the Transition Phase Program updated in accordance with this Deed;</li> <li>3) <b>(operational readiness preparation):</b> a report on the activities associated with Operational Readiness of the Existing Facility. This report must include Manage Co's proposed program, process, agenda and required State attendees for the Operational Readiness Assessment (as defined under Schedule 8);</li> <li>4) <b>(Claims and Disputes):</b> details of any outstanding or unresolved Claims and Disputes;</li> </ol>	<p>5 Business Days prior to each Project Control Group meeting during the Transition Phase</p>

Report	Content	Time for provision
	5) <b>(Variation)</b> : the progress of any Variations or information relating to any proposed Variations; 6) <b>(quality assurance issues)</b> : details of any quality assurance issues; 7) <b>(environmental issues)</b> : details of any environmental issues; 8) <b>(work health and safety)</b> : details of Manage Co performance in respect of work health and safety including details of any safety incidents; and 9) <b>(other information)</b> : such other information reasonably requested by the State Representative.	
B. Transition Phase Program	The Initial Transition Phase Program is contained in Attachment 1 to the Deed.  Manage Co must update the Transition Phase Program so it meets the requirements of Schedule 4 and clauses 10 and 20.1 of this Deed.	As required in accordance with Schedule 4 and clauses 10 and 20.1 of this Deed.
C. Operational Readiness Report – Existing Facility	The report must contain: 1) activities associated with Operational Readiness; 2) the outcome of the Operational Readiness Assessment so it meets the requirements of Schedule 8; 3) 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, including: a) issues, events, matters or things which Manage Co proposes to be Operational Readiness Outstanding Items; and b) any issues raised by the State in relation to Operational Readiness.	<b>Draft</b>  Within 10 Business Days of the completion of the Operational Readiness Assessment for the Existing Facility  <b>Final</b>  Within 2 Business Days from the Operational Commencement Date of the Existing Facility



## 2. Transition Phase Plans

### 2.1 Overview

The minimum requirements for Transition Phase Plans for the Project are detailed in this Schedule 7.

Transition Phase Plans must be consistent with and provide no lesser obligations or standards on Manage Co than the corresponding Initial Plans contained in Attachment 1 to this Deed (or any updates to them).

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 and clauses 10 and 11 of the Deed;
- (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 Deed.

**Table 2 —Transition Phase Plans**

Plan	Plan submission date	Frequency of updates
Transition Plan	<b>Final Version</b> 10 Business Days prior to Commercial Close.	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		
Operational Readiness Plan	<b>1st draft – Existing Facility and Expanded Facility</b> 40 Business Days before the Date for Operational Readiness of the Existing Facility <b>Final Version – Existing Facility</b>	As above in accordance with this section 2.1

Plan	Plan submission date	Frequency of updates
	20 Business Days before the Date for Operational Readiness of the Existing Facility <b>Final version – Expanded Facility</b> 30 Business Days before the Date for Operational Readiness of the Expanded Facility	

## 2.2 Transition Plan

Manage Co must develop, implement and update the Transition Plan so that it includes:

- (a) strategy for the management and delivery of the Transition Phase Activities, including:
  - (i) an organisational chart, which identifies the Transition Phase team, including:
    - A. names and roles of key personnel of Manage Co, subcontractors and suppliers who will hold positions of responsibility and accountability for the outcomes of the Transition Phase Activities, including the Operational Readiness Co-ordinator; and
    - B. lines of communication and interfaces with the State (including CSNSW, JHFMHN and the Justice Infrastructure and Assets division within the Department of Justice) and other key stakeholders
  - (ii) CVs of the key people demonstrating relevant experience in transitioning the operations of facilities of a similar nature, size and complexity as the Correctional Complex or in managing and/or delivering activities similar to the Transition Phase Activities;
- (b) governance arrangements; and
- (c) proposed strategy including details and methodology to:
  - (i) deliver the Transition Phase Activities specified in Part B of the Output Specification including its approach to recruitment and compliance with the *Fair Work Act 2009* (Cth); and
  - (ii) achieve the general obligations specified in Part B of the Output Specification including any other acts, matters or things which Manage Co will implement to achieve the general transition obligations.

## 2.3 Transition Phase Recruitment and Training Plan

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 of the Existing Facility, so that it includes:

- (a) the organisational structure identifying Manage Co's Key People with Transition Phase recruitment and training responsibilities and accountabilities, including:

- (i) lines of communication and interfaces with Manage Co's overall organisational structure; and
- (ii) minimum skill levels required;
- (b) the interfaces of the Transition Phase Recruitment and Training Plan with other Plans;
- (c) Manage Co's strategy for the recruitment of Staff and Associates during the Transition Phase for the delivery of the Services;
- (d) Manage Co's recruitment strategy relating to employees from the Incumbent Operator, including the number of employees (by reference to grade and classification) to which Manage Co commits to invite to apply for positions available at the Correctional Complex.
- (e) Manage Co's recruitment strategy to recruit any JHFMHN Employees prior to the Date for Operational Readiness, including its demonstration of compliance with respect to the transfer of JHFMHN Employee entitlements as required by the *Fair Work Act 2009* (Cth);
- (f) 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 Complex during the Transition Phase; and
- (g) 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 Deed.
- (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) strategy for inspection, witnessing, monitoring and reporting;
  - (v) auditing procedures for the Transition Phase Quality Assurance Plan;
  - (vi) process for developing and managing quality records;
  - (vii) procedures for rectifying non-conformances and managing improvement opportunities, corrective action and preventative action to prevent recurrence; and
  - (viii) 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 Deed.
- (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 Complex; and
    - D. stakeholders, including third party stakeholders,which 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 Deed.
- (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 Deed.
- (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.

## 2.8 Operational Readiness Plan

- (a) Manage Co is to prepare an Operational Readiness Plan that covers the Existing Facility and the Expanded Facility.
- (b) With respect to the Existing Facility, the Operational Readiness Plan must:
  - (i) demonstrate a clear understanding of the mobilisation activities to ensure the delivery of the full range of Services on and after the Operational Commencement Date of the Existing Facility at full operating capacity;
  - (ii) identify and quantify the resources to undertake the key mobilisation tasks;
  - (iii) provide information regarding the mobilisation of each of the Services, including:
    - A. identification of key Operational Readiness dates;

- B. identification and quantification of all personnel to be involved in Operational Readiness activities;
  - C. indicative allocation of Operational Readiness and ramp-up responsibilities and interdependencies with the State; and
  - D. the major mobilisation risks and how these are to be managed or mitigated; and
- (iv) include a strategy:
- A. for liaising with and involving the State Representative in delivering the Operational Readiness Plan; and
  - B. to engage all stakeholders;
- (c) With regard to the Expanded Facility, the Operational Readiness Plan must:
- (i) demonstrate a clear understanding of the mobilisation and Operational Readiness Assessment planning activities to ensure the delivery of the full range of Services on and after the Operational Commencement Date of the Expanded Facility in accordance with Schedule 9;
  - (ii) identify and quantify the resources to undertake the key mobilisation and operational readiness tasks;
  - (iii) provide information regarding the mobilisation or operational readiness tasks of each of the Services, including:
    - A. identification of key Operational Readiness dates;
    - B. identification and quantification of all personnel to be involved in Operational Readiness activities;
    - C. indicative allocation of Operational Readiness and ramp-up responsibilities and interdependencies with the State; and
    - D. the major mobilisation risks and how these are to be managed or mitigated;
  - (iv) include a strategy:
    - A. for liaising with and involving the State Representative in delivering the Operational Readiness Plan; and
    - B. to engage all stakeholders;
  - (v) detail Manage Co's approach to meet the requirements set out in Schedule 9, including its initial occupation plan;
  - (vi) detail the process for accepting Inmates into the Expanded Facility, including any proposed staging or Inmates to be prioritised for transfer;
  - (vii) methodology for oversight of the ramp-up process including any additional monitoring or testing to be undertaken to demonstrate that Manage Co has the

ability to increase the number of Inmates in the Expanded Facility to achieve full operating capacity; and

- (viii) detail Manage Co's approach to ensuring a full Staff complement is available to meet the requirements set out in Schedule 9.

## Part B – Operating Phase Plans and Reports

### 3. Operating Phase Reports

**TABLE 3: 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 4: 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 11) including a breakdown of the location of any vacant Available Inmate Places within the Correctional Complex. 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 5: 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. Key Performance Report	The Performance Report is to contain: <ol style="list-style-type: none"> <li>1) a holistic overview of the performance of Manage Co in relation to the delivery of Services for the previous Month;</li> <li>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;</li> </ol>	Within 5 Business Days after the end of the relevant Month



Report	Content of report	Time for provision
	3) information relating to Aboriginal participation; and 4) 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.	
B. Pharmaceuticals Reporting Spreadsheet	Manage Co must complete and submit a Pharmaceuticals Reporting Spreadsheet in the form of Attachment 1 to this Schedule 7 (as updated by the State from time to time).	
C. Case management programs and reintegration services update	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 ( <b>OIMS</b> ), including the following: <ol style="list-style-type: none"> <li>1) the details and results of all assessments completed;</li> <li>2) formulated plans (as required in the Output Specification);</li> <li>3) details of every intervention offered to Inmates, including:               <ol style="list-style-type: none"> <li>a) date of offer;</li> <li>b) Inmate acceptance or non-acceptance of intervention; and</li> <li>c) reasons for Inmate non-acceptance of intervention;</li> </ol> </li> <li>4) details of all interventions, including:               <ol style="list-style-type: none"> <li>a) date of session attendances;</li> <li>b) duration of sessions;</li> <li>c) date of intervention completion; and</li> <li>d) reasons for non-completion of any intervention;</li> </ol> </li> <li>5) details of all health stream alcohol and other drugs programs, criminogenic stream programs and co-morbidity stream programs completed in the relevant Month, the number of Inmates who completed each program divided by the number of Inmates who commenced the program, expressed as percentage;</li> </ol>	

Report	Content of report	Time for provision
	6) average daily number of Inmates waiting for each of the program types listed in paragraph 5 above; and 7) the total number of individual Inmate interventions provided by program type.	
D. Health Services update	Manage Co must provide a report to Justice Health and Forensic Mental Health Network in relation to Health Services that includes the following: 1) end of Month Health Services Staff full time equivalent information, including designation of Health Services Staff reconciling inward and outward movements in Staff numbers to the previous Month; and 2) non-admitted Custodial Patient occasions of service for the relevant Month.	
E. Staff deployment	Provide end of month Staff full time equivalent information, reconciling inward and outward movements in Staff numbers to the previous Month.	
F. FM Services update report	Manage Co must provide details of any activation of the security systems (including false alarms and nuisance alarms) of any nominated alarm. Manage Co must provide an Asset management report detailing as a minimum: 1) works not completed in accordance with the Planned Maintenance Schedule and Annual Asset Works Plan in the Asset Management Plan (see section 4.12 below); 2) the number, type and location of unscheduled maintenance activities; and 3) inspections, statutory and regulatory tests undertaken. 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. Manage Co must provide a grounds maintenance report detailing planned and unscheduled work	Within 5 Business Days after the end of the relevant Month

Report	Content of report	Time for provision
	<p>undertaken during the previous month and for the year in total.</p> <p>Manage Co must provide a pest control report detailing planned inspections and the measures to deter pest infestations and 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 6: 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"> <li>1) identify areas or items of non-compliance with this Deed and remedial actions;</li> <li>2) confirm that the Significant Subcontractors are maintaining Quality Assurance Systems in accordance with AS/NZS ISO 9001, ISO 4801, ISO 55001, ISO 22000 and ISO 14001 and the Quality Assurance Plans (in accordance with the requirements of this Deed);</li> <li>3) include a summary of the items that have been addressed and remediated since the Quality Assurance Plan submitted in the last Quarter;</li> <li>4) include a summary of the overall performance of the Quality Assurance Systems;</li> <li>5) include a summary of Aboriginal participation;</li> <li>6) include Health Services specific reports including: <ol style="list-style-type: none"> <li>a) Quarterly performance indicators for: <ol style="list-style-type: none"> <li>i) mental health including: <ol style="list-style-type: none"> <li>(1) percentage of Custodial Patients discharged from an acute mental health setting to the Correctional</li> </ol> </li> </ol> </li> </ol> </li> </ol>	Within 5 Business Days of the end of each Quarter

Report	Content of report	Time for provision
	<p>Complex who are seen within 7 days by a mental health clinician; and</p> <p>(2) number of Custodial Patients with a mental illness with at least one set of mental health outcome measures collected during a period of care (3 months);</p> <p>ii) oral health including number of Dental Weighted Activity Units (<b>DWAUs</b>);</p> <p>iii) drug and alcohol including:</p> <p>(1) percentage of new Custodial Patients in this reporting period coming into the Correctional Complex who are maintained on an existing opiate treatment program, unless clinically contraindicated; and</p> <p>(2) percentage of Custodial Patients on Opiate Substitution Treatment (<b>OST</b>) 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 an 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>	

Report	Content of report	Time for provision
	<ul style="list-style-type: none"> <li>(3) needle and syringe register checks (including dental room); and</li> <li>(4) maintenance checks of glucometers, INR machines, HbA1C machines;</li> <li>ii) every 2<sup>nd</sup> month audits including:                             <ul style="list-style-type: none"> <li>(1) work health and safety workplace inspection of all clinical areas;</li> <li>(2) therapeutic diet certificate audit; and</li> <li>(3) health record audits - 10 files per Correctional Centre;</li> </ul> </li> <li>iii) Quarterly report on results of audits including:                             <ul style="list-style-type: none"> <li>(1) environmental cleaning audits of the health centre(s) and all satellite health centre(s);</li> <li>(2) medication charts (long stay medication charts) for 10% of the population; and</li> <li>(3) Imprest Stock; and</li> </ul> </li> <li>iv) annual audits including:                             <ul style="list-style-type: none"> <li>(1) biomedical equipment testing.</li> </ul> </li> </ul>	

TABLE 7: ANNUAL REPORT

Report	Content	Time for provision
A. Annual Report	<p>Manage Co must provide an annual report on Manage Co's activities and performance for each Service bundle under this Deed 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> <ul style="list-style-type: none"> <li>1) annualised Key Performance Indicators in relation to the Key Performance Indicators as defined in Schedule 11;</li> <li>2) annualised information in relation to the number of Inmate Places that met the Available Inmate Place (as defined in Schedule 11) standard on each day of the year;</li> </ul>	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
	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; 4) annual financial statements for: a) Manage Co; b) any other Significant Subcontractor or member of Manage Co as requested by the State; 5) an annualised Pharmaceuticals Reporting Spreadsheet; and 6) annual report on Health Services accreditation status.	
B. Aboriginal Participation Report	The Aboriginal Participation Report must be in accordance with clause 21.2 under this Deed.	Annually, as required in accordance with the Deed.
C. Health professional registration checks	Health professional registration checks with AHPRA.	Annually on 31 May
D. Condition Assessment	Manage Co must undertake annually a Condition Assessment of the Correctional Complex which must: 1) assess the performance, condition and the remaining serviceable life of each Asset (with the exception of Minor Assets); 2) detail any Assets which were identified as failed, defective or otherwise not in a satisfactory operational condition and the reason why planned preventative maintenance 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 4.12; 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	30 Business Days after the end of each calendar year during the Operating Phase

Report	Content	Time for provision
	<p>Condition Assessment and which has not been maintained, refurbished or replaced (as applicable);</p> <p>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 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 Complex. The justification shall include a business case setting out:</p> <p>a) the cost, quality and time implications and any other effect on the Services of undertaking the proposed change; and</p> <p>b) the cost, quality and time implications and any other effect on the Services if the proposed change is not undertaken.</p> <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>	

TABLE 8: EXPANDED FACILITY REPORTS

Report	Content	Time for provision
<p>A. Operational Readiness and Commissioning Report – Expanded Facility</p>	<p>The report must contain:</p> <p>1) activities associated with commissioning, Operational Readiness and ramp-up;</p> <p>2) the proposed program which must meet the requirements specified in Schedule 4;</p> <p>3) the outcome of the Operational Readiness Assessment so it meets the requirements of Schedule 8;</p> <p>4) any issue, event, matter or thing which needs to be completed or remedied, and Manage Co's action plan</p>	<p><b>Draft</b></p> <p>Within 10 Business Days of the completion of the Operational Readiness Assessment for the Expanded Facility</p> <p><b>Final</b></p> <p>Within 2 Business Days from the</p>

Report	Content	Time for provision
	<p>and timeframe to complete and remedy those issues, events, matters or things, including issues, events, matters or things which Manage Co proposes to be Operational Readiness Outstanding Items; and</p> <p>5) any issues raised by the State in relation to Operational Readiness.</p>	Operational Commencement Date of the Expanded Facility

## 4. Operating Phase Plans

### 4.1 Overview

The minimum requirements for Operating Phase Plans for the Project are detailed in this Schedule 7.

Each first draft (or updated draft) of an Operating Phase Plan must:

- (a) if there is a corresponding Initial Plan, be consistent with and provide no lesser obligations or standards on Manage Co than that corresponding Initial Plan or previous version of the plan; or
- (b) otherwise, be to the satisfaction of the State.

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

The Operating Phase Plans detailed in this Schedule 7 must be submitted or updated:

- (c) in accordance with Table 9 and clauses 10 and 11 of the Deed;
- (d) as required by the State Representative or any Authority;
- (e) to align with changes in:
  - (i) the management and operations of the Correctional Complex;
  - (ii) other related Plans; and
  - (iii) the Plans as requested by the State Representative under this Deed; and
- (f) to include a methodology of regular reviews that considers:
  - (i) planned exercises; and
  - (ii) incorporation of lessons learned from actual incidents and events.



**TABLE 9 — SUBMISSION AND UPDATE OF OPERATING PHASE PLANS**

Plan	Plan submission date	Update frequency
Safety and Security Plan	<b>1st draft</b> 60 Business Days before the Date for Operational Readiness of the Existing Facility  <b>Final version</b> 25 Business Days before the Date for Operational Readiness of the Existing Facility	<b>Annually</b> (20 Business Days prior to the end of each calendar year)
Emergency Management Plan		
Staff Recruitment and Training Plan		
Staff Deployment Plan		
Health Services Plan		
Operating Manuals		
Business Continuity Plan		
FM Services Plan		
Asset Management Plan		
Rehabilitation Plan	<b>1st draft</b> 40 Business Days before the Date for Operational Readiness of the Existing Facility  <b>Final version</b> 20 Business Days before the Date for Operational Readiness of the Existing Facility	
Reintegration Plan		
Inmate Needs and Services Plan		
Governance and Administration Plan		
Quality Assurance Plan		
WHS Management Plan		
Environmental Management Plan	<b>1st draft</b> 25 Business Days before the Date for Operational Readiness of the Existing Facility  <b>Final version</b> 5 Business Days before the Date for Operational Readiness of the Existing Facility	
Performance Monitoring Program		
Correctional Complex Access Protocols		
Aboriginal Participation Plan	<b>1st draft</b> 10 Business Days after the Operational Commencement Date of the Existing Facility  <b>Final version</b> 30 Business Days after the Operational Commencement Date of the Existing Facility	
Local Industry Participation Plan		
Communications and Community Relations Plan		
Handover Package		

Plan	Plan submission date	Update frequency
Disengagement Plan	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 Deed.	
Commissioning Plan	<b>1st draft</b> 20 Business Days before the commencement of commissioning activities associated with the Expanded Facility  <b>Final version</b> 10 Business Days before the Date for Operational Readiness of the Expanded Facility	As above in accordance with this section 4.1

#### 4.2 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.

#### 4.3 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.

#### 4.4 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 the Correctional Complex 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.

#### 4.5 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) Critical Incidents;
  - (ii) evacuation;
  - (iii) bomb threat;
  - (iv) withdrawal of labour;
  - (v) natural disaster;
  - (vi) key lock compromise;
  - (vii) electronic security failure;
  - (viii) pandemic outbreak; and

- (ix) public demonstration.

#### 4.6 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 CSI on behalf of the State in relation to the State's obligations under section 1 of Schedule 17;
    - 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 17; and
    - C. the process to be implemented by Manage Co to ensure it complies with this Deed 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 17. Manage Co must include actions it will take to ensure that Manage Co provides each of Meals (as defined under Schedule 17) in accordance with the Services Specification and Schedule 17) 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;
  - (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.

#### 4.7 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.

#### 4.8 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 and credentialed health staff including medical & dental officers through the Justice Health & Forensic Mental Health Network Dental Appointment Advisory Committee (**MADAAC**).

#### **4.9 Staff Deployment Plan**

- (a) Manage Co is to provide a Staff Deployment Plan in accordance with Schedule 3, Part C for the next year.
- (b) As a minimum this plan must:
  - (i) maintain the good order and security of the Correctional Complex;
  - (ii) provide a safe environment for Staff, Visitors and Inmates;
  - (iii) facilitate a purposeful daily routine for each Inmate, including Inmate access to and attendance at Offence Related Programs, Education, Vocational Training, Employment, recreation and leisure activities;
  - (iv) maximise Inmate time out of cells; and
  - (v) maintain effective control of each Inmate, including all Inmates' movements.

#### **4.10 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.

#### **4.11 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.

#### 4.12 Asset Management Plan

- (a) Manage Co must develop, implement and update an Asset Management Plan in accordance with the requirements of this Deed.
- (b) The Asset Management Plan is to be updated in accordance with the update frequency, as identified in Table 9, 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 Management System that meets the requirements of the ISO 55001 including details on how:

- (I) the Asset Management System will be used to support organisational requirements;
  - (II) the Asset Management System will be updated as the Asset changes; and
  - (III) the Asset Management System will be used as a resource for Manage Co;
- B. details on the systems that will be used to monitor and facilitate FM 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 (**Asset Register**);
  - (vii) Manage Co Equipment register which identifies all Manage Co Equipment, as agreed by the State (**Manage Co Equipment Register**);
  - (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 (**Annual Asset Works Plan**);
  - (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 (**12 Year Asset Works Plan**);
  - (x) a consolidated programmed planned maintenance schedule 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 Management System to facilitate electronic tracking and storage of maintenance information, include the following:
  - (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 which includes 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, containing 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) a list of consumables and chemical agents to be used in the provision of FM Services including storage and security requirements.

#### 4.13 Operating Manuals

Manage Co must develop Operating Manuals for the State's approval that detail all operating policies and procedures, methods, work instructions and Governor's orders and directions that apply to the Correctional Complex and which otherwise comply with all relevant Legislation and Policies and directions of the Commissioner in accordance with the requirements of outcome 4 (Professionalism and Accountability) of Part C of the Output Specification.

#### 4.14 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 the Corrections Act to monitor the Correctional Complex;
- (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.

#### 4.15 Quality Assurance Plan

- (a) Manage Co must develop, implement and update an Operating Phase Quality Assurance Plan for the Services, as specified in this Deed.
- (b) The Operating Phase Quality Assurance Plan must satisfy the requirements of the Output Specification.
- (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.

#### 4.16 Environmental Management Plan

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

- (i) 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.

#### **4.17 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 Complex, human resources and payroll.

#### **4.18 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 Complex.

#### 4.19 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 Deed (including the Services Requirements).
- (b) The PMP must be compatible with the Monthly Performance Report as set out in Table 5. 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;
  - (v) the nominated Staff member responsible for the monitoring of each Key Performance Indicator; and
  - (vi) the approach, systems, methods and tools to ensure that:
    - A. all required performance information is entered into the CSNSW OIMS as required in the Output Specification;
    - B. all records, statistics, registers and journals are maintained, as required in the Output Specification; and
    - C. all original performance reports for monitoring and auditing are maintained.

#### 4.20 Aboriginal Participation Plan

- (a) Manage Co must develop, implement and update an Aboriginal Participation Plan for the Services 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, as specified in clause 21.2 of this Deed using the template provided at:  
<https://www.procurepoint.nsw.gov.au/before-you-supply/policy-framework-construction>;
- (b) Manage Co must provide details 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 6%; and

- (c) Manage Co must detail the steps it will take to increase the engagement of Aboriginal owned businesses by Manage Co and by its Subcontractors.

#### 4.21 Correctional Complex Access Protocols

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

#### 4.22 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).

#### 4.23 Handover Package

The Handover Package is to contain key information to enable the State or other incoming party to take over operations of the Correctional Complex. As a minimum, this plan is to contain the following information:

- (a) **(Contracts):** a list of all agreements, permits, licences or other documents which are material to the delivery of the Services, including (as appropriate) the contact number, name, address, email address, telephone and facsimile numbers of counterparties, contract price, value and subject matter;
- (b) **(Systems):** a list of systems (including communication systems) used (computer and otherwise) for the delivery of the Services, together with a description of the systems and master passwords where applicable. Software licences for any software required for continued operation and management of the systems must be transferred to the State at the end of the Operating Phase as part of the final Handover Package or following the State exercising step-in rights in accordance with this Deed;
- (c) **(Daily operations):** a list of any other information key to the daily operation of the Services, including:
  - (i) updated Plans;
  - (ii) details of the location of keys and access cards to the Correctional Complex; and

- (iii) lists of plant and other Assets relevant to delivery of the Services to the Correctional Complex;
- (d) **(Staff):** details of each member of Staff, including:
  - (i) names, work email addresses, work telephone numbers, roles and responsibilities;
  - (ii) the date on which the person became a member of Staff;
  - (iii) evidence of security checks undertaken;
  - (iv) terms and conditions of employment or other contract; and
  - (v) all payments, benefits or changes to terms and conditions of employment or other contract promised to any member of Staff;
- (e) **(Correctional Complex information):**
  - (i) records relevant to location plans, boundaries and titles to the Site;
  - (ii) current and accurate 'as built' and 'as installed' drawings and specifications showing all modifications and augmentations, constructed or installed during the Operating Phase, stored in editable electronic format;
  - (iii) all area and buildings volume data;
  - (iv) Condition 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; and
  - (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.

#### 4.24 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 Correctional Complex 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)).

#### 4.25 Commissioning Plan

- (a) Manage Co is to prepare a Commissioning Plan that covers the Expanded Facility.
- (b) The Commissioning Plan must:
  - (i) demonstrate a clear understanding of the commissioning activities which Manage Co will participate in, in accordance with the State's commissioning plan;
  - (ii) identify and quantify the resources to undertake the key commissioning tasks;
  - (iii) provide information regarding the commissioning of each of the Services, including:
    - A. identification of key commissioning dates;
    - B. identification and quantification of all personnel to be involved in commissioning activities;
    - C. indicative allocation of commissioning responsibilities and interdependencies with the State; and
    - D. the major commissioning risks and how these are to be managed or mitigated;
  - (iv) include a strategy:

- A. for liaising with and involving the State Representative in delivering the Commissioning Plan; and
  - B. to engage all stakeholders;
- (v) methodology for oversight of the commissioning activities including any additional monitoring or testing to be undertaken; and
- (vi) detail Manage Co's approach to ensuring a full Staff complement is available in accordance with the State's commissioning plan, as well as strategy to training.







## Schedule 8 — Operational Readiness Schedule

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### 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) No later than 20 Business Days prior to the:

- (i) Date for Operational Readiness of the Existing Facility; and
- (ii) Date for Operational Readiness (EW),

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(c) (**Operational Readiness Assessment**).

(b) The purpose of the Operational Readiness Assessment is to demonstrate that Manage Co has successfully performed:

- (i) the Transition Phase Activities for the Existing Facility such that the State is satisfied that Manage Co will be ready to commence performing the Services on the Operational Commencement Date of the Existing Facility; and
- (ii) the Operational Readiness Activities for the Expanded Facility such that the State is satisfied that Manage Co will be ready to commence performing the Services on the Operational Commencement Date of the Expanded Facility.

(c) The Operational Readiness Assessment must assess, without limitation:

- (i) whether Manage Co has obtained the licences, Approvals and accreditation necessary for the Services;
- (ii) whether Manage Co has completed its recruitment process;
- (iii) whether Manage Co has completed inductions and training for Staff and Associates;
- (iv) whether Manage Co has completed its Operating Phase Plans in accordance with the requirements of Schedule 7 (Plans and Reports Schedule);
- (v) the systems, processes and procedures put in place by Manage Co for the performance of the Services;
- (vi) whether Manage Co engaged Subcontractors to provide Services, where required;
- (vii) the Assets which Manage Co has to perform the Services (including Manage Co Equipment);
- (viii) the Asset Management System;
- (ix) the agreed interface protocols with key stakeholders;
- (x) any other aspects required to demonstrate readiness to perform the Services; and

- (xi) any other matter reasonably requested by the State.
- (d) Manage Co must issue the final Operational Readiness Report in accordance with Schedule 7.

## 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:
    - (A) in respect of the Existing Facility, all Transition Phase Activities have been completed (other than those which are Operational Readiness Outstanding Items); and
    - (B) in respect of the Expanded Facility, all Operational Readiness Activities 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 Deed.

## Schedule 9 — Ramp Up Profile

### Ramp Up Profile

Table 1: Ramp Up Profile

Week	Expanded Facility (# beds)		
	Wing	Total number of Inmates per week	Cumulative total in the Expanded Facility
Operational Commencement Date of the Expansion Works			
Week 1	A		
Week 2	A		
Week 3	A		
	B		
Week 4	B		
Week 5	C		
Week 6	C		
Week 7	D		
Week 8	D		

## Schedule 10 - Payment Schedule

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### 1. Definitions

In this Schedule:

**Abatement Cap** means 16% of the Base Fee, Volumetric Adjustment and Surge Adjustment as calculated in accordance with this Schedule and aggregated over a rolling 12 Month period.

**Additional Security Escorts Hourly Rate** means the hourly rate per correctional officer to be applied in the calculation of the Additional Security Services Payment, as set out in Annexure 9 to this Schedule 10.

**Available Inmate Place** has the meaning given to it in Schedule 11 (Performance Regime).

**BMS** has the meaning given to that term in the Output Specification.

**CDTCC X-Ray Unit Cost** means the unit cost in respect of radiology services provided to Participants at the Compulsory Drug Treatment Correctional Centre, as set out in Annexure 7 to this Schedule 10.

**CDTCC Meal Service Unit Cost** means the unit cost in respect of meal services provided to Participants at the Compulsory Drug Treatment Correctional Centre, as set out in Annexure 7 to this Schedule 10.

**CDTCC Laundry Unit Cost** means the unit cost in respect of laundry services provided to Participants at the Compulsory Drug Treatment Correctional Centre, as set out in Annexure 7 to this Schedule 10.

**CDTCC Waste Disposal Unit Cost** means the unit cost in respect of waste disposal services provided to Participants at the Compulsory Drug Treatment Correctional Centre, as set out in Annexure 7 to this Schedule 10.

**Consumer Price Index** or **CPI** means the Consumer Price Index (all Groups) for Sydney published quarterly by the Australian Bureau of Statistics or, if section 2.2 applies, the index determined in accordance with that section.

**Contingency Plan** means that part of the Inmate Needs and Services Plan identified in sections 4.6(b)(x) of Schedule 7 (Plans and Reporting Schedule) (as applicable).

**CPI Annual Multiplier** at any time means:

- (a) the most recently published CPI for a Quarter ending 30 June; divided by
- (b) the published CPI for the Quarter ended 30 June 2018.

**Escorts** means:

- (a) transportation of one or more Inmates to an external health facility and return travel time for the Staff;
- (b) travel time for the Staff to an external health facility for the purposes of transportation of one or more Inmates and transportation of one or more Inmates from the external health facility to the Correctional Complex;

- (c) transportation of one or more Inmates for the purposes of compassionate leave within Sydney; or
- (d) transportation to or from authorised locations within Sydney for Temporary Leave.

**FM Service Failure** means any failure to meet, comply with or otherwise satisfy the requirements of the FM Services as defined in the Output Specification.

**Health Price Index MDH or HPI MDH** means the Sydney CPI Medical, Dental and Hospital services Index published quarterly by the Australian Bureau of Statistics or, if section 2.2 applies, the index determined in accordance with that section.

**HPI Annual Multiplier** at any time means:

- (a) the most recently published HPI MDH for a Quarter ending 30 June; divided by
- (b) the published HPI MDH for the Quarter ended 30 June 2018.

**Inmate Place Unavailability** has the meaning given to it in Schedule 11 (Performance Regime).

**Level 1 Performance Range** has the meaning ascertained from Schedule 11 (Performance Regime).

**Level 2 Performance Range** has the meaning ascertained from Schedule 11 (Performance Regime).

**Maximum Inmate State** means the total nominal and Surge Capacity of the Correctional Complex, being 1,160 Inmates prior to, and 1,816 Inmates on and from, the Operational Commencement Date of the Expanded Facility.

**Meal Costs** means the costs paid by Manage Co to the State (or CSI on behalf of the State) for providing Meal Services to Inmates of the Correctional Complex or (where applicable) meal services to participants at the Compulsory Drug Treatment Correctional Centre excluding any Manage Co or Manage Co's Associates mark-ups, profit margin or administration, management or other fees.

**Meal Services** means Manage Co's obligations to provide food services under the Deed.

**Minimum Population** means, in respect of:

- (a) the 230 bed minimum security Correctional Centre, 80 Inmates; and
- (b) the 1,346 bed maximum security Correctional Centre, 846 Inmates.

**NSW Ambulance Charges** means the cost of emergency ambulance treatment or transport charged to Manage Co by the Ambulance Service of NSW, except to the extent such treatment is required as a result of a failure by Manage Co to perform the Project Activities in accordance with this Deed.

**Participants** means participants at the Compulsory Drug Treatment Correctional Centre who are sentenced to a compulsory drug treatment order.

**Pharmacy Costs** means Manage Co's third party costs in relation to:

- (a) the purchase of Pharmaceuticals or Pharmaceutical Related Items; and
- (b) any Pharmaceutical Supply or Urgent Pharmaceutical Supply,

inclusive of all discounts, rebates, allowances and deductions but excluding any Manage Co or Manage Co's Associates mark-ups, profit margin or administration, management or other fees.

**Pharmaceutical Related Items** means dose administration aids.

**Pharmaceuticals Reporting Spreadsheet** means the spreadsheet titled as such in Attachment 1 of Schedule 7 (Plans and Reports Schedule).

**Pharmaceutical Supply** means the freight, transport and delivery of Pharmaceutical and Pharmaceutical Related Items to the Correctional Complex within standard delivery times.

**Pharmaceuticals** means:

- (a) all prescription medications determined or prescribed by:
  - (i) a registered medical practitioner;
  - (ii) a registered dentist; or
  - (iii) a registered optometrist;
  - (iv) a registered (and suitably endorsed) podiatrist; and
  - (v) an authorised registered nurse practitioner,including those Pharmaceuticals issued from Imprest Stock; and
- (b) nurse initiated medication issued from Imprest Stock.

**Quality Failure** has the meaning given to it in section 11.2 of this Schedule.

**Rectification Period** means:

- (a) for Inmate Place Unavailability, the aggregate of:
  - (i) the period from the commencement of the Inmate Place Unavailability, as determined in accordance with section 11.3(b), up to (and including) midnight on that calendar day; and
  - (ii) subject to extensions granted under section 11.3 or 11.4, 24 hours from midnight on the calendar day in which the period of Inmate Place Unavailability commenced; and
- (b) for an FM Service Failure, subject to extensions granted under section 11.3 or 11.4, the period of time set out in the FM Table in section 2.12 of Schedule 11 (Performance Regime) for the relevant categorisation of the FM Service Failure.

**Rectification Notice** has the meaning given to it in section 11.3(f)(i).

**Rectify, Rectified, Rectifying or Rectification** means Manage Co doing all that is required to rectify a FM Service Failure or an Inmate Place Unavailability (as the case may be), including in order to ensure that the Correctional Complex (or any part of it) is Fit For Purpose and Manage Co otherwise meets or exceeds the performance standards set out in the Output Specification.

**Replacement Meals** means meals provided by the State (or CSI on behalf of the State) to Manage Co that Manage Co stores in temporary storage on site (such as a freezer), or meals purchased by Manage Co from third parties and kept in temporary storage in the event that Manage Co needs to provide a meal which the State (or CSI on behalf of the State) has failed to provide pursuant to the State's obligations under section 1 of Schedule 17 (Food Services) and which is delivered in accordance with the Contingency Plan.

**Remand Inmate** means an unsentenced Inmate held in custody awaiting trial.



**Remand Inmate Floor** has the meaning ascertainable from section 7(b).

**Respond, Response or Responded** means Manage Co does all of the following:

- (a) establishes the nature, location and cause of the Inmate Place Unavailability or FM Service Failure (as the case may be);
- (b) commences all necessary actions to address the Inmate Place Unavailability or FM Service Failure (as the case may be) and fulfil health and safety requirements;
- (c) if applicable, appoints a suitably qualified, experienced and accountable person to pursue a Rectification;
- (d) assesses the situation and, within reasonable time, takes or authorises any required action; and
- (e) records an assessment of the Inmate Place Unavailability or FM Service Failure (as the case may be) in the performance monitoring program in accordance with the minimum requirements for General Services as set out in the Output Specification.

**Scheduled Escorts** means:

- (a) the transportation of an Inmate to and from a Scheduled Medical Treatment; and
- (b) the guarding of the Inmate by Staff for the actual duration of the Scheduled Medical Treatment

provided that the Inmate was transferred to the Correctional Centre pursuant to section 23 or section 24 of the Corrections Act solely for the purpose of attending the Scheduled Medical Treatment.

**Scheduled Medical Treatment** means either:

- (a) a scheduled appointment with a medical practitioner; or
- (b) a scheduled inpatient medical treatment,

at a hospital or off site medical centre that serves as an equivalent of a hospital for the Inmate.

**SIF<sub>n</sub>** has the meaning ascertainable from section 4.1(a).

**Surge Capacity** means incremental capacity at the Correctional Complex to accommodate Inmates:

- (a) in the maximum security area of the Existing Facility, in excess of 846 Inmates; and
- (b) in each block of the Expanded Facility, in excess of 125 Inmates.

**Surge Capacity Inmate** means any Inmates accommodated using Surge Capacity.

**Surge Fee** means the variable fee payable per Surge Capacity Inmate per day, as set out in Annexure 4 to this Schedule 10.

**Target Performance Range** has the meaning as ascertained from Schedule 11 (Performance Regime).

**Temporary Fix** has the meaning given to it in section 11.4.

**Urgent Pharmaceutical Supply** means the freight, transport and delivery of Pharmaceuticals and Pharmaceutical Related Items outside of standard delivery times in exceptional circumstances where necessitated by clinical need as determined by suitably qualified Staff of Manage Co or any of its Associates.

**Volumetric Fixed Fee** means the fixed fee payable per day in respect of a volumetric banding, as set out in the applicable table of rates in Annexure 3 to this Schedule 10.

**Volumetric Variable Fee** means the variable fee payable per Inmate per day in respect of a volumetric banding, as set out in the applicable table of rates in Annexure 3 to this Schedule 10.

**Wage Price Index** or **WPI** means the Wage Price Index: Total Hourly Rates of Pay Excluding Bonuses (New South Wales, All Industries, Public and Private) published quarterly by the Australian Bureau of Statistics or, if section 2.2 applies, the index determined in accordance with that section.

**WPI Annual Multiplier** at any time means:

- (a) the most recently published WPI for a Quarter ending 30 June; divided by
- (b) the published WPI for the Quarter ended 30 June 2018.

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## 2. Indexation

### 2.1 Indexation

- (a) All amounts to be "Indexed" under this Deed are indexed by multiplying the relevant number by the CPI Annual Multiplier or, if expressly specified, the WPI Annual Multiplier or HPI Annual Multiplier (as applicable).

### 2.2 Changes to Indexes

The following rules apply to all terms referred to in section 2.1:

- (a) if there is a change in the coverage of the index from that applying at the date of this Deed and the new index is linked to another index, the defined term is to be referable to the new index;
- (b) if the index is published and there is a change in its:
- (i) coverage and it is not linked to another index; or
  - (ii) periodicity,

the parties must request the President of the Institute of Actuaries of Australia (or the President's nominee) to determine:

- (iii) whether the index remains appropriate as a general indicator of the rate of price change for the relevant goods and services; and
- (iv) if it is not, what other index should be used as a substitute index for the purpose of the defined term's use in this Deed,

and that determination is final and binding on the parties;

- (c) if there is a change in the reference base of the index from that applying at the date of this Deed and the Australian Bureau of Statistics provides a conversion factor, that conversion factor must be applied to calculate revised figures for the purpose of the defined term's use in this Deed, in terms of the new reference base. Where possible the conversion factor should be applied to both (a) and (b) in the definitions of CPI Annual Multiplier, WPI Annual Multiplier or HPI Annual Multiplier (as applicable) so that going forward both are expressed in the terms of the new reference base;
- (d) if there is a change in the reference base of the index from that applying at the date of this Deed and the Australian Bureau of Statistics does not provide a conversion factor, the parties must request the President of the Institute of Actuaries of Australia (or the President's nominee) to calculate a revised index for the purposes of the defined term's use in this Deed, and that calculation is final and binding on the parties;
- (e) if the index ceases to be published and the Australian Bureau of Statistics publishes another index which is:
- (i) a replacement of that index; and
  - (ii) linked to the index,

the defined term must be re-calculated to the same reference base as the replacement index;

- (f) if the index ceases to be published and the Australian Bureau of Statistics does not publish another index which is linked to the index, the parties must request

the President of the Institute of Actuaries of Australia (or the President's nominee) to calculate a revised index for the purposes of the defined term's use in this Deed, and that calculation is final and binding on the parties;

- (g) if the index ceases to be published and the Australian Bureau of Statistics does not publish another index in place of the index, the parties must request the President of the Institute of Actuaries of Australia (or the President's nominee) to determine an appropriate index which is a general indicator of the rate of price change for the relevant goods and services, and that determination is final and binding on the parties; and
- (h) if a Change in Law causes a material aberration in the index, the index must be adjusted to remove the impact of that material aberration in accordance with any such methodology published by a responsible Authority for adoption by business or, in the absence of such publication, within six months of the occurrence of the material aberration as agreed by the parties or, in the absence of Deed, as determined by an independent expert in accordance with clause 42 of this Deed.

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### 3. Monthly Service Payment

#### 3.1 Calculation of the Monthly Service Payment

- (a) The Monthly Service Payment for the nth Month of the Operating Phase (MSP<sub>n</sub>) is:

$$\text{MSP}_n = \text{BF}_n + \text{VA}_n + \text{SA}_n + \text{CA}_n + \text{LC}_n + \text{PTC}_n + \text{EP}_n - \text{TD}_n - \text{CEA}_n$$

where:

- BF<sub>n</sub>** = the Base Fee for Month n, calculated in accordance with section 4;
- VA<sub>n</sub>** = the Volumetric Adjustment for Month n, calculated in accordance with section 5;
- SA<sub>n</sub>** = the Surge Adjustment for Month n, calculated in accordance with section 6;
- CA<sub>n</sub>** = the Cohort Adjustment for Month n, calculated in accordance with section 7;
- LC<sub>n</sub>** = the Lifecycle Charge for Month n, calculated in accordance with section 8;
- PTC<sub>n</sub>** = Pass Through Costs for Month n, calculated in accordance with section 9;
- EP<sub>n</sub>** = Escort Payments for Month n, calculated in accordance with section 10;
- TD<sub>n</sub>** = the Total Deductions for Month n, calculated in accordance with section 11;
- CEA<sub>n</sub>** = Charge Event Adjustment for Month n, calculated in accordance with section 12; and

- (b) MSP<sub>n</sub> cannot be a negative number. If MSP<sub>n</sub> is a negative number, it is deemed to be zero.

**3.2 First and Last Month of the Operating Phase**

Where the Operating Phase does not commence on the first day of a Month,  $BF_n$  and  $CA_n$  will be adjusted proportionately for:

- (a) the first Month in the Operating Phase; and
- (b) the last Month in the Operating Phase,

having regard to the number of days in the relevant partial Month as a percentage of the total number of days in the full calendar Month.

**4. Base Fee**

**4.1 Calculation of the Base Fee**

- (a) The Base Fee for the nth Month of the Operating Phase ( $BF_n$ ) is calculated as:

$$BF_n = (MBSP_n \times SIF_n) + (I_n \times CPI_n) + U_n$$

where:

$MBSP_n$  = Monthly Base Service Payment applicable to the Operating Phase in which Month n occurs, as set out in Annexure 1 to this Schedule 10;

$SIF_n$  = the Services Indexing Factor for Month n calculated as:  
 $K\% \cdot CPI_n + L\% \cdot WPI_n + M\% \cdot HPI_n$

where K%, L% and M% are the proportions of each indexing element of the fee as set out in Annexure 1 to this Schedule 10;

$U_n$  = Monthly Utilities Payment for Month n, calculated in accordance with section 4.2;

$I_n$  = Monthly Insurance Payment for Month n, as set out in Annexure 1 to this Schedule 10;

$CPI_n$  = CPI Annual Multiplier applicable for Month n;

$WPI_n$  = WPI Annual Multiplier applicable for Month n; and

$HPI_n$  = HPI Annual Multiplier applicable for Month n.

**4.2 Calculation of the Monthly Utilities Payment**

- (a) The Monthly Utilities Payment will be calculated one Month in arrears for each Month n in the Operating Phase except for:
  - (i) the first Month in the Operating Phase, whereby no Monthly Utilities Payment is payable; and
  - (ii) the final Month in the Operating Phase, whereby the Monthly Utilities Payment is calculated with reference to Month n-1 and Month n.
- (b) Manage Co must calculate the Monthly Utilities Payment for Month n in accordance with section 4.2(c) to 4.2(e) (inclusive) and provide this to the State with the Payment Claim prepared under clause 24.2(a) of this Deed.

- (c) Subject to sections 4.2(d) and 4.2(e) (inclusive), the Monthly Utilities Payment for the nth Month of the Operating Phase is calculated as:

$$U_n = \sum_k UP_k$$

Where  $UP_k$  is the Utility Payment for the kth Utility and is calculated as the lesser of:

- (i) the Actual Utility Cost ( $AUC_k$ ) incurred by Manage Co for the Month n-1 in respect of the kth Utility, being the actual third party costs inclusive of all discounts, rebates, allowances and deductions but excluding any default or late interest, balancing charges, charges due to extraordinary peaks in usage, Manage Co or Manage Co's Associates mark-ups, profit margins or administration, management or other fees; and
- (ii) the Estimated Utility Cost ( $EUC_k$ ) calculated as the sum of the actual fixed charges, less all discounts, rebates, allowances and deductions, plus the sum product of 4.2(c)(ii)A and 4.2(c)(ii)B below:
- A. the estimated monthly consumption data for the kth Utility based on the Volumetric Units provided in Annexure 2 to this Schedule 10; and
- B. the corresponding pricing inputs for the kth Utility based on the actual pricing inputs for the Correctional Complex provided in the monthly statement from the relevant Utility supplier for Month n-1.

The Estimated Utility Cost should exclude any default or late interest, balancing charges, charges due to extraordinary peaks in usage, Manage Co or Manage Co's Associates mark-ups, profit margins or administration, management or other fees.

- (d) If no monthly statement is received for the kth Utility from the relevant Utility supplier in Month n-1,  $AUC_k$  and  $EUC_k$  will each be equal to zero. For the purposes of section 4.2(c)(ii), the Monthly Utility Payment calculated for the kth Utility will be adjusted appropriately to represent a quarterly amount to provide a like for like comparison with the statement received for the kth Utility.
- (e) The Monthly Utilities Payment does not apply to telephone, communications and data services (including facsimile and internet access), which should be included in Manage Co's Base Fee.

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## 5. Volumetric Adjustment

### 5.1 Calculation of the Volumetric Adjustment

- (a) The purpose of the Volumetric Adjustment is to compensate Manage Co for the additional costs of operation in accordance with this section where the number of Inmates at a Correctional Centre exceeds the relevant Minimum Population.
- (b) The Volumetric Adjustment will not be negative (i.e. the Volumetric Adjustment will either be zero or will be positive).
- (c) The Volumetric Variable Fee and Volumetric Fixed Fees shall each be indexed by  $SIF_n$ , in accordance with section 4.1(a).

- (d) If the State forecasts:
- (i) an increase to the Inmate numbers at the minimum security Correctional Centre or the maximum security Correctional Centre above the relevant Minimum Population; or
  - (ii) an increase or decrease in the Inmate numbers at the minimum security Correctional Centre or maximum security Correctional Centre beyond the upper or lower limit of a band as previously notified in accordance with this section 5.1,
- then the State must use reasonable endeavours to provide Manage Co with as much notice as practicable of the forecast banding for the relevant Correctional Centre and the date whereby the forecast banding is expected to apply.
- (e) The Volumetric Adjustment for Month  $n$  ( $VA_n$ ) for the minimum security Correctional Centre and maximum security Correctional Centre are calculated individually as follows:
- (i) Step 1 : For each day, calculate the actual number of Inmates (excluding Surge Capacity) within the relevant Correctional Centre as measured at 12am (**Actual Population**); and
  - (ii) Step 2: Deduct the Minimum Population for that Correctional Centre to find the daily Variance in Population (**VIP**);
  - (iii) Step 3: Multiply the VIP by the relevant Volumetric Variable Fee and add to this the relevant Volumetric Fixed Fee (**DVA**); and
  - (iv) Step 4: Sum DVA for every day in the Month.
- (f) For the avoidance of doubt, the Volumetric Adjustment will increase or decrease over time as the Inmate population at a Correctional Centre fluctuates.

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## 6. Surge Adjustment

### 6.1 Calculation of the Surge Adjustment

- (a) The purpose of the Surge Adjustment is to compensate Manage Co in accordance with this section for the additional costs of operation in respect of the utilisation of Surge Capacity at the Correctional Complex.
- (b) The Surge Adjustment will not be negative (i.e. the Surge Adjustment will either be zero or will be positive).
- (c) The Surge Fee shall be indexed by  $CPI_n$ .
- (d) The State must use reasonable endeavours to provide Manage Co with as much notice as practicable of any Surge Capacity forecasted to be utilised at the Correctional Complex.
- (e) The Surge Adjustment for Month  $n$  ( $SA_n$ ) for the Correctional Complex is calculated as follows:
  - (i) Step 1 : For each day, calculate the actual number of Surge Capacity Inmates within the Correctional Complex as measured at 12am (**Surge Population**); and
  - (ii) Step 2: Multiply the Surge Population by the Surge Fee (**DSA**); and

- (iii) Step 3: Sum DSA for every day in the Month.
- (f) For the avoidance of doubt, the Surge Adjustment will increase or decrease over time as the Surge Capacity population at the Correctional Complex fluctuates.

## 7. Cohort Adjustment

- (a) The purpose of the Cohort Adjustment is to enhance value for money and provide flexibility to the State by:
  - (i) compensating Manage Co in the event that the number of Remand Inmates at the Correctional Complex exceeds the Remand Inmate Threshold; and
  - (ii) reducing the payment obligation of the State in the event that the number of Remand Inmates at the Correctional Complex is lower than the Remand Inmate Threshold, down to the Remand Inmate Floor.
- (b) The Cohort Adjustment for Month n ( $CA_n$ ) is calculated as:

$$CA_n = (RI_n - (RIT * TP)) \times CAR \times CPI_n$$

Where:

$RI_n$  means the higher of RIFloor and RIActual;

RIActual means the daily average number of Remand Inmates in Month n;

RIFloor means the Remand Inmate Floor of 30% of  $TP_n$ ;

RIT means the Remand Inmate Threshold of 60%;

$TP_n$  means the daily average Inmate population at the Correctional Complex in Month n;

CAR means the monthly Cohort Adjustment Rate as set out in Annexure 5 to this Schedule 10; and

$CPI_n$  means the CPI Annual Multiplier for Month n.

- (c) For the avoidance of doubt, the Cohort Adjustment can be a positive or negative number.
- (d) For the purposes of this section, an Inmate in custody under sentence and under remand is to be treated as an Inmate in custody under sentence.

## 8. Lifecycle Charge

- (a) The Lifecycle Charge for Month n ( $LC_n$ ) is calculated as:

$$LC_n = LP_n \times CPI_n$$

where:



$LP_n =$  the Lifecycle Payment for Month n (as set out in Annexure 6 to this Schedule 10); and

$CPI_n =$  CPI Annual Multiplier for Month n.

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## 9. Pass Through Costs

- (a) The Pass Through Costs for the nth Month of the Operating Phase will be the sum of the following:
- (i) Pharmacy Costs which Manage Co is entitled to claim in accordance with section 9(b);
  - (ii) NSW Ambulance charges which Manage Co is entitled to claim in accordance with section 9(c);
  - (iii) Meal Costs which Manage Co is entitled to claim in accordance with section 9(d); and
  - (iv) Compulsory Drug Treatment Correctional Centre costs which Manage Co is entitled to claim in accordance with section 9(e).
- (b) Pharmacy costs
- (i) Manage Co will only be entitled to claim reimbursement of Pharmacy Costs after Pharmaceuticals have been administered to Custodial Patients (regardless of whether or not a Custodial Patient completes a course of Pharmaceuticals).
  - (ii) It is a condition precedent to Manage Co's entitlement to claim reimbursement of Pharmacy Costs that:
    - A. the Pharmacy Costs were properly and necessarily incurred in accordance with the Services Specification; and
    - B. Manage Co has complied with its obligations under this Deed in incurring the Pharmacy Costs (including submission of the Pharmaceuticals Reporting Spreadsheet).
  - (iii) As part of its Payment Claim prepared under clause 24.2(a) of this Deed, Manage Co must provide evidence of all Pharmacy Costs actually incurred and paid for by Manage Co during the relevant Month.
  - (iv) Manage Co acknowledges and agrees that it is only entitled to claim reimbursement of Pharmacy Costs up to the relevant unit price or rates, or in accordance with the applicable charging formula (as applicable), specified in the terms of the Pharmaceuticals Supplier's appointment in respect of:
    - A. each Pharmaceutical item;
    - B. those items of Imprest Stock that have been approved by the State in accordance with clause 7.12 of this Deed;
    - C. each Pharmaceutical Related Item;

- D. each Pharmaceutical Supply; and
  - E. each Urgent Pharmaceutical Supply.
- (c) NSW Ambulance Charges
- (i) Manage Co will only be entitled to claim reimbursement of NSW Ambulance Charges to the extent that the NSW Ambulance Charges were properly and necessarily incurred for the provision of emergency care.
  - (ii) As part of its Payment Claim prepared under clause 24.2(a) of this Deed, Manage Co must provide evidence of all NSW Ambulance Charges actually incurred and paid for by Manage Co during the relevant Month.
- (d) Meal Costs
- (i) As part of its Payment Claim prepared under clause 24.2(a) of this Deed, Manage Co must provide evidence of all Meal Costs actually paid for by Manage Co during the relevant Month.
  - (ii) Subject to 9(d)(iii) and 9(d)(iv) below, Manage Co will only be entitled to claim reimbursement for Meal Costs which have been paid for by Manage Co to the State (or CSI on behalf of the State) in consideration of the State performing its obligations under Schedule 17, in accordance with the prices and terms outlined in Schedule 17, with any changes to the prices and terms outlined in Schedule 17 as approved by the State.
  - (iii) Where the State (or CSI on behalf of the State) fails to comply with the State's obligations under section 1 of Schedule 17, Manage Co must implement its Contingency Plan. Where the agreed Contingency Plan permits it to do so, Manage Co is entitled to source meals from an external supplier and recover the costs of replacement meals and the reasonable administrative costs associated with finding a replacement supplier as a Pass Through Cost, provided that the meal costs are not disproportionate relative to the standard cost per CSI meal in accordance with Schedule 17 and Manage Co can demonstrate that it used reasonable endeavours to mitigate and minimise such costs.
  - (iv) Manage Co may also recover the costs of Replacement Meals as a Pass Through Cost in accordance with Sections 9(d)(i) and 9(d)(ii) above.
- (e) Compulsory Drug Treatment Correctional Centre
- (i) Manage Co will be entitled to claim reimbursement for certain agreed costs associated with provision of services to the Compulsory Drug Treatment Correctional Centre, as set out in the remainder of this Section 9(e).
  - (ii) Manage Co will be entitled to claim reimbursement for radiology services provided to Participants at the Compulsory Drug Treatment Correctional Centre in a relevant Month calculated by multiplying the CDTCC X-Ray Unit Cost by the number of Participants at the Compulsory Drug Treatment Correctional Centre to whom radiology services were provided in that month.

- (iii) Manage Co will be entitled to claim reimbursement for meal services provided to the Compulsory Drug Treatment Correctional Centre in a relevant Month calculated by multiplying the CDTCC Meal Service Unit Cost by the aggregate number of Participants at the Compulsory Drug Treatment Correctional Centre on each day of that month.
- (iv) Manage Co will be entitled to claim reimbursement for laundry services provided to the Compulsory Drug Treatment Correctional Centre in a relevant Month calculated by multiplying the CDTCC Laundry Unit Cost by the aggregate number of Participants at the Compulsory Drug Treatment Correctional Centre on each day of that month.
- (v) Manage Co will be entitled to claim reimbursement for waste disposal services provided to the Compulsory Drug Treatment Correctional Centre in a relevant Month calculated by multiplying the CDTCC Waste Disposal Unit Cost by the aggregate number of Participants at the Compulsory Drug Treatment Correctional Centre on each day of that month.

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## 10. Escort Payments

- (a) Manage Co will be paid for each Escort and Scheduled Escort in accordance with this section.
- (b) Manage Co and its Associates must not seek to extend the necessary duration of each Escort and Scheduled Escort (as the case may be).

### *Escorts*

- (c) The amount payable by the State for each Escort undertaken in the Month is calculated based on the duration of the Escort and the relevant price per one hour interval (or part thereof) as identified in Annexure 8 of this Schedule 10 depending on the number of Inmates escorted in that Escort and the security classification of the Inmates escorted (as the case may be).
- (d) The price per one hour interval in Annexure 8 of this Schedule 10 will be Indexed by the WPI Annual Multiplier.
- (e) Where practicable, Manage Co must seek to minimise the frequency with which Staff are required to be relieved from an Escort and replaced with alternative Staff due to the duration of the Escort.

### *Scheduled Escorts*

- (f) The amount payable by the State for each Scheduled Escort undertaken in the Month is calculated based on the actual duration of the Scheduled Escort (or part thereof where the Scheduled Escort straddles the end of a Month) and the relevant price per day (or part thereof) as identified in Annexure 8 of this Schedule 10 depending on the security classification of the Inmates escorted (as the case may be).
- (g) The price per daily rate in Annexure 8 of this Schedule 10 will be Indexed by the WPI Annual Multiplier.

## 11. Total Deductions

### 11.1 Calculation of the Total Deductions

- (a) With the exception of the first three Months of the Operating Phase where  $TD_n$  is deemed to be equal to zero, and subject to clause (d), Total Deductions for the  $n$ th Month of the Operating Phase ( $TD_n$ ) are calculated as:

$$TD_n = \sum QFA_n$$

where:

$\sum QFA_n$  = Quality Failure Abatement for the relevant Month, calculated in accordance with section 11.2.

- (b) Any errors or omissions that are found to be deliberate instances of concealing or omitting to report a Quality Failure Abatement will attract a reporting failure factor equal to 200% of the relevant Quality Failure Points.
- (c) In the Month that a reporting failure is identified (regardless of when or how it is identified) Manage Co is required to record the correct details regarding the Quality Failure Abatement in an amended monthly report for the Month in which the error occurred. The Monthly Service Payment for the Month in which the reporting failure is identified will be adjusted to take account of any overpayment by the State in the Month that the reporting failure relates to.
- (d) Without limiting section 11.1(f), if Manage Co has incurred Total Deductions and Charge Events in accordance with clause 24.3(a)(i) of the Deed (as determined under the Performance Regime), in any rolling 12 Month period with an aggregate value equal to the Abatement Cap, no further Total Deductions will be deducted from the Monthly Service Payment for that rolling 12 Month period (**Excess Deductions**).
- (e) Subject to section 11.1(f), any Excess Deductions which are not deducted from the Monthly Service Payment pursuant to section 11.1(d) will not be taken into account in the calculation of aggregated Total Deductions for the purposes of determining whether section 11.1(d) applies in future rolling 12 Month periods.
- (f) Notwithstanding anything to the contrary in this Deed, in no circumstance does section 11.1(d) limit or modify Manage Co's obligation under clause 24.3(a)(ii) of the Deed to pay the State amounts (or Manage Co's liability to the State for amounts) arising from or in connection with the occurrence of any Charge Events (as determined under the Performance Regime).

### 11.2 Calculation of the Quality Failure Abatement

- (a) A Quality Failure will arise when:
- (i) Manage Co fails to meet the Target Performance Range for any Key Performance Indicator as set out in section 2 of Schedule 11 (Performance Regime); or
  - (ii) where there is no Target Performance Range for a Key Performance Indicator, where the formula in section 2 of Schedule 11 applicable to that Key Performance Indicator (or that part of the Key Performance Indicator) results in a value greater than zero.
- (b) Where a Quality Failure occurs in a Month, Quality Failure Points (**QFPs**) will accrue and will be calculated with reference to the relevant Key Performance

Indicator and methodology for the calculation of QFPs set out in section 2 of Schedule 11 (Performance Regime).

- (c) Where two or more Quality Failures arise from the same incident, the higher of the calculated QFPs will apply.
- (d) To the extent that:
  - (i) the same Quality Failure occurs in two or more Months within a period of six consecutive Months; and
  - (ii) Manage Co's performance falls within the Level 2 Performance Range for each of those Months,

the QFPs which accrue in respect of that KPI or that part of the KPI for the second Month and any subsequent Months where section 11.2(d)(ii) continues to apply will be multiplied by a factor of two.

- (e) The Quality Failure Abatement for the Month ( $\sum QFA_n$ ) will be calculated as:

$$\sum QFP \times \blacksquare \times SIF_n$$

where the resultant value will either be nil or positive (such that it increases Total Deductions and reduces the Monthly Service Payment).

**11.3 Rectification**

- (a) This section sets out provisions in respect of the Rectification of Inmate Place Unavailability and FM Service Failures (as relevant to the calculation of Quality Failure Abatements in section 11.2).
- (b) The Rectification Period will commence at the moment that the Inmate Place Unavailability or the FM Service Failure (as the case may be):
  - (i) first comes to the attention of any member of Staff (including by notification by the State, a Monitor, an Inmate or a Visitor to a member of Staff);
  - (ii) is detected by the BMS or any other automatic monitoring or alarm system; or
  - (iii) should have come to the attention of any member of Staff or should have been detected by the BMS or any other automatic monitoring or alarm system, if Manage Co was complying with its obligations under this Deed,

whichever is the earlier.

- (c) If, at any time during the Operating Phase, Manage Co refuses to accept an Inmate to occupy any Available Inmate Place, that Available Inmate Place is deemed to be an Inmate Place Unavailability from the time of such refusal by Manage Co until the date on which Manage Co makes that Inmate Place Available.
- (d) Manage Co may request an extension to the Rectification Period in respect of each Inmate Place Unavailability and each FM Service Failure. The State Representative will not unreasonably refuse to grant such extensions provided that:

- (i) Manage Co has promptly Responded and, where applicable, has diligently pursued and effected a Temporary Fix in accordance with section 11.4 to the State Representative's satisfaction;
  - (ii) the Inmate Place Unavailability or FM Service Failure (as the case may be) was not caused by an act or omission of Manage Co or a Manage Co Associate (including the provision of inadequate resources) or an act or omission of an Inmate, to the extent arising from a failure to perform the Services in accordance with the Deed;
  - (iii) Manage Co has diligently pursued a remedy or cure; and
  - (iv) the need for the extension is not due to a failure on the part of Manage Co to adhere to Best Services Practices, including the identification, purchasing and storage of spare parts for plant and Equipment whose failure may have a significant impact upon the operation of the Correctional Complex in accordance with this Deed.
- (e) For so long as any Inmate Place Unavailability or FM Service Failure (as the case may be) continues, Manage Co must provide to the State a daily update on the progress made in Rectification, together with any revised estimate of the likely date of Rectification.
- (f) The period of the Inmate Place Unavailability or FM Service Failure (as the case may be) will be determined in accordance with the following procedure:
- (i) Manage Co must immediately notify the State when it believes that any Inmate Place Unavailability or FM Service Failure (as the case may be) has been Rectified (the "Rectification Notice"); and
  - (ii) the time of such Rectification Notice will, subject to section 11.3(i), constitute the time of Rectification.
- (g) The State will be entitled to inspect the area of the Correctional Complex that is the subject of the Rectification Notice and notify Manage Co of whether or not it agrees that the Inmate Place Unavailability or FM Service Failure (as the case may be) has been Rectified by no later than 2 Business Days after receipt by the State of the Rectification Notice.
- (h) If the State:
- (i) notifies Manage Co that it agrees with the Rectification Notice; or
  - (ii) does not notify Manage Co in accordance with section 11.3(i),
- the relevant Inmate Place Unavailability or FM Service Failure (as the case may be) ceases from the time of the Rectification Notice.
- (i) If the State notifies Manage Co that it does not agree with the Rectification Notice in accordance with section 11.3(g), the relevant Inmate Place Unavailability or FM Service Failure (as the case may be) is deemed to continue until Rectification in accordance with section 11.3(h).

#### 11.4 Temporary Fix

- (a) This section sets out provisions in respect of a Temporary Fix for Inmate Place Unavailability and FM Service Failures (as relevant to the calculation of Quality Failure Abatements in section 11.2).
- (b) If Manage Co considers that it is not able to Rectify an Inmate Place Unavailability or FM Service Failure (as the case may be) within the relevant

Rectification Period, it may seek approval from the State for a course of action that will temporarily ameliorate the consequences of the Inmate Place Unavailability or FM Service Failure (as the case may be) whilst the problem is being Rectified (**Temporary Fix**). Manage Co must specify the proposed time by which the Rectification must occur (**Permanent Fix Time**).

- (c) Manage Co may not proceed to perform a Temporary Fix without the State's prior approval of the Temporary Fix and Permanent Fix Time.
- (d) The parties acknowledge that the State is entitled to reject a Temporary Fix.
- (e) If the State allows a Temporary Fix:
  - (i) Manage Co must diligently pursue the Temporary Fix within the time frames agreed as part of the Temporary Fix and must ensure that the Inmate Place Unavailability or FM Service Failure (as the case may be) is Rectified by the Permanent Fix Time; and
  - (ii) for the purpose of Schedule 11, the expiry of the Rectification Period for the Inmate Place Unavailability or FM Service Failure (as the case may be) will be deemed to be the Permanent Fix Time.
- (f) No approval of a Temporary Fix or Permanent Fix Time, or extension of the Permanent Fix Time or Rectification Period, by the State will:
  - (i) relieve Manage Co of any of its obligations or liabilities under this Project Deed; or
  - (ii) entitle Manage Co to make a Claim against the State or its Associates.

#### 11.5 Review of Key Performance Indicators

- (a) At the end of each Operating Year, Manage Co must consult in good faith and use all reasonable endeavours to review the operation of each part of each Key Performance Indicator with the State, taking into consideration the following factors:
  - (i) the Target, Level 1 and Level 2 Performance Ranges may be adjusted to account for industry improvements to maintain Manage Co's performance targets relative to publicly operated correctional centre performance levels, taking into consideration the specific characteristics of the Correctional Complex and Inmates;
  - (ii) the outcome of:
    - A. any audit performed in accordance with clause 9; and
    - B. the State exercising any rights under clause 18.3, of this Deed; and
  - (iii) the Project Objectives.
- (b) To the extent that, in the course of their review, the parties agree that:
  - (i) a Key Performance Indicator or a part of a Key Performance Indicator should be omitted, replaced or otherwise amended;
  - (ii) a new Key Performance Indicator should be inserted;

- (iii) the Target, Level 1 and/or Level 2 Performance Ranges (as set out for each Key Performance Indicator in Schedule 11) should be increased, decreased or otherwise amended; or
- (iv) the Quality Failure Points associated with a Key Performance Indicator or any part of a Key Performance Indicator (as set out in Schedule 11) should be amended,

then:

- (v) the State must prepare and provide Manage Co with an amended version of Schedule 11 which clearly identifies any amendments (**Amended Schedule 11**); and
- (vi) both parties must sign the Amended Schedule 11,

and from the date on which the Amended Schedule 11 has been signed by both parties:

- (vii) the Amended Schedule 11 will be deemed to have replaced Schedule 17; and
- (viii) Quality Failure Abatements will be calculated with reference to the Amended Schedule 11.

## 12. Charge Event Adjustment

- (a) Subject to section 11.1(f), if a Charge Event occurs, the State may elect to adjust the Monthly Service Payment in accordance with clause 24.3(a)(i) of the Deed (**Charge Event Adjustment**).
- (b) The Charge Event Adjustment for the nth Month of the Operating Phase ( $CEA_n$ ) is calculated as:

$$CEA_n = \sum CEL_n \times CPI_n$$

where:

- $CEL_n$  = the liability for each Charge Event in Month n that the State elects to charge through an adjustment to the Monthly Service Payment; and
- $CPI_n$  = CPI Annual Multiplier for Month n (in accordance with clause 1(b) of Schedule 11 (Performance Regime)).

## 13. Reintegration and Incentive Payments

### 13.1 Definitions

In this section 13:

**Achieved Rate** means the Re-Incarceration Rate or Return To Custody Rate achieved by Manage Co (as applicable for each Inmate Group).

**Benchmark Rate** means the State Re-incarceration Rate less three percentage points (Re-incarceration Rate (%) – 3%), or the State Return To Custody Rate less three percentage points (as applicable for each Inmate Group). The Benchmark rate cannot be a negative number. If the Benchmark Rate is a negative number, it is deemed to be zero.



**Drug Court** has the Drug Court of New South Wales constituted by *Drug Court Act 1998* (NSW).

**Eligible Inmates** means Inmates:

- (a) who were:
  - (i) Remand Release Inmates remanded in custody for a minimum of four weeks at the Correctional Complex (in the context of remand Inmate Groups and determining the Return To Custody Rate); or
  - (ii) in custody under sentence for a minimum of three months at the Correctional Complex (in the context of sentenced Inmate Groups and determining the Re-Incarceration Rate),  
immediately prior to their Release Date;
- (b) who did not die within 24 months of their Release Date;
- (c) who were not deported within 24 months of their Release Date;
- (d) who were Released from custody and that Release did not constitute an Erroneous Release; and
- (e) whose Release Dates were in Reintegration Review Year y-2.

**Erroneous Release** has the meaning given in Schedule 11 (Performance Regime).

**Inmate Group** means each of the following groups of Inmates:

- (a) Aboriginal and Torres Strait Islander sentenced Inmates;
- (b) Non Aboriginal and Torres Strait Islander sentenced Inmates;
- (c) Aboriginal and Torres Strait Islander Remand Inmates;
- (d) Non Aboriginal and Torres Strait Islander Remand Inmates.

**Inmates In-Scope** means Inmates:

- (a) who were:
  - (i) Remand Release Inmates at a State Correctional Centre for at least four weeks prior to their Release Date (in the context of determining the State Return To Custody Rate); or
  - (ii) in custody under sentence at a State Correctional Centre for at least three months prior to their Release Date (in the context of determining the State Re-incarceration Rate);
- (b) who did not die within 24 months of their Release Date;
- (c) who were not deported within 24 months of their Release Date;
- (d) who were Released from custody and that Release did not constitute an Erroneous Release; and
- (e) whose Release Dates were in Reintegration Review Year y-2.

**Monthly Actual Reintegration Costs** means the actual substantiated costs incurred by Manage Co to improve the reintegration outcomes for Inmates to the extent such costs

would not otherwise have been incurred by Manage Co to provide the Services in accordance with this Deed.

**New Offence** means an offence with a valid Justice Link case/charge identifier that is:

- (a) associated with a custodial remand or sentence order;
- (b) has a valid JusticeLink case/charge identifier; and
- (c) has a recorded offence date which post-dates the remand episode release date.

**Re-Incarceration Rate** means the number of Eligible Inmates returning to custody under sentence in the NSW correctional centre system within 24 months of their Release Date expressed as a percentage of the total number of Eligible Inmates.

**Reintegration Review Year** means:

- (a) for the first Reintegration Review Year, the period of 12 Months commencing from the second anniversary of the Operational Commencement Date of the Existing Facility;
- (b) subject to paragraph (c) below, each subsequent period of 12 Months; and
- (c) for the final Reintegration Review Year, the period of 12 Months which expires on the second anniversary of the Final Expiry Date unless terminated earlier, in which case no Incentive Payment will be payable after the Expiry Date.

**Release** or **Released** means the release of an Inmate to re-enter the community whether through release from remand, on completion of a custodial sentence, or on parole.

**Release Date** means the date on which the Inmate was Released from a State Correctional Centre or the Correctional Complex (as the case may be).

**Remand Release Inmate** means an inmate released from a NSW Correctional Centre where:

- (a) the discharge reason does not relate to:
  - (i) the completion or part completion of any custodial sentence;
  - (ii) being sentenced to a community-based order;
  - (iii) being referred to the Drug Court;
  - (iv) being referred for mental health treatment and/or screening; or
  - (v) being transferred to another jurisdiction (juvenile justice, interstate, other form of diversion from full-time imprisonment such as periodic detention);
- (b) the imprisonment status at time of release was recorded as “unsentenced”;
- (c) the offender was not under community-based supervision at the time or returned to or commenced community supervision within 1 month of release; and
- (d) had at least one valid remand order recorded against the episode of imprisonment relating to the discharge.

**Return To Custody Rate** means the number of Eligible Inmates returned to a gazetted NSW correctional centre, excluding the Amber Laurel Correctional Centre, for a New Offence within 24 months of their Release Date expressed as a percentage of the total number of

**Eligible Inmates.** For the avoidance of doubt, if an individual was a remand release on more than one occasion during a 24 month period, then only the first release in that period is used in the numerator and denominator of the percentage calculation.

**State Correctional Centre** means any correctional centre operated by the State or a third party provider in the State of New South Wales other than the Correctional Complex.

**State Return To Custody Rate** means the number of remand Inmates In-Scope returned to a gazetted NSW correctional centre, excluding the Amber Laurel Correctional Centre, for a New Offence within 24 months of their Release Date expressed as a percentage of the total number of remand Inmates In-Scope. For the avoidance of doubt, if an individual was a remand release on more than one occasion during a 24 month period, then only the first release in that period is used in the numerator and denominator of the percentage calculation.

**State Re-Incarceration Rate** means the number of sentenced Inmates In-Scope returning to custody under sentence in the NSW correctional centre system within 24 months of their Release Date expressed as a percentage of the total number of sentenced Inmates In-Scope.

### 13.2 Monthly Reintegration Payment

*Refer to Annexure 11 of this Schedule 10 for a worked example of the calculation of the Monthly Reintegration Payment.*

- (a) The Monthly Reintegration Payment for the nth Month of the Operating Phase ( $MRP_n$ ) is 50% of the Monthly Actual Reintegration Costs for the nth month of the Operating Phase, subject to section 13.2(b) of this Schedule 10.
- (b) Subject to section 13.2(c) of this Schedule 10, the aggregate Monthly Reintegration Payments for a Financial Year must not exceed:

$$ARP = RC \times CPI_y$$

where:

**ARP** = Annual Reintegration Payments

**RC** = Capped Reintegration Cost as set out in Annexure 10 to this Schedule 10; and

**$CPI_y$**  = CPI Annual Multiplier calculated at the end of the last Month of Reintegration Review Year y.

- (c) Where the Operating Phase does not commence on the first day of a Financial Year, ARP will be adjusted proportionately for:
  - (i) the first Financial Year in the Operating Phase; and
  - (ii) the last Financial Year in the Operating Phase,

having regard to the number of days in the relevant partial Financial Year as a percentage of the total number of days in the full Financial Year.

- (d) Manage Co:
  - (i) must provide the State with information and evidence to the satisfaction of the State (acting reasonably) to substantiate that Manage Co's Monthly Actual Reintegration Costs have been incurred

to improve the reintegration outcomes for Inmates and would not have otherwise been incurred by Manage Co to provide the Services in accordance with this Deed; and

- (ii) may provide its Monthly Reintegration Payment determined in accordance with this section 13.2 of this Schedule 10 in a Payment Claim provided to the State in accordance with clause 24.2(a) of the Deed.

**13.3 Annual Incentive Payments**

*Refer to Annexure 11 of this Schedule 10 for a worked example of the calculation of the annual Incentive Payment.*

- (a) Incentive Payments will be calculated for each Reintegration Review Year in accordance with sections 13.3(b), 13.3(c) and 13.3(d) 13.2and, if relevant, payable in accordance with section 13.4.
- (b) Incentive Payments for Reintegration Review Year y are calculated as follows:

$$IP_y = BI_y \times CPI_y$$

where:

**BI<sub>y,i</sub>** means the Base Incentive for Inmate Group i in Reintegration Review Year y, calculated in accordance with section 13.2(c); and

**CPI<sub>y</sub>** = CPI Annual Multiplier calculated at the end of the last Month of Reintegration Review Year y.

- (c) Base Incentive in Review Year y is to be calculated as the lesser of 13.3(c)(i) and 13.3(c)(ii), being:

- (i)

$$BI_y = \sum ((BR_{y,i} - AR_{y,i}) \times IF_y \times \frac{NR_{y,i}}{NR_y} \times IR_i )$$

where:

**BR<sub>y,i</sub>** means the Benchmark Rate for Inmate Group i in Reintegration Review Year y;

**AR<sub>y,i</sub>** means the Achieved Rate for Inmate Group i in Reintegration Review Year y;

**IF<sub>y</sub>** means the higher of the total number of Eligible Inmates in Reintegration Review Year y and the inmate floor as set out in Annexure 10 to this Schedule 10;

**NR<sub>y,i</sub>** means the number of Eligible Inmates in Inmate Group i in Reintegration Review Year y;

**NR<sub>y</sub>** means the total number of Eligible Inmates in Reintegration Review Year y; and

**IR<sub>i</sub>** means the incentive rate for Inmate Group i as set out in Annexure 10 to this Schedule 10; or

(ii)

$$BI_y = IC$$

where:

**IC** means the Incentive Cap as set out in Annexure 10 to this Schedule 10.

(d) Where  $IP_y$  is negative:

- (i) no Incentive Payment will be payable by the State; and,
- (ii) Manage Co will not be required to make a payment to the State.

### 13.4 Information and calculation

- (a) Within four weeks after the end of the Reintegration Review Year, the State will provide Manage Co with the Benchmark Rate for each Inmate Group, the Re-Incarceration Rate or Return To Custody Rate for each Inmate Group (as applicable) and the number of Eligible Inmates for each Inmate Group.
- (b) Manage Co is then responsible for calculating  $IP_y$  and providing these calculations to the State in accordance with clause 24.2(a) of the Deed.
- (c) [PCC1]Manage Co may (acting reasonably) request additional information from the State in respect of the Incentive Payment and the State Re-incarceration Rate.
- (d) If:
  - (i) the State receives a request from Manage Co for additional information pursuant to section 13.4(c) of this Schedule 10; and
  - (ii) the requested information is within the State's possession or knowledge,

the State may provide such information to Manage Co in its discretion having regard to (amongst other things):

- (iii) its obligations at Law, including in respect of privacy; or
- (iv) the State's confidentiality obligations.

### 13.5 General

The parties acknowledge and agree that:

- (a) the maximum aggregate amount payable by the State to Manage Co in respect of the Monthly Reintegration Payment and Incentive Payments will not exceed [REDACTED] real as at 30 June 2018);
- (b) the State's obligation to pay the Monthly Reintegration Payment and Incentive Payments ceases on the earlier of:
  - (i) the Final Expiry Date; or
  - (ii) the earlier termination of this Deed; and
- (c) if this Deed expires on the Final Expiry Date, the maximum number of Incentive Payments which may be payable by the State will not exceed 10.

**13.6 Review of Reintegration and Incentive Payment Regime**

- (a) At the same time as the parties review the Key Performance Indicators in accordance with section 11.5 of this Schedule 10, the parties must review the operation of the regime contemplated by this section 13 of Schedule 10.
- (b) To the extent that, in the course of their review, the parties agree any amendments to the regime contemplated by this Schedule 10 then:
- (i) the State must prepare and provide Manage Co with an amended version of Schedule 10 which clearly identifies any amendments (**Amended Schedule 10**); and
  - (ii) both parties must sign the Amended Schedule 10,
- and from the date on which the Amended Schedule 10 has been signed by both parties:
- (iii) the Amended Schedule 10 will be deemed to have replaced Schedule 10; and
  - (iv) the Monthly Reintegration Payment and Incentive Payments will be calculated with reference to the Amended Schedule 10.
- (c) Subject to section 13.6(d) of this Schedule 10, the State may, in its absolute discretion, elect to delete the regime contemplated by section 13 of this Schedule 10 and if so:
- (i) the State must:
    - A. provide a notice to Manage Co expressly stating it wishes to delete the regime contemplated by section 13 of this Schedule 10;
    - B. prepare and provide Manage Co with an amended version of Schedule 10 which deletes the regime contemplated by this section 13 of this Schedule 10 (**Schedule 10 (No Reintegration Option)**); and
  - (ii) both parties must sign the Schedule 10 (No Reintegration Option),
- and from the date being 3 months from receipt by Manage Co of the State's notice pursuant to section 13.6(c)(i)(A) of this Schedule 10 (regardless of whether the parties have signed the Schedule 10 (No Reintegration Option)):
- (iii) the Schedule 10 (No Reintegration Option) will be deemed to have replaced Schedule 10; and
  - (iv) the Monthly Reintegration Payment and Incentive Payments will no longer be payable by the State.
- (d) The State's right to delete the regime in this section 13 of this Schedule 10 in accordance with section 13.6(c) of this Schedule 10:
- (i) applies on an annual basis; and
  - (ii) expires annually:
    - A. if the parties agree amendments to the regime in accordance with section 13.6(b) of this Schedule 10, on

the date on which the Amended Schedule 10 has been signed by both parties; or

- B. if the parties do not agree amendments to the regime in accordance with section 13.6(b) of this Schedule 10, on the date being 6 months following the end of the relevant Operating Year.

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#### 14. Transition Payments

- (a) The purpose of the Transition Phase Payments for the Existing Facility is to compensate Manage Co for the costs associated with preparing for Operational Readiness of the Existing Facility.
- (b) The purpose of the Transition Phase Payments for the Expanded Facility is to compensate Manage Co for the costs associated with preparing for Operational Readiness of the Expanded Facility,
- (c) The Transition Payments will include provision for:
- (i) management costs;
  - (ii) equipment purchases;
  - (iii) costs of preparing, approving and complying with the Transition Plan or Operational Readiness Plan (as applicable);
  - (iv) costs of developing plans required for the Operating Phase;
  - (v) recruitment costs;
  - (vi) staff training costs;
  - (vii) insurance costs;
  - (viii) IT and systems costs; and
  - (ix) other mobilisation costs.
- (d) The Transition Payments will be paid in accordance with clause 24.1 of the Deed.

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#### 15. Additional Security Services Payment

- (a) During the Initial Operating Phase, Manage Co will be paid an Additional Security Services Payment as compensation for providing Additional Officers.
- (b) Subject to clause 15(c), the Additional Security Services Payment will be calculated for Month n as the sum of:
- (i) the Core Additional Security Escorts Fee, being the monthly fee for the provision of 10 Additional Officers for every Escort Day in Month n, as identified in Annexure 9 of this Schedule 10; and
  - (ii) where the State provides an Additional Security Escort Notice that requires more than ten Additional Officers on an Escort Day, the number of actual hours worked by the eleventh Additional Officer and each further Additional Officer in Month n in accordance with clause

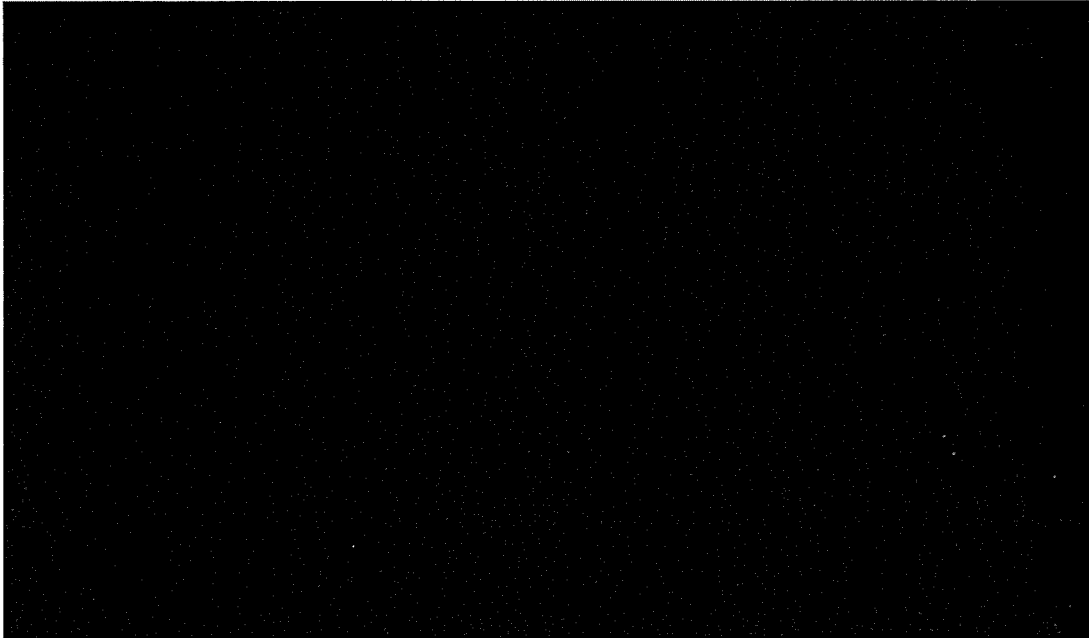
14.2 of the Deed multiplied by the Additional Security Escorts Hourly Rate as identified in Annexure 9 of this Schedule 10.

- (c) To the extent Manage Co can mitigate its costs in relation to providing Additional Officers in accordance with clause 14.2(e) of the Deed, including:
- (i) where the relevant Additional Security Escorts Notice requires less than 10 Additional Officers for any Escort Day, by redeploying the surplus Additional Officers to other posts within the Correctional Complex; or
  - (ii) by using correctional officers whose employment is otherwise paid for through the Monthly Service Payment or Transition Phase Payment for the Expanded Facility,

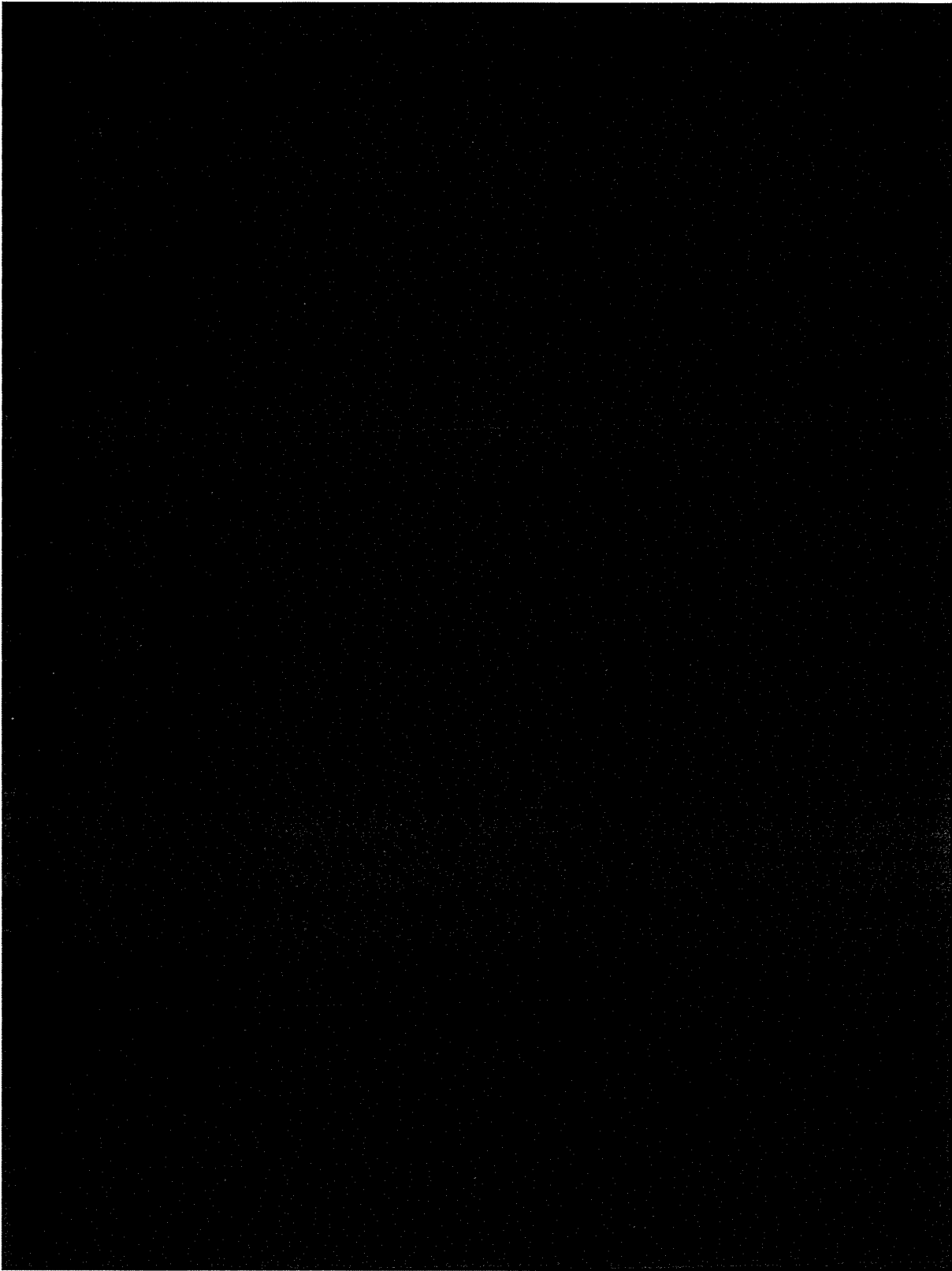
the State will reduce the Additional Security Services Payment by this amount, to avoid duplication of payment for the Services.



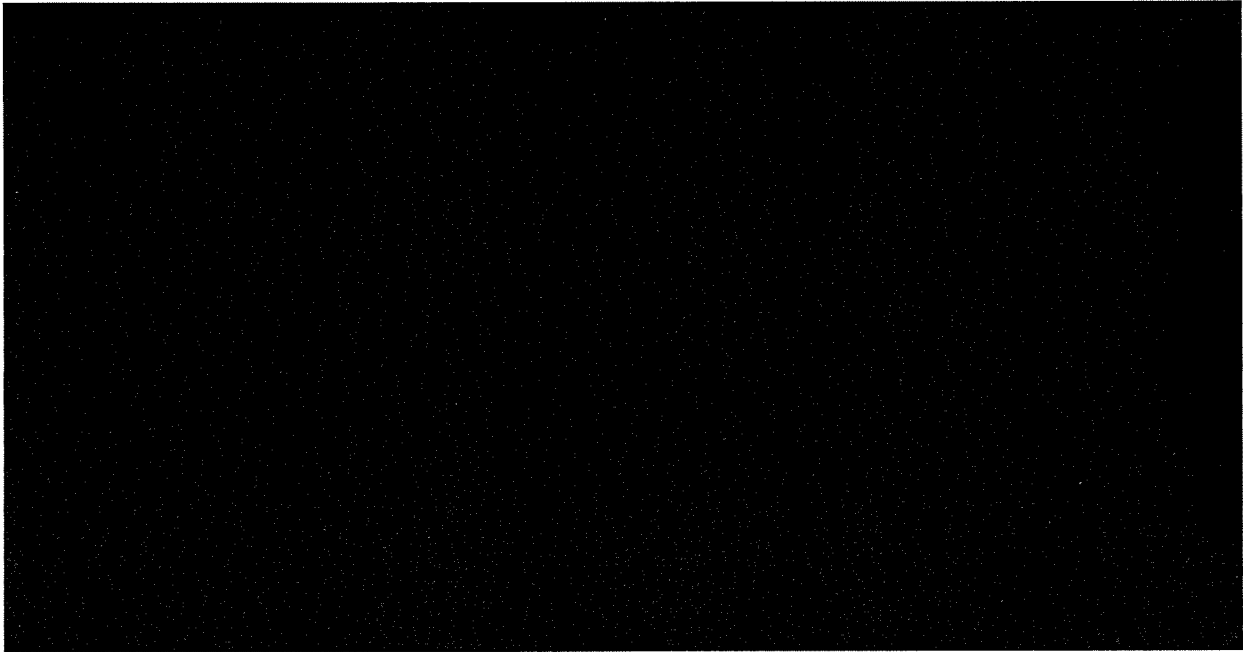
**Annexure 1** [REDACTED]



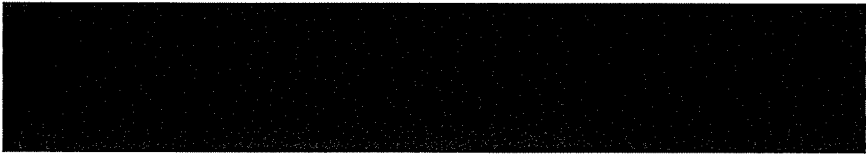
**Annexure 2**



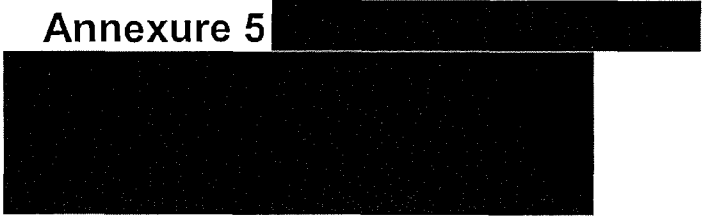
Annexure 3 -



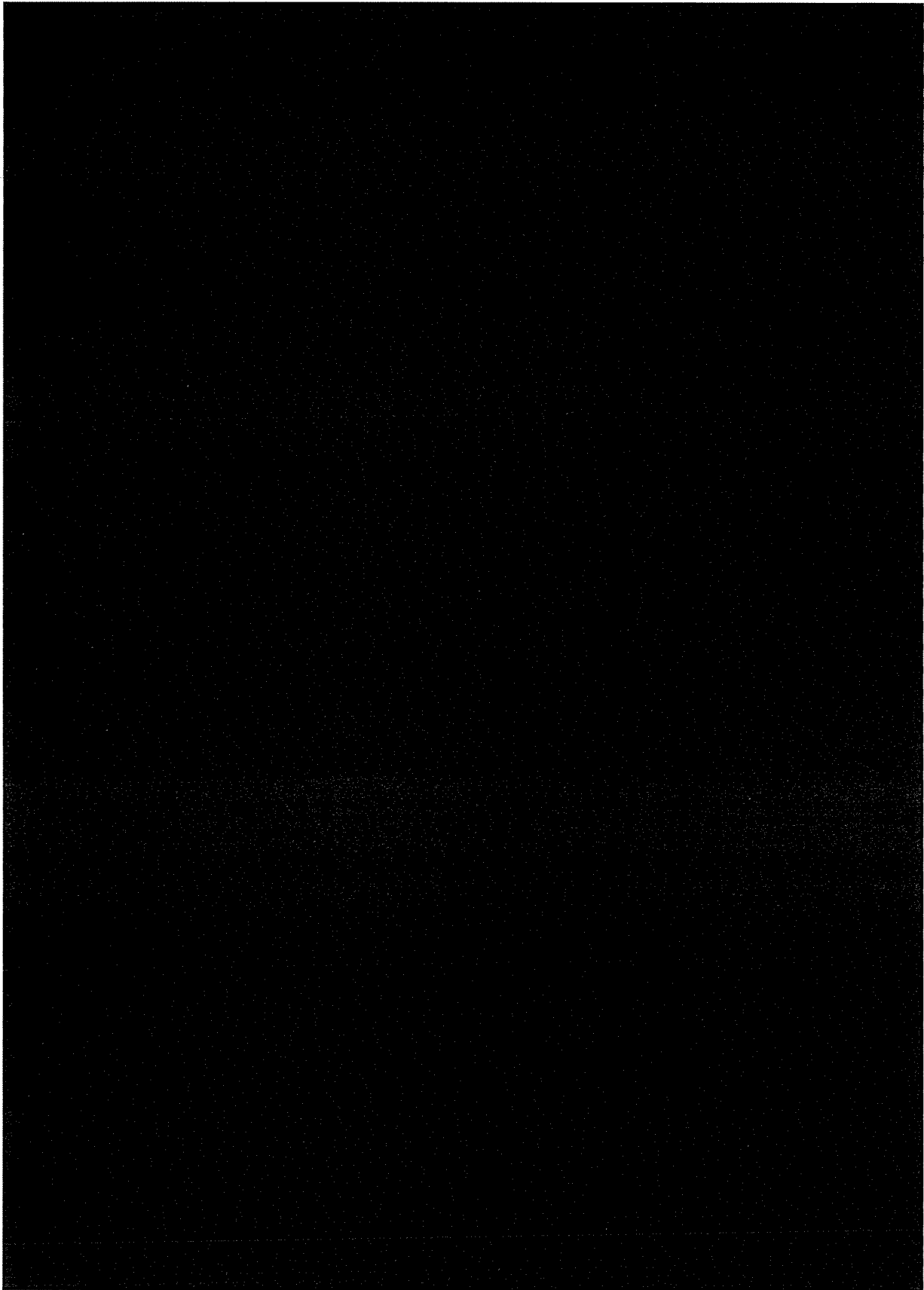
**Annexure 4** - [REDACTED]

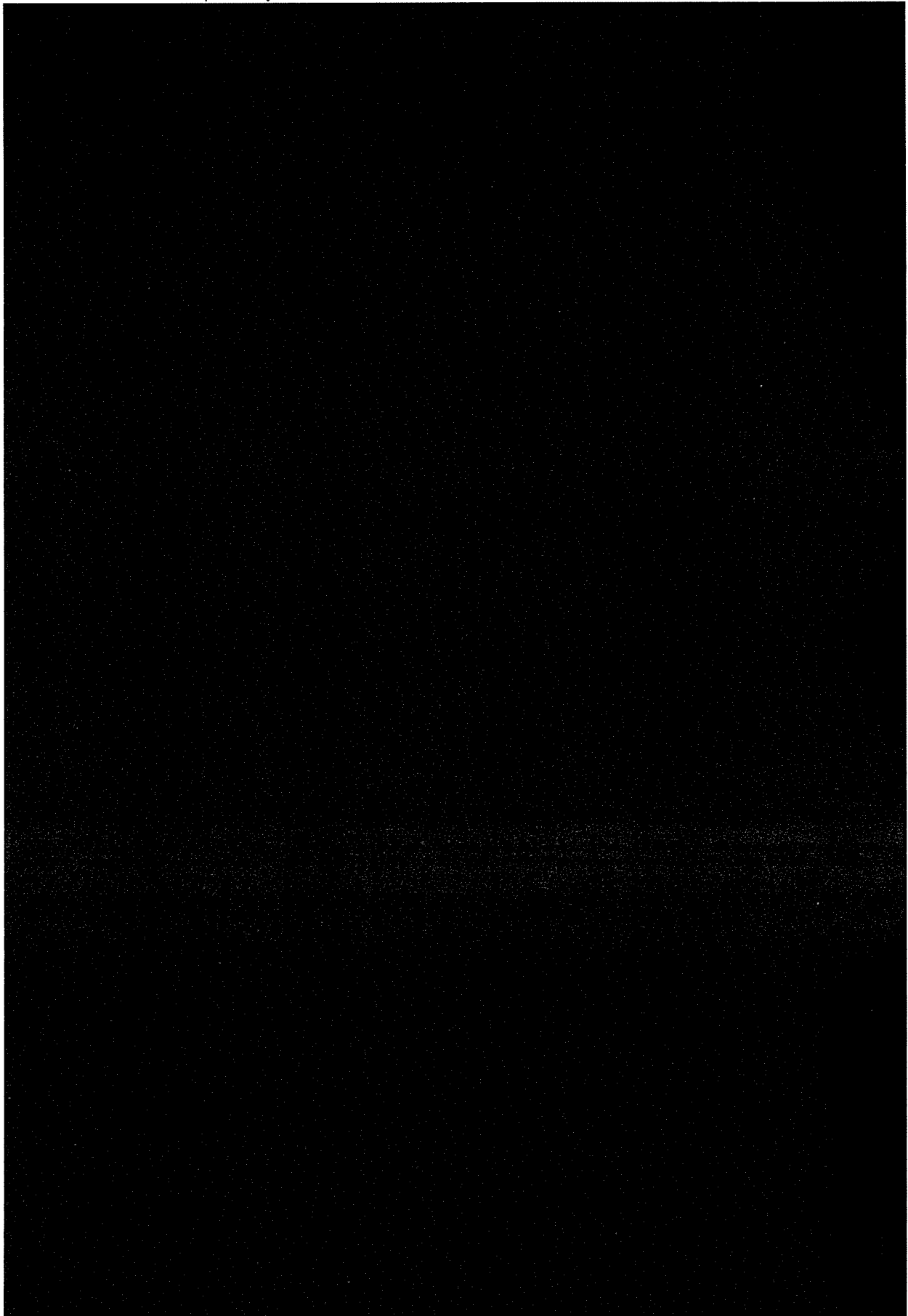


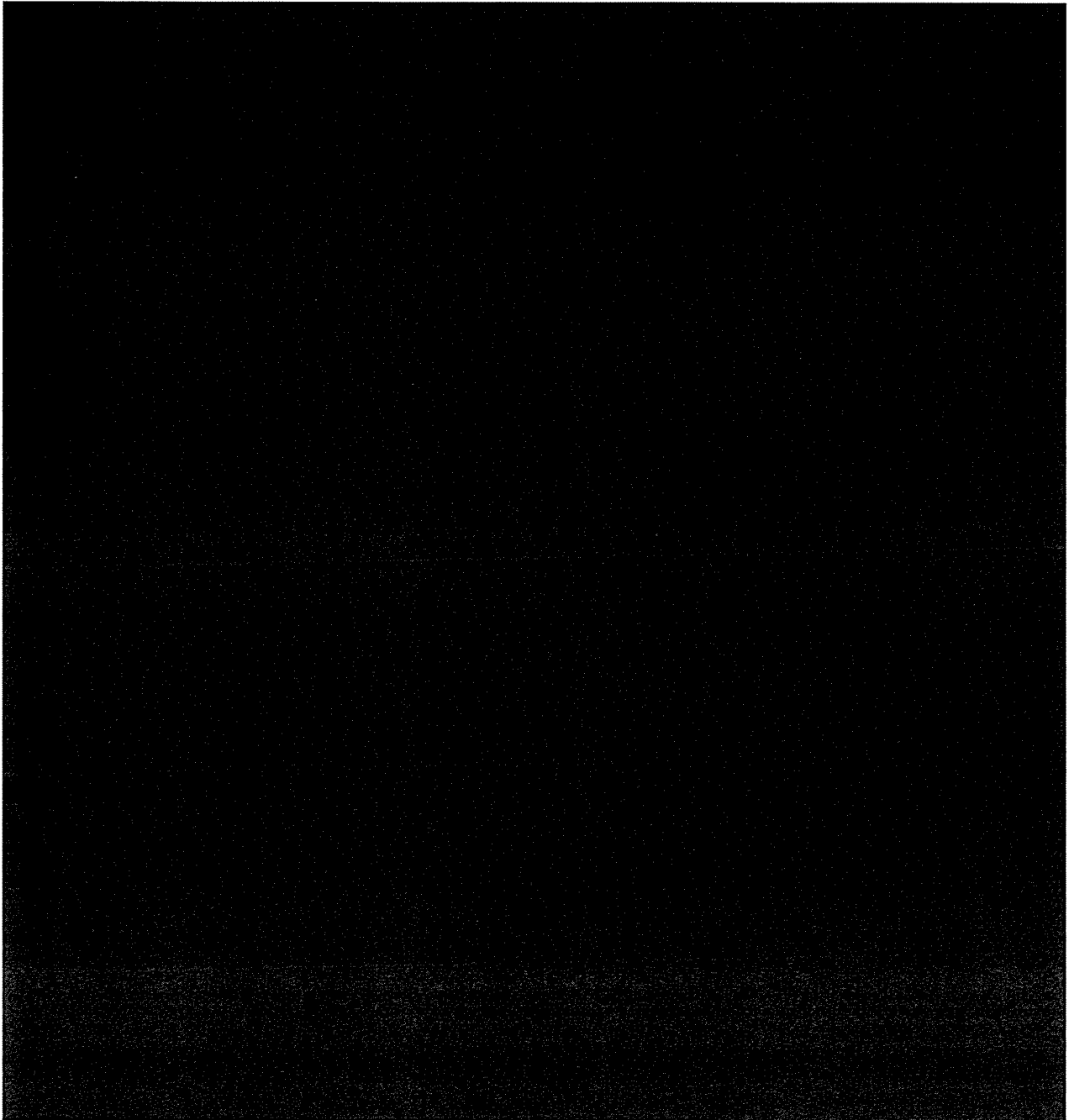
**Annexure 5**



**Annexure 6 – [REDACTED]**

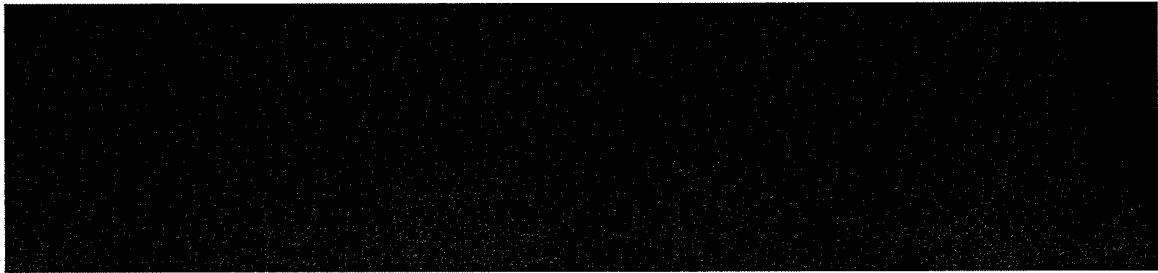








**Annexure 7 –** 



**Annexure 8** [REDACTED]



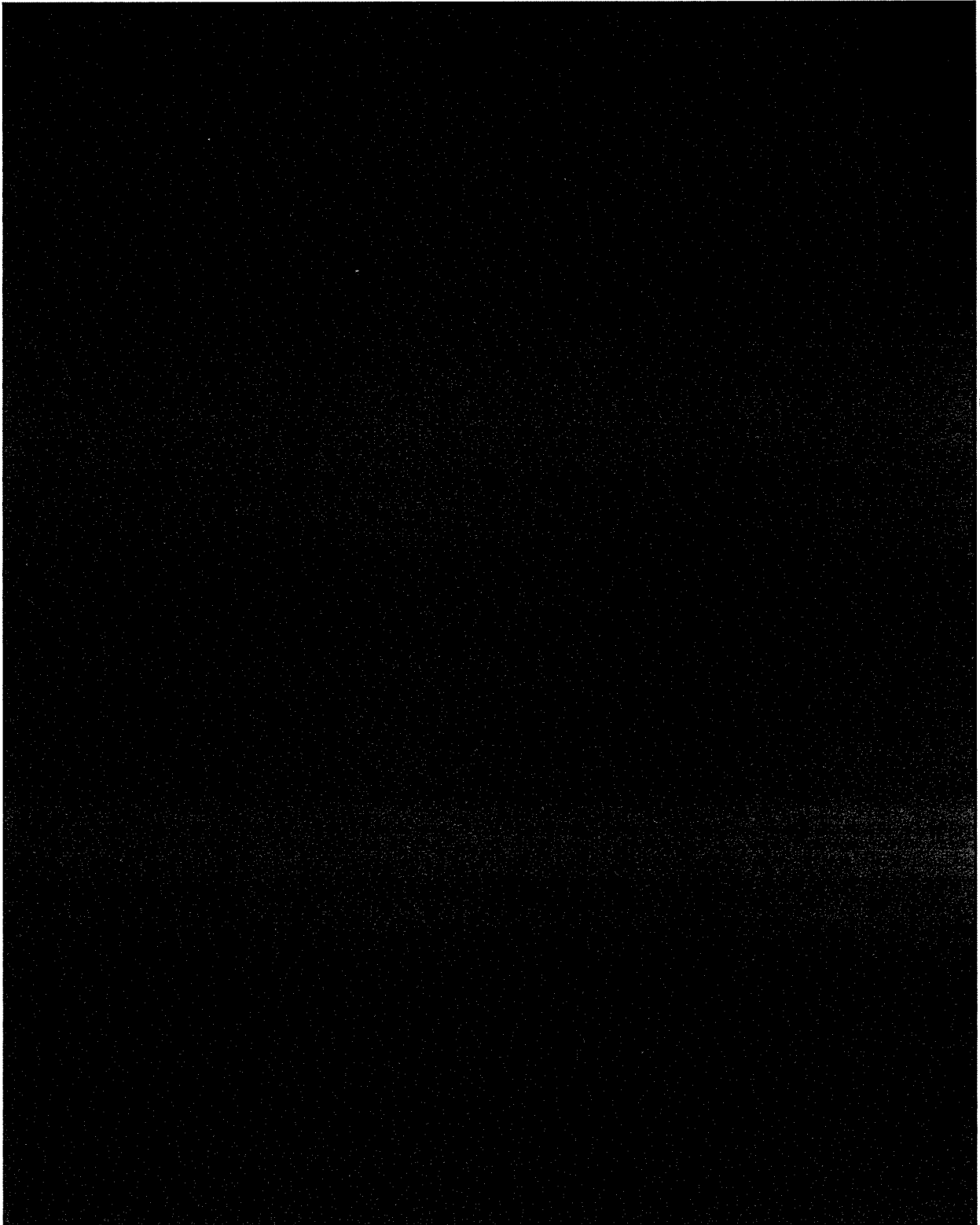
**Annexure 9 –**



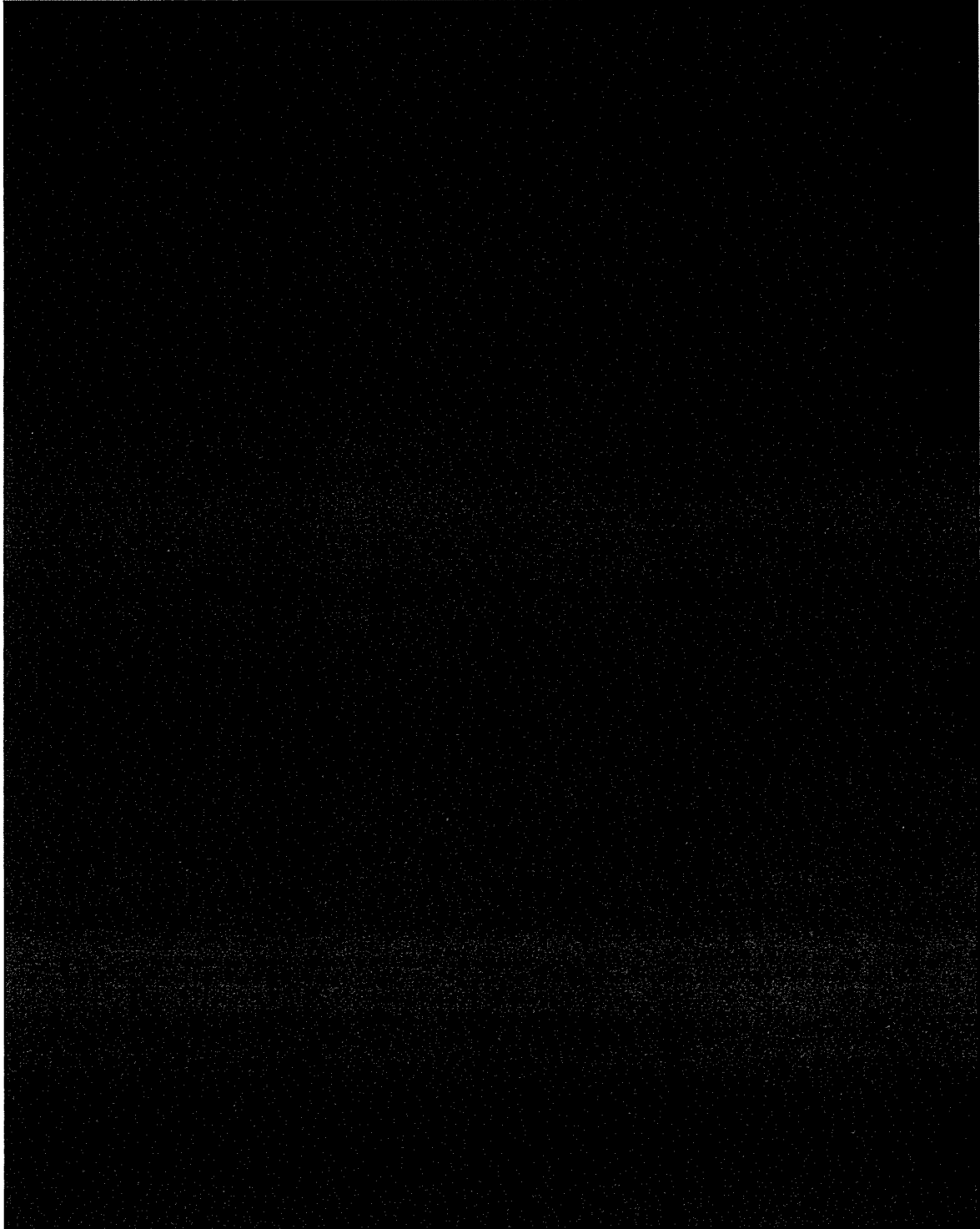
**Annexure 10 –** 



**Annexure 11 –**







# Schedule 11 – Performance Regime

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# 1. Introduction

## 1.1 General

- (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.

<b>Charge Event / KPI number</b>	Title of Charge Event or Key Performance Indicator
<b>Formula</b>	<p>Sets out the formula which will be used to calculate the relevant Charge Event or Key Performance Indicator.</p> <p>Where this formula includes “x 100”, this is to convert the result from a decimal number into a percentage (as indicated in the example set out in section 1.3) to align with the Target, Level 1 and Level 2 Performance Ranges (as the case may be) for the purposes of calculating Quality Failure Points.</p>
<b>Charge / Calculation of Quality Failure Points</b>	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 10 (Payment Schedule).
<b>Definitions</b>	Sets out definitions which are relevant to the Charge Event or Key Performance Indicator.
<b>Counting rules</b>	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.

<b>Reporting requirements of Manage Co</b>	Sets out Manage Co's non-exhaustive reporting obligations in respect of the relevant Charge Event or Key Performance Indicator.
<b>Reporting Period</b>	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
<b>Target</b>	0 – 1.5%	0
<b>Level 1</b>	>1.5 – 5%	750 points per incident in this range
<b>Level 2</b>	>5%	1,000 points per incident in this range

The formula is as follows:

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

Assume that for Month n:

- (a) The number of Inmate victims of Substantiated Assault by Inmates is equal to 77; and
- (b) The Daily Average Inmate Population is equal to 1100.

The KPI result is 7% (i.e.  $77/1100 \times 100$ ) which represents Level 2 performance. The Quality Failure Points are calculated to be 50,250 based on the methodology set out below:

	Failures in this Range <sup>1</sup>	Applicable Failures in this Range	Calculated Quality Failure Points
<b>Target</b>	0 – 16	16	$16 \times 0 = 0$
<b>Level 1</b>	17 – 55	39	$39 \times 750 = 29,250$
<b>Level 2</b>	56 - 77	21	$21 \times 1,000 = 21,000$
<b>Total</b>		<b>77</b>	<b>50,250</b>

<sup>1</sup> Calculated by reference to the KPI denominator – 1100 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 emergency admission to hospital or any off Site medical centre that serves as an equivalent of a hospital;
- (b) indecent assault; or
- (c) deliberate transfer (e.g. spitting) of blood or other bodily fluids which is not captured within the definition of Serious Assault.

**Custodial Patients** means all Inmates.

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

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

**JHeHS** means the Justice Health electronic Health Service.

**OIMS** means the CSNSW Offender Integrated Management System.

**Open Custody** means any Correctional Centre within the Correctional Complex classified by the State as minimum security.

**PAS** means the Patient Administration System.

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

**Secure Custody** means any Correctional Centre within the Correctional Complex classified by the State as maximum security.

**Serious Assault** means physical violence that results in physical injury requiring:

- (a) immediate transfer to hospital or any off Site medical centre that serves as an equivalent of a hospital for the Inmates; and
- (b) medical treatment as an inpatient (regardless of whether this treatment is received in the emergency department or otherwise)

Notwithstanding the previous sentence, Serious Assault is deemed to include:

- (a) any instance of sexual intercourse without consent; and
- (b) deliberate transfer (e.g. spitting) of blood or other bodily fluids or matter that results in infection or the transmittal of disease; or
- (c) any deliberate incident of skin being punctured with a syringe (i.e. "a needle stick injury").

**Services Specification** means Service Requirements.

**Significant Assault** means the deliberate transfer of blood or other bodily fluid 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 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

<b>KPI 1</b>	<b>Purposeful Activity</b>																									
<b>Formulae</b>	<p><b>A. (Total sentenced Inmate hours in Purposeful Activity) / (Daily average sentenced Inmate population) / (Number of days in reporting period)</b></p> <p><b>B. (Total remand Inmate hours in Purposeful Activity) / (Daily average remand Inmate population) / (Number of days in reporting period)</b></p>																									
<b>Calculation of Quality Failure Points</b>	<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> <th style="width: 15%;">A.</th> <th style="width: 45%;">Performance Range</th> <th style="width: 40%;">Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td><b>Target</b></td> <td>4.8 - 6 hours</td> <td>0 points x daily average sentenced Inmate population x number of days in reporting period</td> </tr> <tr> <td><b>Level 1</b></td> <td>2 - &lt;4.8 hours</td> <td>1 point for hours (or part thereof) in this range x daily average sentenced Inmate population x number of days in reporting period</td> </tr> <tr> <td><b>Level 2</b></td> <td>&lt;2 hours</td> <td>2 points for hours (or part thereof) in this range x daily average sentenced Inmate population x number of days in reporting period</td> </tr> </tbody> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">B.</th> <th style="width: 45%;">Performance Range</th> <th style="width: 40%;">Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td><b>Target</b></td> <td>3 - 4 hours</td> <td>0 points x daily average remand Inmate population x number of days in reporting period</td> </tr> <tr> <td><b>Level 1</b></td> <td>1 - &lt;3 hours</td> <td>1 point for hours (or part thereof) in this range x daily average remand Inmate population x number of days in reporting period</td> </tr> <tr> <td><b>Level 2</b></td> <td>&lt;1 hour</td> <td>2 points for hours (or part thereof) in this range x daily average remand Inmate</td> </tr> </tbody> </table>		A.	Performance Range	Quality Failure Points	<b>Target</b>	4.8 - 6 hours	0 points x daily average sentenced Inmate population x number of days in reporting period	<b>Level 1</b>	2 - <4.8 hours	1 point for hours (or part thereof) in this range x daily average sentenced Inmate population x number of days in reporting period	<b>Level 2</b>	<2 hours	2 points for hours (or part thereof) in this range x daily average sentenced Inmate population x number of days in reporting period	B.	Performance Range	Quality Failure Points	<b>Target</b>	3 - 4 hours	0 points x daily average remand Inmate population x number of days in reporting period	<b>Level 1</b>	1 - <3 hours	1 point for hours (or part thereof) in this range x daily average remand Inmate population x number of days in reporting period	<b>Level 2</b>	<1 hour	2 points for hours (or part thereof) in this range x daily average remand Inmate
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		population x number of days in reporting period
<b>Definitions</b>	<p><b>Purposeful Activity</b> means:</p> <p>(a) the following activities on any day of the week:</p> <ul style="list-style-type: none"> <li>(i) <b>Commercial Industries, Service Industries or Work Release;</b></li> <li>(ii) <b>Offence Related Programs:</b> a structured intervention that addresses the factors directly linked to offending behaviour;</li> <li>(iii) <b>Adult Basic Education (ABE):</b> a structured intervention that develops skills to improve reading, writing, oral communication and numeracy;</li> <li>(iv) <b>Vocational Education and Training (VET):</b> a course or traineeship that teaches skills and qualifications for employment;</li> <li>(v) <b>Services that support Inmate wellbeing:</b> one-to-one services that address health, psychological, motivational, pre-release or welfare factors that impact on an Inmate's well-being; or</li> <li>(vi) <b>Personal Development and Life Skills Programs:</b> a structured program that addresses the life skills and well-being of the Inmate's needs;</li> <li>(vii) <b>Reintegration and Rehabilitation Programs:</b> provision of programs and/or one to one services that assist the Inmate to successfully reintegrate 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</li> <li>(viii) <b>Exercise:</b> not more than one hour each day for exercise in the open air; or</li> </ul> <p>(b) the following activities on weekends and public holidays:</p> <ul style="list-style-type: none"> <li>(i) <b>Recreational Activities</b> including sports activities and any other recreational activities provided within the Correctional Complex to create a sense of community and to provide recreation for the Inmates; or</li> <li>(ii) <b>Community and social activities</b> including any activities which provide the opportunity for Inmates to purposefully engage with each other for leisure purposes.</li> </ul> <p><b>Commercial Industries</b> means programs run by Manage Co or its Associates at the Correctional Complex which operate on a commercial fee for service basis (e.g. sale of products/services to external clients and sale of products/services to the correctional system).</p> <p><b>Service Industries</b> means employment to maintain the self-sufficiency of the Correctional Complex which are not subject to a fee for service (e.g. kitchens, laundries, gardening). This includes community projects and other unpaid work.</p> <p><b>Work Release</b> means employment in the community under industrial award conditions as part of temporary leave.</p>	

<p><b>Counting Rules</b></p>	<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"> <li>• Inmates who are 65 years of age or over and who elect not to participate in Purposeful Activities, either in whole or part;</li> <li>• 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;</li> <li>• 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.</li> <li>• Inmates, to the extent serving a period of loss of privileges;</li> <li>• 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.</li> <li>• Inmates accommodated in a high security or management unit of the Correctional Complex (and alternative arrangements are in place in accordance with the Output Specification or as agreed with the State in writing);</li> <li>• 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</li> <li>• Inmates in the Correctional Complex pursuant to NSW Drug Court orders.</li> </ul>
<p><b>Reporting Requirements</b></p>	<p>N/A</p>
<p><b>Reporting Period</b></p>	<p>Monthly</p>

## 2.2 KPI 2 – Time out of Cells

<b>KPI 2</b>	<b>Time out of Cells</b>
<b>Formula</b>	<b>The number of Out of Cell Hour Failure Periods</b>
<b>Calculation of Quality Failure Points</b>	10 Quality Failure Points per Failure Period
<b>Definitions</b>	<p><b>Failure Periods</b> are calculated as <math>(A - B)</math>, rounded up to the nearest whole number where:</p> <p><b>A</b> = the sum of the Variance in Out of Cell Hours per day per Inmate over the course of the Month</p> <p><b>B</b> = 2 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><b>Variance in Out of Cell Hours</b> 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><b>Actual Out of Cell hours</b> 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><b>Minimum Out of Cell hours</b> is specified in section 3.7.2 of the Services Specification, subject to Approved Exceptions.</p> <p><b>Approved Exceptions</b> means:</p> <ul style="list-style-type: none"> <li>(a) monthly scheduled searches of the Correctional Complex in accordance with the Deed;</li> <li>(b) Inmates in segregated custody or NSW Drug Court beds; and</li> <li>(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.</li> </ul>
<b>Counting Rules</b>	<p><u>Example:</u></p> <ul style="list-style-type: none"> <li>• Minimum Out of Cell Hours per day for Secure Custody Inmates = 7.5 hours</li> <li>• Actual Out of Cell Hours for 800 Secure Custody Inmates each day in January = 6.3 hours</li> <li>• There is no Variance in Out of Cell Hours for minimum security Inmates</li> </ul>



KPI 2	Time out of Cells
	<ul style="list-style-type: none"> <li>• Assume the Daily Average Inmate Population for January is 1100</li> <li>• The Variance in Out of Cell Hours for each of those 800 Inmates for each day in January is calculated as <math>(7.5 - 6.3) = 1.2</math> hours = <math>2.4 \times 30</math> minute intervals</li> <li>• Failure Periods = <math>(2.4 \times 800 \text{ Inmates} \times 31 \text{ days}) - (2 \times 1100) = 57,320</math></li> <li>• Quality Failure Points are calculated as <math>10 \times 57,320 = 573,200</math></li> </ul>
<b>Reporting Requirements</b>	<ul style="list-style-type: none"> <li>• Total Out of Cell Hours based on the approved Correctional Centre routine for Inmates.</li> <li>• Details of all irregular lockdowns, including: <ul style="list-style-type: none"> <li>○ Date of lockdown;</li> <li>○ Area of lockdown and Inmates affected by lockdown;</li> <li>○ Reason for lockdown;</li> <li>○ Number of Inmates affected by lockdown; and</li> <li>○ Duration of the lockdown.</li> </ul> </li> </ul>
<b>Reporting Period</b>	Monthly

### 2.3 KPI 3 - Serious Self Harm

<b>KPI 3</b>	<b>Serious Self Harm</b>		
<b>Formula</b>	<b>Number of incidents of Serious Self Harm</b>		
<b>Calculation of Quality Failure Points</b>	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.		
		<b>Performance Range</b>	<b>Quality Failure Points</b>
	<b>Target</b>	0-1	0
	<b>Level 1</b>	2-3	15,000 points per incident in this range
	<b>Level 2</b>	>3	30,000 points per incident in this range
<b>Definitions</b>	<p><b>Serious Self Harm</b> means deliberate injury to oneself that results in:</p> <p>(a) immediate transfer to hospital or any off Site medical centre that serves as an equivalent of a hospital for the Inmates; and</p> <p>(b) medical treatment as an inpatient (regardless of whether this treatment is received in the emergency department or otherwise,</p> <p>but excluding Unnatural Deaths and Non-Fatal Drug Overdoses.</p>		
<b>Counting Rules</b>	<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 caused by Serious Self Harm in the reporting period, each injury is counted separately.</p>		
<b>Reporting Requirements</b>	<ul style="list-style-type: none"> <li>• Date and time of the Serious Self Harm.</li> <li>• Location of the Serious Self Harm.</li> <li>• Details of each Inmate involved in the Serious Self Harm.</li> <li>• Summary of the Serious Self Harm.</li> <li>• Details of response to the Serious Self Harm.</li> <li>• 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.</li> <li>• Details of the Inmate injury.</li> <li>• Manage Co's intended action to minimise or avoid the future risk to Inmates.</li> <li>• Report from the Governor of the Correctional Complex in respect of the Serious Self Harm.</li> </ul>		

<b>KPI 3</b>	<b>Serious Self Harm</b>
<b>Reporting Period</b>	Monthly

**2.4 KPI 4 – Assaults on Non-Inmates**

<b>KPI 4</b>	<b>Assaults on Non-Inmates</b>												
<b>Formulae</b>	<p><b>A. Number of Non-Inmate victims of Substantiated Serious Assault.</b></p> <p><b>B. Number of Non-Inmate victims of Substantiated Significant Assault.</b></p> <p><b>C. Number of Non-Inmate victims of Substantiated Assault by Inmates.</b></p>												
<b>Calculation of Quality Failure Points</b>	<p>The Quality Failure Points which Manage Co will accrue each Month is as follows:</p> <p>A. Substantiated Serious Assaults – 250,000 per Non-Inmate victim</p> <p>B. Substantiated Significant Assault – 25,000 per Non-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"> <thead> <tr> <th></th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td>0</td> <td>0</td> </tr> <tr> <td>Level 1</td> <td>1</td> <td>2,500 points per failure in this range</td> </tr> <tr> <td>Level 2</td> <td>&gt;1</td> <td>10,000 points per failure in this range</td> </tr> </tbody> </table>		Performance Range	Quality Failure Points	Target	0	0	Level 1	1	2,500 points per failure in this range	Level 2	>1	10,000 points per failure in this range
	Performance Range	Quality Failure Points											
Target	0	0											
Level 1	1	2,500 points per failure in this range											
Level 2	>1	10,000 points per failure in this range											
<b>Definitions</b>	N/A												
<b>Counting Rules</b>	<p><b>Serious Assault</b></p> <p>Count the number of Non-Inmates who were victims of a Serious Assault that was Substantiated during the reporting period. For example, if two Inmates perpetrate a Serious Assault on one Non-Inmate, count one Non-Inmate. If a Serious Assault takes place in a reporting period but this is not Substantiated until another reporting period, count the Serious Assault in the period in which it is Substantiated.</p> <p><b>Significant Assault</b></p> <p>Count the number of Non-Inmates who were victims of a Significant Assault that was Substantiated during the reporting period. For example, if two Inmates perpetrate a Significant Assault on one Non-Inmate, count one Non-Inmate. If a Significant Assault takes place in a reporting period but this is not Substantiated until another reporting period, count the Significant Assault in the period in which it is Substantiated.</p> <p><b>Assault</b></p>												

<b>KPI 4</b>	<b>Assaults on Non-Inmates</b>
	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.
<b>Reporting Requirements</b>	<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"> <li>• date and time of the Substantiated Serious Assault, Significant Assault or Assault (as the case may be);</li> <li>• location of the Substantiated Serious Assault, Significant Assault or Assault (as the case may be);</li> <li>• details of Inmates involved in the Substantiated Serious Assault, Significant Assault or Assault (as the case may be);</li> <li>• details of Non-Inmates involved in the Substantiated Serious Assault, Significant Assault or Assault (as the case may be), including as victim;</li> <li>• summary of the Substantiated Serious Assault, Significant Assault or Assault (as the case may be);</li> <li>• details of Manage Co's or its Associates' response to the Substantiated Serious Assault, Significant Assault or Assault (as the case may be);</li> <li>• details of Non-Inmate injury;</li> <li>• Manage Co's intended actions to minimise future risk to Non-Inmates; and</li> <li>• Governor's report regarding the Substantiated Serious Assault, Significant Assault or Assault (as the case may be) in accordance with the Corrections Legislation.</li> </ul>
<b>Reporting Period</b>	Monthly

## 2.5 KPI 5 – Assaults on Inmates by other Inmates

<b>KPI 5</b>	<b>Assaults on Inmates by Inmates</b>												
<b>Formulae</b>	<p><b>A. Number of Inmate victims of Substantiated Serious Assault.</b></p> <p><b>B. Number of Inmate victims of Substantiated Significant Assault.</b></p> <p><b>C. (Number of Inmate victims of Substantiated Assault by Inmates) / (Daily Average Inmate Population) x 100</b></p>												
<b>Calculation of Quality Failure Points</b>	<p>The Quality Failure Points which Manage Co will accrue each Month is as follows:</p> <p>A. Substantiated Serious Assaults – 30,000 per Inmate victim</p> <p>B. Substantiated Significant Assault – 3,000 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="480 887 1426 1240"> <thead> <tr> <th></th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td><b>Target</b></td> <td>0 – 1.5%</td> <td>0</td> </tr> <tr> <td><b>Level 1</b></td> <td>&gt;1.5 – 5%</td> <td>750 points per incident in this range</td> </tr> <tr> <td><b>Level 2</b></td> <td>&gt;5%</td> <td>1,000 points per incident in this range</td> </tr> </tbody> </table>		Performance Range	Quality Failure Points	<b>Target</b>	0 – 1.5%	0	<b>Level 1</b>	>1.5 – 5%	750 points per incident in this range	<b>Level 2</b>	>5%	1,000 points per incident in this range
	Performance Range	Quality Failure Points											
<b>Target</b>	0 – 1.5%	0											
<b>Level 1</b>	>1.5 – 5%	750 points per incident in this range											
<b>Level 2</b>	>5%	1,000 points per incident in this range											
<b>Definitions</b>	N/A												
<b>Counting Rules</b>	<p><b>Serious Assault</b></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><b>Significant Assault</b></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><b>Assault</b></p>												

<b>KPI 5</b>	<b>Assaults on Inmates by Inmates</b>
	<p>Count the number of Inmates who were victims of an Assault during the reporting period. If four Inmates perpetrate an Assault on one Inmate, count one Inmate. If an Assault takes place in a reporting period but is not Substantiated until another reporting period, count the Assault in the period in which it was Substantiated.</p>
<b>Reporting Requirements</b>	<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"> <li>• date and time of the Substantiated Serious Assault, Significant Assault or Assault (as the case may be);</li> <li>• location of the Substantiated Serious Assault, Significant Assault or Assault (as the case may be);</li> <li>• details of Inmate(s) involved in the Substantiated Serious Assault, Significant Assault or Assault (as the case may be), including as victim(s).</li> <li>• details of Non-Inmate(s) involved in the Substantiated Serious Assault, Significant Assault or Assault (as the case may be);</li> <li>• summary of the Substantiated Serious Assault, Significant Assault or Assault (as the case may be);</li> <li>• details of response to the Substantiated Serious Assault, Significant Assault or Assault (as the case may be);</li> <li>• details of any injury;</li> <li>• Manage Co's or its Associates' intended actions to minimise future risk to Inmates; and.</li> <li>• Governor's report regarding the Substantiated Serious Assault, Significant Assault or Assault (as the case may be) in accordance with the Corrections Legislation.</li> </ul>
<b>Reporting Period</b>	Monthly

## 2.6 KPI 6 - Specified Serious Incidents

KPI 6	Specified Serious Incidents
Formulae	<p><b>A. Number of Deliberately Lit Fires, Security Breaches and Non-Fatal Drug Overdoses</b></p> <p><b>B. Number of Serious Contraband Breaches identified by the State</b></p>
Calculation of Quality Failure Points	<p>The Quality Failure Points which Manage Co will accrue each Month are as follows:</p> <ul style="list-style-type: none"> <li>(a) Deliberately Lit Fires, Security Breaches and Non-Fatal Drug Overdoses - 25,000 per incident</li> <li>(b) Serious Contraband Breaches – 2,000 per item, excluding the first three items per search, subject to a cap of 25,000 per search.</li> </ul>
Definitions	<p><b>Serious Contraband</b> means any contraband which has the potential to threaten the security or good order of any part of the Correctional Complex or the secure custody of an Inmate, and is deemed to include mobile phones or any part of them, illicit drugs, alcohol, matches, lighters, syringes, pornographic material and Weapons.</p> <p><b>Serious Contraband Breach</b> means the identification of an item of Serious Contraband within the Correctional Complex by the State as part of a random search carried out in accordance with the Deed, the Corrections Legislation or a Policy.</p> <p><b>Deliberately Lit Fire</b> means a fire that causes injury or death to a person, or damage to any part of the Correctional Complex (such as an accommodation area, common area, recreational area, work area or yard, rather than a cell), that was, in the opinion of the State or the Governor, deliberately lit.</p> <p><b>Non-Fatal Drug Overdose</b> 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><b>Security Breach</b> means an incident or event that has the potential to seriously affect the security or good order of any part of the Correctional Complex or the Correctional Centre or the secure custody of an Inmate and is deemed to include:</p> <ul style="list-style-type: none"> <li>(a) where an Inmate is found in an unauthorised area of the Correctional Complex (but does not breach or otherwise pass the outer most secure perimeter of the Correctional Complex) or breaches a Security Barrier in the Correctional Complex;</li> </ul>



KPI 6	Specified Serious Incidents
	<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 the Output Specification; or</p> <p>(d) an unauthorised discharge of a firearm by any person within the Correctional Complex or while an Inmate is on temporary leave or being (or required to be) escorted by Manage Co or its Associates.</p> <p><b>Security Barrier</b> means a physical structure designed to limit movement to and from a secure area</p> <p><b>Specified Serious Incident</b> means a Deliberately Lit Fire, Security Breach, Serious Contraband Breach or Non-Fatal Drug Overdose.</p> <p><b>Weapons</b> means any offensive weapon or instrument (as defined by the <i>Crimes Act 1900</i> (NSW)).</p>
<b>Counting Rules</b>	<p><b>Deliberately Lit Fire</b> 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><b>Security Breach</b> 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 Manage 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><b>Serious Contraband Breach</b> Count the number of Serious Contraband identified by the State during the reporting period. For example, if 10 mobile phones are found by the State within the Correctional Complex within a reporting period (whether they are found during one inspection or on multiple occasions), count 10 Serious Contraband Breaches during the reporting period.</p>

<b>KPI 6</b>	<b>Specified Serious Incidents</b>
	<p><b>Non-Fatal Drug Overdose</b>                  Count the number of Inmates that suffer a Non-Fatal Drug Overdose during the reporting period.</p>
<b>Reporting Requirements</b>	<p>Details of each Specified Serious Incident must include:</p> <ul style="list-style-type: none"> <li>• date and time of the Specified Serious Incident;</li> <li>• location of the Specified Serious Incident;</li> <li>• details of Inmate(s) involved in the Specified Serious Incident;</li> <li>• details of Non-Inmate(s) involved in the Specified Serious Incident;</li> <li>• summary of incident or event;</li> <li>• details of response to the Specified Serious Incident;</li> <li>• Manage Co's or its Associates' intended actions to minimise future risk of Specified Serious Incidents; and</li> <li>• Governor's report regarding the Specified Serious Incident in accordance with the Corrections Legislation.</li> </ul>
<b>Reporting Period</b>	Monthly

## 2.7 KPI 7 – Illicit Drug Use

<b>KPI 7</b>	<b>Illicit Drug Use</b>												
<b>Formula</b>	<b>(Number of Positive Random Drug Tests) / (Number of Random Drug Tests) x 100</b>												
<b>Calculation of Quality Failure Points</b>	<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><b>Performance Range</b></th> <th><b>Quality Failure Points</b></th> </tr> </thead> <tbody> <tr> <td><b>Target</b></td> <td>0 - 6%</td> <td>0</td> </tr> <tr> <td><b>Level 1</b></td> <td>&gt;6-12%</td> <td>5,000 points per positive test in this range</td> </tr> <tr> <td><b>Level 2</b></td> <td>&gt;12%</td> <td>12,000 points per positive test in this range</td> </tr> </tbody> </table>		<b>Performance Range</b>	<b>Quality Failure Points</b>	<b>Target</b>	0 - 6%	0	<b>Level 1</b>	>6-12%	5,000 points per positive test in this range	<b>Level 2</b>	>12%	12,000 points per positive test in this range
	<b>Performance Range</b>	<b>Quality Failure Points</b>											
<b>Target</b>	0 - 6%	0											
<b>Level 1</b>	>6-12%	5,000 points per positive test in this range											
<b>Level 2</b>	>12%	12,000 points per positive test in this range											
<b>Definitions</b>	<p><b>Random Drug Test</b> means a random drug test to identify illicit drug use conducted by Manage Co or its Associates in respect of a 5% 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><b>Eligible Inmates</b> include all Inmates except Inmates who have been in custody for less than 30 days excluding Inmates in the Correctional Complex pursuant to NSW Drug Court orders.</p> <p><b>Positive</b> 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><b>Nil Creatinine Detected</b> means the pathology results find that the sample does not contain the enzyme found in urine and cannot be tested.</p> <p><b>Residual Effects</b> 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><b>Window Periods</b> means that the pathology results find that the drug use was due to drugs taken by the relevant Inmate prior to reception into the Correctional Complex.</p>												
<b>Counting Rules</b>	<p><u>Numerator</u>: Count the number of Positive Random Drug Test samples collected during the reporting period.</p> <p><u>Denominator</u>: The number of Random Drug Tests collected at the Correctional Complex during the reporting period.</p>												

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

## 2.8 KPI 8 – Staff Misconduct

<b>KPI 8</b>	<b>Staff Misconduct</b>
<b>Formulae</b>	<p><b>A. Number of incidents of Staff Misconduct</b></p> <p><b>B. Number of Staff Misconduct not known to Manage Co or its Associates</b></p> <p><b>C. Number of Staff Misconduct incidents Not Reported or Misreported</b></p>
<b>Calculation of Quality Failure Points</b>	<p>The Quality Failure Points which Manage Co will accrue each Month is as follows:</p> <p>A. 5,000 points per incident</p> <p>B. 100,000 points per incident</p> <p>C. 50,000 points per incident</p>
<b>Definitions</b>	<p><b>Staff Misconduct</b> means:</p> <p>(a) a member of Staff is convicted of an offence, whether or not such a conviction is recorded and whether or not such an offence was committed in connection with the employment of the Staff member at the Correctional Complex, subject only to the Exceptions; or</p> <p>(b) a finding of misconduct of a member of Staff, including:</p> <p>(i) any finding of misconduct by the Governor or the State (acting reasonably) as a consequence of an event that arises in connection with the employment of the Staff member at the Correctional Complex including any breach of Law, Policies or procedures or any professional standards or guidelines applicable to the position of that Staff member; or</p> <p>(ii) any finding of professional misconduct, negligence or malpractice by an appropriate professional regulatory body or a court or tribunal against any member of Staff.</p> <p><b>Exceptions</b> means:</p> <p>(a) any convictions for traffic related offences that have not arisen from, during or in connection with the employment of the Staff member at the Correctional Complex; or</p> <p>(b) any conviction for which the Staff member has received a pardon or which has been quashed.</p>

KPI 8	Staff Misconduct
	<p><b>Staff Misconduct not known to Manage Co or its Associates</b> 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><b>Staff Misconduct Not Reported or Misreported</b> 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 in a prior reporting period.</p>
<b>Counting Rules</b>	<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>
<b>Reporting Requirements</b>	Report all findings of staff misconduct to the CSNSW Professional Standards Branch (PSB) as they occur.
<b>Reporting Period</b>	Monthly

## 2.9 KPI 9 – Accuracy of Reporting

<b>KPI 9</b>	<b>Accuracy of Reporting</b>
<b>Formulae</b>	<p><b>A. Number of Non-Compliant Incident Reports</b></p> <p><b>B. Number of Critical Reporting Failures</b></p>
<b>Calculation of Quality Failure Points</b>	<p>The Quality Failure Points which Manage Co will accrue each Month is as follows:</p> <p>A. 500 points per Non-Compliant Incident Report</p> <p>B. 5,000 points per Critical Reporting Failure</p>
<b>Definitions</b>	<p><b>Non-Compliant Incident Reports</b> 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><b>Critical Reporting Failure</b> 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>
<b>Counting Rules</b>	<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>
<b>CSNSW Validation</b>	Review by Monitors including a qualitative review of reports.
<b>Reporting Requirements</b>	<p>For each Non-Compliant Incident Report:</p> <ul style="list-style-type: none"> <li>• details of the relevant incident report;</li> <li>• details of the relevant Legislation, Policy or section of the Deed that it does not comply with including specific clause references; and</li> <li>• details of the reasons why the Non-Compliant Incident Report arose.</li> </ul> <p>For each Critical Reporting Failure:</p> <ul style="list-style-type: none"> <li>• details of the relevant critical incident report;</li> <li>• details of the timeframe specified in Legislation, Policy or the Deed including specific clause references;</li> <li>• details of the timeframe in which the relevant critical incident report was provided; and</li> <li>• details of the reasons why the Critical Reporting Failure arose.</li> </ul>
<b>Reporting Period</b>	Monthly

**2.10 KPI 10 – Adherence to Performance Improvement Notice cure plans**

<b>KPI 10</b>	<b>Adherence to Performance Improvement Notice cure plans</b>
<b>Formula</b>	<b>Number of failures to comply with a Performance Improvement Notice cure plan</b>
<b>Calculation of Quality Failure Points</b>	Manage Co will accrue 10,000 Quality Failure Points for each failure to comply with a Performance Improvement Notice cure plan.
<b>Definitions</b>	<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 notice to Manage Co if it fails to comply with the Services Specification (<b>Performance Improvement Notice or PIN</b>).</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 Deed.</p>
<b>Counting Rules</b>	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 Specification for which a PIN has been issued, that PIN is to be disregarded for the purposes of these counting rules.
<b>Reporting Requirements</b>	<p>For each Performance Improvement Notice cure plan not complied with:</p> <ul style="list-style-type: none"> <li>• the steps or actions which were not completed in accordance with the PIN cure plan; and</li> <li>• the reason why the PIN cure plan was not complied with.</li> </ul>
<b>Reporting Period</b>	Monthly



## 2.11 KPI 11 – Carrying out scheduled FM Service tasks

KPI 11	Carrying out scheduled FM Service tasks																								
Formulae	<p><b>A. Number of Type 1 Failures</b></p> <p><b>B. Number of Type 2 Failures</b></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><b>A. Number of Type 1 Failures</b></p> <table border="1" data-bbox="480 689 1423 1048"> <thead> <tr> <th></th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td>0-1</td> <td>0</td> </tr> <tr> <td>Level 1</td> <td>2-12</td> <td>500 points per Failure in this range</td> </tr> <tr> <td>Level 2</td> <td>&gt;12</td> <td>1,000 points per Failure in this range</td> </tr> </tbody> </table> <p><b>B. Number of Type 2 Failures</b></p> <table border="1" data-bbox="480 1115 1423 1473"> <thead> <tr> <th></th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td>0</td> <td>0</td> </tr> <tr> <td>Level 1</td> <td>1-3</td> <td>2,000 points per Failure in this range</td> </tr> <tr> <td>Level 2</td> <td>&gt;3</td> <td>4,000 points per Failure in this range</td> </tr> </tbody> </table>		Performance Range	Quality Failure Points	Target	0-1	0	Level 1	2-12	500 points per Failure in this range	Level 2	>12	1,000 points per Failure in this range		Performance Range	Quality Failure Points	Target	0	0	Level 1	1-3	2,000 points per Failure in this range	Level 2	>3	4,000 points per Failure in this range
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Target	0	0																							
Level 1	1-3	2,000 points per Failure in this range																							
Level 2	>3	4,000 points per Failure in this range																							
Definitions	<p><b>Type 1 Failures</b> 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.</p> <p><b>Type 2 Failures</b> means incidents of failure to undertake Critical Planned Maintenance Tasks in accordance with the Asset Management Plan and planned maintenance schedules (as included in the Asset Management Plan) in the reporting period.</p> <p><b>Critical Planned Maintenance Tasks</b> 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> <p>(a) communication systems;</p>																								

<b>KPI 11</b>	<b>Carrying out scheduled FM Service tasks</b>
	<p>(b) electrical services;</p> <p>(c) fire and life safety engineering services;</p> <p>(d) medical equipment; or</p> <p>(e) security systems.</p> <p><b>Non-Critical Maintenance Tasks</b> means any planned maintenance tasks which are not Critical Planned Maintenance Tasks.</p>
<b>Counting Rules</b>	Count the number of Type 1 and Type 2 Failures that occur in the reporting period
<b>Reporting Requirements</b>	Report of planned maintenance tasks completed in accordance with the Asset Management Plan and planned maintenance schedules (as included in the Asset Management Plan)
<b>Reporting Period</b>	Monthly

**2.12 KPI 12 – Rectifying FM Service Failures**

For the purposes of this KPI, the following definitions will apply:

**FM Service Failure** has the meaning given to it in Schedule 10 (Payment Schedule).

**FM Table** means the definitions set out in the following table:

<b>FM Table</b>	
<b>Level A FM Service Failure – Emergency</b>	<b>Level A Rectification Period</b>
means any FM Service Failure which: <ul style="list-style-type: none"> <li>• is life threatening or, if not remedied immediately, will potentially be life threatening;</li> <li>• is serious enough to cause significant damage to the Site or Correctional Complex;</li> <li>• 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;</li> <li>• may result in a partial or total lock-down if not Rectified immediately; or</li> <li>• is otherwise deemed by the State as requiring Rectification within the Level A Rectification Period.</li> </ul>	60 minutes
<b>Level B FM Service Failure – Urgent/High Priority</b>	<b>Level B Rectification Period</b>
means any FM Service Failure that is not categorised as a Level A FM Service Failure and: <ul style="list-style-type: none"> <li>• is interrupting, or if not Rectified within the Level B Rectification Period, has the potential to interrupt the operation or functionality of the Site or Correctional Complex; or</li> <li>• may develop into a Level A FM Service Failure if not Rectified within the Level B Rectification Period.</li> </ul>	6 hours
<b>Level C FM Service Failure – Medium Priority</b>	<b>Level C Rectification Period</b>
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"> <li>• 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</li> <li>• causes no more than very minor disruption, inconvenience or loss of amenity to the Site or Correctional Complex; or</li> </ul>	24 hours

<b>FM Table</b>	
<ul style="list-style-type: none"> <li>potentially causes more than minor disruption, inconvenience to Manage Co or its Associates in carrying out the operations if not Rectified within the Level C Rectification Period.</li> </ul>	
<b>Level D FM Service Failure – Low Priority</b>	<b>Level D Rectification Period</b>
<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"> <li>does not pose any immediate or potential danger or risk in any way to Inmates, Staff, Visitors or other users;</li> <li>will not immediately disrupt the Site, or the purposes, functions and uses of the Correctional Complex if not Rectified; or</li> <li>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.</li> </ul>	Within 5 calendar days

**Rectification Period** has the meaning attributed to it in Schedule 10 (Payment Schedule).

**Rectify** has the meaning attributed to it in Schedule 10 (Payment Schedule).

**Respond** has the meaning attributed to it in Schedule 10 (Payment Schedule).

- (a) 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.
- (b) Once categorised, an FM Service Failure cannot be re-categorised as a lower FM Service Failure level unless agreed with the State. If an FM Service Failure has occurred and 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.
- (c) Manage Co is entitled to request a Temporary Fix in accordance with Schedule 10 (Payment Schedule).
- (d) The Quality Failure Points attributable to each incident of failure to Rectify an FM Service Failure within the relevant Level A-D Rectification Periods are calculated in accordance with the following table

<b>KPI 12</b>	<b>Rectifying facilities management failure events</b>																																	
<b>Formulae</b>	<p><b>A. Number of incidents of failure to Rectify a Level A FM Service Failures within the Level A Rectification Period</b></p> <p><b>B. Number of incidents of failure to Rectify a Level B FM Service Failures within the Level B Rectification Period</b></p> <p><b>C. Number of incidents of failure to Rectify a Level C FM Service Failures within the Level C Rectification Period</b></p> <p><b>D. Number of incidents of failure to Rectify a Level D FM Service Failures within the Level D Rectification Period</b></p>																																	
<b>Calculation of Quality Failure Points</b>	<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><b>A. Number of incidents of failure to Rectify a Level A FM Service Failure within the Level A Rectification Period</b></p> <table border="1" data-bbox="536 840 1329 1234"> <thead> <tr> <th></th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td>0</td> <td>0</td> </tr> <tr> <td>Level 1</td> <td>1-3</td> <td>5,000 points per incident of failure in this range</td> </tr> <tr> <td>Level 2</td> <td>&gt;3</td> <td>10,000 points per incident of failure in this range</td> </tr> </tbody> </table> <p><b>B. Number of incidents of failure to Rectify a Level B FM Service Failure within the Level B Rectification Period</b></p> <table border="1" data-bbox="536 1341 1329 1697"> <thead> <tr> <th></th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td>0-1</td> <td>0</td> </tr> <tr> <td>Level 1</td> <td>2-12</td> <td>2,500 points per incident of failure in this range</td> </tr> <tr> <td>Level 2</td> <td>&gt;12</td> <td>5,000 points per incident of failure in this range</td> </tr> </tbody> </table> <p><b>C. Number of incidents of failure to Rectify a Level C FM Service Failure within the Level C Rectification Period</b></p> <table border="1" data-bbox="536 1805 1329 2047"> <thead> <tr> <th></th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td>0-2</td> <td>0</td> </tr> <tr> <td>Level 1</td> <td>3-24</td> <td>1,250 points per incident of failure in this range</td> </tr> </tbody> </table>		Performance Range	Quality Failure Points	Target	0	0	Level 1	1-3	5,000 points per incident of failure in this range	Level 2	>3	10,000 points per incident of failure in this range		Performance Range	Quality Failure Points	Target	0-1	0	Level 1	2-12	2,500 points per incident of failure in this range	Level 2	>12	5,000 points per incident of failure in this range		Performance Range	Quality Failure Points	Target	0-2	0	Level 1	3-24	1,250 points per incident of failure in this range
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<b>KPI 12</b>	<b>Rectifying facilities management failure events</b>														
	<table border="1"> <tr> <td data-bbox="520 224 689 351"><b>Level 2</b></td> <td data-bbox="702 224 986 351">&gt;24</td> <td data-bbox="992 224 1310 351">2,500 points per incident of failure in this range</td> </tr> </table>	<b>Level 2</b>	>24	2,500 points per incident of failure in this range											
<b>Level 2</b>	>24	2,500 points per incident of failure in this range													
<p><b>Counting Rules</b></p>	<p><b>D. Number of incidents of failure to Rectify a Level D FM Service Failure within the Level D Rectification Period</b></p> <table border="1"> <thead> <tr> <th data-bbox="520 539 695 607"></th> <th data-bbox="702 539 986 607">Performance Range</th> <th data-bbox="992 539 1310 607">Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td data-bbox="520 616 695 683"><b>Target</b></td> <td data-bbox="702 616 986 683">0-4</td> <td data-bbox="992 616 1310 683">0</td> </tr> <tr> <td data-bbox="520 692 695 786"><b>Level 1</b></td> <td data-bbox="702 692 986 786">5-48</td> <td data-bbox="992 692 1310 786">625 points per incident of failure in this range</td> </tr> <tr> <td data-bbox="520 795 695 898"><b>Level 2</b></td> <td data-bbox="702 795 986 898">&gt;48</td> <td data-bbox="992 795 1310 898">1,250 points per incident of failure in this range</td> </tr> </tbody> </table> <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 60 minutes and no Temporary Fix is agreed with the State.</p> <p>The Level A FM Service Failure is Rectified at 5.30pm on the same Thursday. This represents two incidents of failure to Rectify the Level A FM Service Failure within the Level A Rectification Period which equates to 10,000 Quality Failure Points (i.e. 2 x 5,000).</p>				Performance Range	Quality Failure Points	<b>Target</b>	0-4	0	<b>Level 1</b>	5-48	625 points per incident of failure in this range	<b>Level 2</b>	>48	1,250 points per incident of failure in this range
	Performance Range	Quality Failure Points													
<b>Target</b>	0-4	0													
<b>Level 1</b>	5-48	625 points per incident of failure in this range													
<b>Level 2</b>	>48	1,250 points per incident of failure in this range													
<p><b>Reporting Requirements</b></p>	<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"> <li>• a unique identification number;</li> <li>• the nature of the FM Service Failure;</li> <li>• the date, time, extent and duration of the FM Service Failure;</li> <li>• the specific location of the FM Service Failure;</li> <li>• the applicable FM Service Failure level;</li> <li>• the required and actual Rectification Period; and</li> <li>• the Quality Failure Points attributable to the FM Service Failure.</li> </ul> <p>Where the FM Service Failure gives rise to Critical Incidents, Manage Co is to separately provide a critical incident report.</p>														

<b>KPI 12</b>	<b>Rectifying facilities management failure events</b>
<b>Reporting Period</b>	Monthly

**2.13 KPI 13 – Chronic Healthcare Plans**

<b>KPI 13</b>	<b>Chronic Healthcare Plans</b>												
<b>Formula</b>	<b>(Number of Eligible Custodial Patients with an Up to Date Chronic Healthcare Plan) / (Number of Eligible Custodial Patients) x 100</b>												
<b>Calculation of Quality Failure Points</b>	<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><b>Target</b></td> <td>85 – 100%</td> <td>0</td> </tr> <tr> <td><b>Level 1</b></td> <td>75 – &lt;85%</td> <td>200 per failure in this range</td> </tr> <tr> <td><b>Level 2</b></td> <td>&lt;75%</td> <td>300 per failure in this range</td> </tr> </tbody> </table>		Performance Range	Quality Failure Points	<b>Target</b>	85 – 100%	0	<b>Level 1</b>	75 – <85%	200 per failure in this range	<b>Level 2</b>	<75%	300 per failure in this range
	Performance Range	Quality Failure Points											
<b>Target</b>	85 – 100%	0											
<b>Level 1</b>	75 – <85%	200 per failure in this range											
<b>Level 2</b>	<75%	300 per failure in this range											
<b>Definitions</b>	<p><b>Up to Date Chronic Healthcare Plan</b> means:</p> <ul style="list-style-type: none"> <li>(a) a plan has been prepared in accordance with the Services Specification within the Required Timeframe and which includes: <ul style="list-style-type: none"> <li>(i) the identification of the health needs of the Custodial Patient;</li> <li>(ii) the specification of the health care interventions and treatments that the Custodial Patient is likely to need;</li> <li>(iii) the inclusion of a date when the plan will be reviewed;</li> <li>(iv) the appropriate linkage with other agencies and organisations for all necessary health care follow-ups on the Custodial Patient’s release from the Correctional Complex;</li> <li>(v) goals agreed with the Custodial Patient relating to ongoing health management; and</li> <li>(vi) evidence of discussion of the goals and nature of the plan with the Custodial Patient,</li> </ul> <p><b>(Chronic Healthcare Plan)</b>; and</p> </li> <li>(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</li> <li>(c) the Chronic Healthcare Plan has been updated and revised as appropriate based on the passage of time and the chronic health</li> </ul>												



<b>KPI 13</b>	<b>Chronic Healthcare Plans</b>
	<p>condition of the Custodial Patient, including further assessments of the necessity for other interventions.</p> <p><b>Required timeframe</b> means:</p> <ul style="list-style-type: none"> <li>(a) 29 days from (as applicable) reception at the Correctional Complex or diagnosis by Manage Co or its Associates of the chronic illness; or</li> <li>(b) where a Custodial Patient has been identified as having a chronic health condition by an alternative health care provider prior to reception at the Correctional Complex, the later of: <ul style="list-style-type: none"> <li>(i) 29 days from the date of identification of the chronic health condition; or</li> <li>(ii) 14 days from the date of the Custodial Patient's transfer to the Correctional Complex.</li> </ul> </li> </ul> <p><b>Eligible Custodial Patients</b> means Custodial Patients who have been at the Correctional Complex for at least 29 days and:</p> <ul style="list-style-type: none"> <li>(a) have chronic conditions, as determined in accordance with the Services Specification; or</li> <li>(b) are identified as requiring a Chronic Healthcare Plan in accordance with the Services Specification,</li> </ul> <p>but do not include Custodial Patients who have been released or transferred from the Correctional Complex prior to the last calendar day of the Month.</p>
<b>Counting Rules</b>	<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>
<b>Reporting Requirements of Manage Co</b>	<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>
<b>Reporting Period</b>	Monthly

**2.14 KPI 14 – Timely Primary Health Services**

<b>KPI 14</b>	<b>Provision of timely primary health services</b>
<b>Formulae</b>	<p><b>A. Number of Failure Periods for Priority 1 Custodial Patients</b></p> <p><b>B. Number of Failure Periods for Priority 2 Custodial Patients</b></p>
<b>Calculation of Quality Failure Points</b>	<p>A. 750 Quality Failure Points per Failure Period</p> <p>B. 500 Quality Failure Points per Failure Period</p>
<b>Definitions</b>	<p><b>Failure Periods</b> means the number of days (or part of them) in excess of the Required Timeframes that a Custodial Patient in the Month had to wait for non-emergency primary health referrals. For the avoidance of doubt, non-emergency primary health referrals do not include the initial reception assessment process to the Correctional Complex or urgent/emergency treatment (where shorter time periods apply).</p> <p><b>Priority 1 Custodial Patients</b> means Custodial Patients whose health condition is deteriorating and who require attention within one to three days.</p> <p><b>Priority 2 Custodial Patients</b> 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><b>Required Timeframes</b> means:</p> <p>(a) For Priority 1 Custodial Patients, 72 hours; and</p> <p>(b) For Priority 2 Custodial Patients, 14 days.</p>
<b>Counting Rules</b>	<p>For each of A and B above, count the number of Failure Periods that each Custodial Patient had to wait in excess of the Required Timeframes.</p> <p>For example, if a Priority 1 Custodial Patient is identified at 5pm on a Friday and that patient does not receive a primary health referral until 2pm on the following Tuesday, count 0.88 (being (93-72)/24 rounded to two decimal places) Failure Periods.</p> <p>Where a Custodial Patient received a non-urgent primary health referral within the Required Timeframe, count zero Failure Periods.</p> <p>Exclude Failure Periods which arise due to non-attendance of the Custodial Patient (other than where the non-attendance arises as a result of a failure by Manage Co or its Associates to perform the Services in accordance with this Deed) provided that, if it were not for the non-attendance of the Custodial Patient, the Required Timeframe would have been met for the Custodial Patient.</p>

<b>KPI 14</b>	<b>Provision of timely primary health services</b>
<b>Reporting Requirements of Manage Co</b>	Number of Failure Periods for Priority 1 Custodial Patients Number of Failure Periods for Priority 2 Custodial Patients
<b>Reporting Period</b>	Monthly

### 2.15 KPI 15 – Health Discharge Plans

<b>KPI 15</b>	<b>Health discharge plans</b>																								
<b>Formulae</b>	<p><b>A. (Number of In-Scope Sentenced Custodial Patients provided with a Health Discharge Plan)/(Number of In-Scope Sentenced Custodial Patients) x 100</b></p> <p><b>B. (Number of In-Scope Remand Custodial Patients provided with a Health Discharge Plan)/(Number of In-Scope Remand Custodial Patients) x 100</b></p>																								
<b>Calculation of Quality Failure Points</b>	<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="517 745 1366 1142"> <thead> <tr> <th>A – Sentenced Inmates</th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td>90 - 100%</td> <td>0</td> </tr> <tr> <td>Level 1</td> <td>70 - &lt;90%</td> <td>300 per failure in this range</td> </tr> <tr> <td>Level 2</td> <td>&lt;70%</td> <td>400 per failure in this range</td> </tr> </tbody> </table> <table border="1" data-bbox="517 1211 1366 1608"> <thead> <tr> <th>B – Remand Inmates</th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td>70 - 100%</td> <td>0</td> </tr> <tr> <td>Level 1</td> <td>60 - &lt;70%</td> <td>300 per failure in this range</td> </tr> <tr> <td>Level 2</td> <td>&lt;60%</td> <td>400 per failure in this range</td> </tr> </tbody> </table>	A – Sentenced Inmates	Performance Range	Quality Failure Points	Target	90 - 100%	0	Level 1	70 - <90%	300 per failure in this range	Level 2	<70%	400 per failure in this range	B – Remand Inmates	Performance Range	Quality Failure Points	Target	70 - 100%	0	Level 1	60 - <70%	300 per failure in this range	Level 2	<60%	400 per failure in this range
A – Sentenced Inmates	Performance Range	Quality Failure Points																							
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B – Remand Inmates	Performance Range	Quality Failure Points																							
Target	70 - 100%	0																							
Level 1	60 - <70%	300 per failure in this range																							
Level 2	<60%	400 per failure in this range																							
<b>Definitions</b>	<p><b>Health Discharge Plan</b> means a health discharge plan that meets the requirements of the Services Specification.</p> <p><b>In-scope Sentenced Custodial Patients</b> means all sentenced Custodial Patients where the known date of release from the Correctional Complex is in the subsequent Month and for whom a health discharge plan is required in accordance with the Services Specification, and includes Specified Custodial Patients.</p> <p><b>In-scope Remand Custodial Patients</b> means all remand Custodial Patients where the next known court date is in the subsequent Month</p>																								

<b>KPI 15</b>	<b>Health discharge plans</b>
	<p>and for whom a health discharge plan is required in accordance with the Services Specification, and includes Specified Custodial Patients.</p> <p><b>Specified Custodial Patients</b> means Custodial Patients:</p> <ul style="list-style-type: none"> <li>• with chronic health issues;</li> <li>• with mental illness or significant mental health issues;</li> <li>• with alcohol and other drug issues;</li> <li>• with a Chronic Healthcare Plan (as defined in KPI 13);</li> <li>• with prescribed pharmacotherapy treatments; or</li> <li>• who are Aboriginal and Torres Strait Islander Custodial Patients.</li> </ul>
<b>Counting Rules</b>	<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 is available to the Custodial Patient upon request.</p> <p>Exclude:</p> <ul style="list-style-type: none"> <li>• In-scope Remand Custodial Patients who were presented to court within 24 hours of being received at the Correctional Complex and for whom no health screening was conducted; or</li> <li>• In-scope Remand Custodial Patients where the Custodial Patient was released in advance of the next booked court date.</li> </ul>
<b>Reporting Requirements of Manage Co</b>	<ul style="list-style-type: none"> <li>• Number of In-Scope Sentenced Custodial Patients provided with a Health Discharge Plan</li> <li>• Number of In-Scope Sentenced Custodial Patients</li> <li>• Number of In-Scope Remand Custodial Patients provided with a Health Discharge Plan</li> <li>• Number of In-Scope Remand Custodial Patients</li> </ul>
<b>Reporting Period</b>	Monthly

**2.16 KPI 16 – Early Detection Programs and Immunisation Services**

<b>KPI 16</b>	<b>Early detection programs and immunisation services</b>																								
<b>Formulae</b>	<p><b>A. (Number of Eligible Custodial Patients provided with Immunisations)/(Number of Eligible Custodial Patients) x 100</b></p> <p><b>B. (Number of High Risk Custodial Patients provided with EDP)/(Number of High Risk Custodial Patients) x 100</b></p>																								
<b>Calculation of Quality Failure Points</b>	<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" style="margin-left: 20px;"> <thead> <tr> <th>A – Immunisations</th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td>100%</td> <td>0</td> </tr> <tr> <td>Level 1</td> <td>90 – &lt;100%</td> <td>500 per failure in this range</td> </tr> <tr> <td>Level 2</td> <td>&lt;90%</td> <td>1,000 per failure in this range</td> </tr> </tbody> </table> <table border="1" style="margin-left: 20px;"> <thead> <tr> <th>B – EDP</th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td>75 - 100%</td> <td>0</td> </tr> <tr> <td>Level 1</td> <td>50 - &lt;75%</td> <td>250 per failure in this range</td> </tr> <tr> <td>Level 2</td> <td>&lt;50%</td> <td>500 per failure in this range</td> </tr> </tbody> </table>	A – Immunisations	Performance Range	Quality Failure Points	Target	100%	0	Level 1	90 – <100%	500 per failure in this range	Level 2	<90%	1,000 per failure in this range	B – EDP	Performance Range	Quality Failure Points	Target	75 - 100%	0	Level 1	50 - <75%	250 per failure in this range	Level 2	<50%	500 per failure in this range
A – Immunisations	Performance Range	Quality Failure Points																							
Target	100%	0																							
Level 1	90 – <100%	500 per failure in this range																							
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Target	75 - 100%	0																							
Level 1	50 - <75%	250 per failure in this range																							
Level 2	<50%	500 per failure in this range																							
<b>Definitions</b>	<p><b>Eligible Custodial Patients</b> means all Custodial Patients who provide voluntary informed consent for Immunisations and who are:</p> <ul style="list-style-type: none"> <li>(a) received into custody at the Correctional Complex in the last 14 days of the previous Month; or</li> <li>(b) received into custody at the Correctional Complex in the current Month excluding the last 14 days of the Month.</li> </ul> <p><b>Immunisations</b> means immunisation services in accordance with the Services Specification.</p> <p><b>High Risk Custodial Patients</b> means Custodial Patients:</p>																								

<b>KPI 16</b>	<b>Early detection programs and immunisation services</b>
	<p>(a) identified as at risk of a blood borne virus or a sexually transmissible infection; and</p> <p>(b) who voluntarily undergo screening, who are:</p> <p>(c) received into custody at the Correctional Complex in the last 14 days of the previous Month; or</p> <p>(d) received into custody at the Correctional Complex in the current Month excluding the last 14 days of the Month.</p> <p><b>EDP</b> means early detection programs for blood borne viruses and sexually transmissible infections in accordance with the Services Specification.</p>
<b>Counting Rules</b>	<p><b><u>A. Immunisations</u></b></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><u>B. EDP</u></b></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>
<b>Reporting Requirements of Manage Co</b>	<ul style="list-style-type: none"> <li>• Number of Eligible Custodial Patients provided with Immunisations</li> <li>• Number of Eligible Custodial Patients</li> <li>• Number of High Risk Custodial Patients provided with EDP</li> <li>• Number of High Risk Custodial Patients</li> </ul>
<b>Reporting Period</b>	Monthly

## 2.17 KPI 17 – Health Related Incident Reporting

KPI 17	Health Related Incident Reporting
Formulae	<p><b>A. Number of Failure Periods for submitting RCA incident reports to the State within the Required Timeframe</b></p> <p><b>B. Number of Failure Periods for Resolving Custodial Patient complaints within the Required Timeframe</b></p> <p><b>C. Number of Incorrect Incidents in the Month</b></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 – 1,000 points per Failure Period</p> <p>B. Complaints – 250 per Failure Period</p> <p>C. Incidents – 5,000 per Incorrect Incident</p>
Definitions	<p><b>Failure Periods</b> 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><b>Root Cause Analysis or RCA</b> 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><b>IIMS</b> means the NSW Ministry of Health Incident Information Management System.</p> <p><b>Incorrect Incidents</b> means Health Procedures which were performed:</p> <ul style="list-style-type: none"> <li>(a) at the incorrect site (i.e. body part);</li> <li>(b) on the incorrect Custodial Patient;</li> <li>(c) which should not have been performed in accordance with NSW Health Policies; or</li> <li>(d) were performed using equipment that was not in accordance with NSW Health Policies.</li> </ul> <p><b>Health Procedures</b> means diagnostic and surgical procedures including dentistry, minor invasive procedures, radiology, chemotherapy and dialysis.</p> <p><b>Resolve, Resolved and Resolving</b> means meeting with the Custodial Patient to discuss their complaint (whether made orally to Staff at the Correctional Complex or submitted in writing including through external services such as the NSW Health Care Complaints Commission or the</p>



<b>KPI 17</b>	<b>Health Related Incident Reporting</b>
	<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><b>Required Timeframes</b> means:</p> <p>(a) for Performance Target A, within 70 days of notification by the State through IIMS;</p> <p>(b) for Performance Target B, within 35 days of Manage Co or its Associates being notified of the complaint.</p>
<b>Counting Rules</b>	<p><b>A. Example:</b></p> <p>Manage Co is notified of the requirement to submit an RCA through IIMS on 15 March 2025. Manage Co submits the RCA to the Ministry of Health on 27 May 2025 i.e. 73 days later. Count three Failure Periods.</p> <p><b>B. Example:</b></p> <p>A written complaint is lodged by an Inmate on 15 March 2025. Manage Co meets with the Inmate on 17 April 2025 (i.e. 33 days later) to discuss the complaint and apologise. Manage Co does not provide a written response to the Inmate until 20 April 2025 (i.e. 37 days after the complaint is lodged). Count two Failure Periods.</p> <p><b>C. Example:</b></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>
<b>Reporting Requirements of Manage Co</b>	<ul style="list-style-type: none"> <li>• Number of Failure Periods for submitting RCA incident reports to the State within the Required Timeframe</li> <li>• Number of Failure Periods for Resolving Custodial Patient complaints within the Required Timeframe</li> <li>• Relevant details of each Incorrect Incident</li> </ul>
<b>Reporting Period</b>	Monthly

**2.18 KPI 18 – Health Screening**

<b>KPI 18</b>	<b>Health Screening</b>												
<b>Formula</b>	<b>(Number of Custodial Patients received into custody at the Correctional Complex in the Period who undergo a Health Assessment within 24 hours) / (Number of Custodial Patients received into custody at the Correctional Complex in the Period) x 100</b>												
<b>Calculation of Quality Failure Points</b>	<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><b>Target</b></td> <td>100%</td> <td>0</td> </tr> <tr> <td><b>Level 1</b></td> <td>97 – &lt;100%</td> <td>500 per failure in this range</td> </tr> <tr> <td><b>Level 2</b></td> <td>&lt;97%</td> <td>750 per failure in this range</td> </tr> </tbody> </table>		Performance Range	Quality Failure Points	<b>Target</b>	100%	0	<b>Level 1</b>	97 – <100%	500 per failure in this range	<b>Level 2</b>	<97%	750 per failure in this range
	Performance Range	Quality Failure Points											
<b>Target</b>	100%	0											
<b>Level 1</b>	97 – <100%	500 per failure in this range											
<b>Level 2</b>	<97%	750 per failure in this range											
<b>Definitions</b>	<p><b>Health Assessment</b> means:</p> <ul style="list-style-type: none"> <li>(a) a comprehensive health assessment in accordance with the Services Specification for Custodial Patients whose reception at the Correctional Complex is their initial reception into the NSW correctional system;</li> <li>(b) a health assessment review in accordance with the Services Specification for Custodial Patients transferred to the Correctional Complex from another correctional centre or from a hospital; or</li> <li>(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.</li> </ul> <p><b>Period</b> means:</p> <ul style="list-style-type: none"> <li>(a) the last day of the preceding Month; and</li> <li>(b) all days in the Month excluding the last day of the Month</li> </ul>												
<b>Counting Rules</b>	<p><u>Numerator</u>: Number of Custodial Patients received into custody at the Correctional Complex in the Period who undergo a Health Assessment within 24 hours of reception into the Correctional Complex.</p> <p><u>Denominator</u>: Number of Custodial Patients received into custody at the Correctional Complex in the Reporting Period.</p>												

<b>KPI 18</b>	<b>Health Screening</b>
<b>Reporting Requirements of Manage Co</b>	<ul style="list-style-type: none"><li>• Number of Health Assessments undertaken for each of (a), (b) and (c) in the Definitions.</li><li>• Total number of Custodial Patients received into custody at the Correctional Complex in the period.</li></ul>
<b>Reporting Period</b>	Monthly

**2.19 KPI 19 – Inmate Place Unavailability**

<b>KPI 19</b>	<b>Inmate Place Unavailability</b>
<b>Formula</b>	<b>Number of days of Inmate Place Unavailability</b>
<b>Calculation of Quality Failure Points</b>	<p>The Quality Failure Points which Manage Co will accrue for each Inmate Place Unavailability is as follows:</p> <p>(a) 110 points per day, or part thereof, for the first seven days; plus</p> <p>(b) 165 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>
<b>Definitions</b>	<p><b>Inmate Place Unavailability</b> means an Inmate Place that is not an Available Inmate Place.</p> <p><b>Inmate Place</b> means a cell at the Correctional Complex (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 1,160 prior to, and 1,816 from, the Operational Commencement Date of the Expanded Facility.</p> <p><b>Available Inmate Place</b> 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>

KPI 19	Inmate Place Unavailability
	<ul style="list-style-type: none"> <li>C. Alarm Systems (incl. Duress)</li> <li>D. Metal Detector (Walk through)</li> <li>E. XRAY Detection Systems</li> <li>F. CCTV / Video Systems</li> <li>G. Access Door Systems</li> <li>H. Cell Call System;</li> </ul> <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 Complex were maintained as required under the Output Specification and Performance Regime.</p> <p><b>Rectification Period</b> has the meaning given to it in Schedule 10 (Payment Schedule)</p>
<b>Counting Rules</b>	<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 2pm on 22 September 2022. The Inmate Place Unavailability</p>

<b>KPI 19</b>	<b>Inmate Place Unavailability</b>
	<p>is not Rectified until 8pm on 4 October 2022. The Quality Failure Points for that Inmate Place Unavailability would be calculated as:</p> <ul style="list-style-type: none"> <li>• 110 QFPs x 7 days = 770 (in respect of 2pm on 22 September 2022 until 2pm on 29 September 2022);</li> <li>• 165 QFPs x 5.25 days = 866.25 (in respect of 2pm on 29 September 2022 until 8pm on 4 October 2022);</li> </ul> <p>The Quality Failure Points for the Inmate Place Unavailability total 866.25.</p>
<b>Reporting Requirements of Manage Co</b>	<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"> <li>• a unique identification number;</li> <li>• the nature of the Inmate Place Unavailability;</li> <li>• the date, time, extent and duration of the Inmate Place Unavailability;</li> <li>• the specific location of the Inmate Place Unavailability;</li> <li>• the required and actual Rectification Period; and</li> <li>• the Quality Failure Points attributable to the Inmate Place Unavailability.</li> </ul> <p>Where the Inmate Place Unavailability gives rise to Critical Incidents, Manage Co is to separately provide a critical incident report.</p>
<b>Reporting Period</b>	Monthly

**2.20 KPI 20 – Meal Failures**

<b>KPI 20</b>	<b>Meal Failures</b>
<b>Formula</b>	<b>Number of Meal Availability Failures in the relevant Month</b>
<b>Calculation of Quality Failure Points</b>	The Quality Failure Points which Manage Co will accrue each Month is 30 points per Meal Availability Failure.
<b>Definitions</b>	<p><b>CSI</b> means Corrective Services Industries.</p> <p><b>Meal Availability Failure</b> means a failure to provide any Inmate food (to the extent that the Inmate is physically present at the Correctional Complex 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 Deed.</p>
<b>Counting Rules</b>	<p>Count the number of Meal Availability Failures.</p> <p>Exclude:</p> <ul style="list-style-type: none"> <li>• 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 17 (Food Services) 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 Deed.</li> </ul>
<b>Reporting Requirements of Manage Co</b>	<ul style="list-style-type: none"> <li>• Report the number of Meal Availability Failures.</li> </ul>
<b>Reporting Period</b>	Monthly

**2.21 KPI 21 – Current Case Plans**

<b>KPI 21</b>	<b>Current Case Plans</b>												
<b>Formula</b>	<b>(Number of Eligible Inmates with a Current Case Plan) / (Number of Eligible Inmates) x 100</b>												
<b>Calculation of Quality Failure Points</b>	<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><b>Target</b></td> <td>90 – 100%</td> <td>0</td> </tr> <tr> <td><b>Level 1</b></td> <td>80 – &lt;90%</td> <td>1,500 per failure in this range</td> </tr> <tr> <td><b>Level 2</b></td> <td>&lt;80%</td> <td>2,250 per failure in this range</td> </tr> </tbody> </table>		Performance Range	Quality Failure Points	<b>Target</b>	90 – 100%	0	<b>Level 1</b>	80 – <90%	1,500 per failure in this range	<b>Level 2</b>	<80%	2,250 per failure in this range
	Performance Range	Quality Failure Points											
<b>Target</b>	90 – 100%	0											
<b>Level 1</b>	80 – <90%	1,500 per failure in this range											
<b>Level 2</b>	<80%	2,250 per failure in this range											
<b>Definitions</b>	<p><b>Current Case Plan</b> means:</p> <ul style="list-style-type: none"> <li>(a) a Complete Case Plan which exists within six weeks of the date of: <ul style="list-style-type: none"> <li>(i) sentence, for newly sentenced Inmates who were on remand at the Correctional Complex</li> <li>(ii) reception into the Correctional Complex, for sentenced Inmates transferred to the Correctional Complex; and</li> </ul> </li> <li>(b) a Complete Case Plan which has been reviewed and updated as required by the Services Specification and, in any case, no less frequently than once every six Months</li> </ul> <p><b>Eligible Inmates</b> means all sentenced Inmates at the Correctional Complex who have three months or more remaining on their sentence (before the earliest possible release date) and who have been at the Correctional Complex under sentence for at least six weeks.</p> <p><b>Complete Case Plan</b> means a case plan for each sentenced Inmate which complies with the Corrections Legislation and the Services Specification and is entered in OIMS</p>												
<b>Counting Rules</b>	<p><u>Numerator:</u> Number of Eligible Inmates with a Current Case Plan</p> <p><u>Denominator:</u> Number of Eligible Inmates.</p>												
<b>Reporting Requirements of Manage Co</b>	<p>For each Eligible Inmate:</p> <ul style="list-style-type: none"> <li>• date of Case Plan assessments;</li> <li>• results of Case Plan assessments;</li> <li>• date the Case Plan was finalised and the date the Case Plan should have been finalised in accordance with the Services Specification;</li> <li>• Case Plan goals including priority rating;</li> </ul>												



<b>KPI 21</b>	<b>Current Case Plans</b>
	<ul style="list-style-type: none"> <li>• formulated interventions for each Case Plan goal;</li> <li>• date expected to complete each intervention; and</li> <li>• dates Case Plan reviewed.</li> </ul>
<b>Reporting Period</b>	Monthly

## 2.22 KPI 22 – Outstanding Case Plan Interventions

KPI 22	Outstanding Case Plan Intervention																								
Formulae	<p>A. (Number of Outstanding Case Plan Interventions for High/Medium Risk Inmates) / (Number of Case Plan Interventions scheduled to be Completed for High/Medium Risk Inmates) x 100</p> <p>B. (Number of Outstanding Case Plan Interventions for Low Risk Inmates) / (Number of Case Plan Interventions scheduled to be Completed for Low Risk Inmates) x 100</p>																								
Calculation of Quality Failure Points	<p>The following table sets out the Quality Failure Points which 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="520 757 1382 1039"> <thead> <tr> <th>A – Medium/High Risk</th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td>0 – 3%</td> <td>0</td> </tr> <tr> <td>Level 1</td> <td>&gt;3 – 10%</td> <td>2,000 per failure in this range</td> </tr> <tr> <td>Level 2</td> <td>&gt;10%</td> <td>3,000 per failure in this range</td> </tr> </tbody> </table> <table border="1" data-bbox="520 1111 1382 1420"> <thead> <tr> <th>B – Low Risk</th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td>0 – 3%</td> <td>0</td> </tr> <tr> <td>Level 1</td> <td>&gt;3 – 10%</td> <td>1,000 per failure in this range</td> </tr> <tr> <td>Level 2</td> <td>&gt;10%</td> <td>1,500 per failure in this range</td> </tr> </tbody> </table>	A – Medium/High Risk	Performance Range	Quality Failure Points	Target	0 – 3%	0	Level 1	>3 – 10%	2,000 per failure in this range	Level 2	>10%	3,000 per failure in this range	B – Low Risk	Performance Range	Quality Failure Points	Target	0 – 3%	0	Level 1	>3 – 10%	1,000 per failure in this range	Level 2	>10%	1,500 per failure in this range
A – Medium/High Risk	Performance Range	Quality Failure Points																							
Target	0 – 3%	0																							
Level 1	>3 – 10%	2,000 per failure in this range																							
Level 2	>10%	3,000 per failure in this range																							
B – Low Risk	Performance Range	Quality Failure Points																							
Target	0 – 3%	0																							
Level 1	>3 – 10%	1,000 per failure in this range																							
Level 2	>10%	1,500 per failure in this range																							
Definitions	<p><b>Case Plan Interventions</b> means:</p> <p>(a) <b>Offence Related Programs:</b> a structured intervention that addresses the factors directly linked to offending behaviour.</p> <p>(b) <b>Adult Basic Education (ABE):</b> a structured intervention that develops skills to improve reading, writing, oral communication and numeracy.</p> <p>(c) <b>Vocational Education and Training (VET):</b> a course or traineeship that teaches skills and qualifications for employment.</p> <p>(d) <b>Services that support Inmate wellbeing:</b> one-to-one services that address psychological, motivational or welfare factors that impact on an Inmate's well-being.</p>																								

KPI 22	Outstanding Case Plan Intervention
	<p>(e) <b>Personal Development and Life Skills Programs:</b> a structured program that addresses the life skills and well being of the Inmate's needs.</p> <p>(f) <b>Re-integration Services and Community Referrals:</b> provision of services and referrals to service providers to assist the Inmate to successfully re-integrate into the community upon release.</p> <p><b>Outstanding Case Plan Interventions</b> means Case Plan Interventions scheduled to be completed in the reporting period where Completion of Case Plan Interventions has not been achieved by the time contemplated in the Case Plan.</p> <p><b>Completion of Case Plan Interventions or Complete Case Plan Interventions</b> means:</p> <p>(a) in respect of an Offence Related Program:</p> <p>(i) determination in writing by the program facilitator that the participating Inmate has satisfied the components of the program; and</p> <p>(ii) the Inmate attended at least 90% of program sessions;</p> <p>(b) in respect of Adult Basic Education, attainment by the participating Inmate of a higher level on the Australian Core Skills Framework;</p> <p>(c) in respect of Vocational Education and Training, attainment by the participating Inmate of a course module or attainment of a recognised qualification;</p> <p>(d) in respect of services that support Inmate wellbeing, evidence that contact between the participating Inmate and the relevant service provider has taken place that addresses psychological, motivation or welfare factors for the participating Inmate and the relevant service provider determines in writing that the intervention is complete; and</p> <p>(e) in respect of a Personal Development and Life Skills Program:</p> <p>(i) determination in writing by the program facilitator that the participating Inmate has satisfied the components of the program; and</p> <p>(ii) the Inmate attended at least 90% of program sessions; and</p> <p>(f) in respect of Reintegration Services and Community Referrals, evidence of referral of the participating Inmate to a relevant service,</p> <p>and in each case entered in OIMS.</p> <p><b>High/Medium Risk Inmates</b> means the Inmates in the Correctional Complex who are assessed by Manage Co or its Associates as having a high or medium Likelihood of Reoffending having regard to the</p>

KPI 22	Outstanding Case Plan Intervention
	<p>requirements of the Corrections Legislation and the Services Specification.</p> <p><b>Likelihood of Reoffending</b> means the risk of the Inmate further offending. It does not take into account the seriousness of further offending or the degree of damage it may cause.</p> <p><b>Low Risk Inmates</b> means the Inmates in the Correctional Complex who are assessed by Manage Co or its Associates as having a low Likelihood of Reoffending having regard to the requirements of the Corrections Legislation and the Services Specification.</p>
<b>Counting Rules</b>	<p><u>Numerator</u>: Count the number of Case Plan Interventions scheduled to be completed but not completed in the reporting period for High/Medium Risk Inmates or Low Risk Inmates (as the case may be).</p> <p><u>Denominator</u>: Count the number of Case Plan Interventions scheduled to be completed in the reporting period for High/Medium Risk Inmates or Low Risk Inmates (as the case may be).</p>
<b>Reporting Requirements of Manage Co</b>	<p>Details of each failure to complete a Case Plan Intervention in the reporting period including:</p> <ul style="list-style-type: none"> <li>• scheduled date of Case Plan Intervention;</li> <li>• type and nature of Case Plan Intervention;</li> <li>• attendance by the Inmate at each session of intervention (if applicable);</li> <li>• reason(s) for non-completion of the Case Plan Intervention; and</li> <li>• revised scheduled date for completion of the Case Plan Intervention.</li> </ul>
<b>Reporting Period</b>	Monthly

**2.23 KPI 23 – Participation in Temporary Leave Programs and Compliance with Temporary Leave Orders**

<p><b>KPI 23</b></p>	<p><b>Participation in Temporary Leave Programs and Compliance with Temporary Leave Orders</b></p>												
<p><b>Formulae</b></p>	<p><b>A. (Number of Inmates participating in Temporary Leave Programs) / (Number of Inmates Eligible for Temporary Leave Programs) x 100</b></p> <p><b>B. Number of Temporary Leave Orders Breached</b></p>												
<p><b>Calculation of Quality Failure Points</b></p>	<p>A. 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" data-bbox="534 761 1396 1025"> <thead> <tr> <th></th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td>85 – 100%</td> <td>(1,000) points per Inmate in this range</td> </tr> <tr> <td>Level 1</td> <td>70 – &lt;85%</td> <td>0 points</td> </tr> <tr> <td>Level 2</td> <td>&lt;70%</td> <td>1,500 points per Inmate in this range</td> </tr> </tbody> </table> <p>B. Temporary Leave Orders Breached – 15,000 points per breach</p>		Performance Range	Quality Failure Points	Target	85 – 100%	(1,000) points per Inmate in this range	Level 1	70 – <85%	0 points	Level 2	<70%	1,500 points per Inmate in this range
	Performance Range	Quality Failure Points											
Target	85 – 100%	(1,000) points per Inmate in this range											
Level 1	70 – <85%	0 points											
Level 2	<70%	1,500 points per Inmate in this range											
<p><b>Definitions</b></p>	<p><b>A. Temporary Leave Programs</b></p> <p><b>Temporary Leave Program</b> means the following programs for Inmates Eligible for Temporary Leave Programs:</p> <ul style="list-style-type: none"> <li>(a) weekend and day leave;</li> <li>(b) external work release program; or</li> <li>(c) education release under a local leave permit for education.</li> </ul> <p><b>Inmates Eligible for Temporary Leave Programs</b> means Inmates who are identified as being eligible for Temporary Leave Programs in accordance with the Output Specification and the Corrections Legislation, and Eligible Inmates will be construed accordingly.</p> <p><b>B. Temporary Leave Orders Breached</b></p> <p><b>Temporary Leave Order Breached</b> means an Inmate has failed to comply with the conditions of the Inmate's temporary leave order except to the extent that the failure relates to the late return by an Inmate:</p> <ul style="list-style-type: none"> <li>(a) arising from circumstances which are beyond the reasonable control of the Inmate, except to the extent that such failure was caused by a failure by Manage Co or its Associates to provide the Services in accordance with this Deed;</li> </ul>												

<b>KPI 23</b>	<b>Participation in Temporary Leave Programs and Compliance with Temporary Leave Orders</b>
	<p>(b) during the period which is up to 30 minutes after the designated return time specified in the temporary leave order; or</p> <p>(c) arising from an Escape from Temporary Leave (as defined in KPI 12).</p>
<b>Counting Rules</b>	<p>A. <u>Numerator:</u> Number of Eligible Inmates participating in a Temporary Leave Program.  <u>Denominator:</u> Number of Inmates Eligible for Temporary Leave Programs.</p> <p>B. Temporary Work Orders – Count the number of Temporary Leave Orders Breached in the reporting period</p> <p>If an inmate has multiple Temporary Leave Orders Breached, each Temporary Leave Order Breached is counted separately.</p>
<b>Reporting Requirements of Manage Co</b>	<p><b>A. Temporary Leave Programs</b></p> <ul style="list-style-type: none"> <li>• Details of Temporary Leave Program participation</li> </ul> <p><b>B. Temporary Leave Orders</b></p> <ul style="list-style-type: none"> <li>• Date of the Temporary Leave Order Breached.</li> <li>• Details of the conditions the Inmate failed to comply with that resulted in the Temporary Leave Order Breached.</li> <li>• Assessment of suitability for Temporary Leave Program for those Inmates who have a Temporary Leave Order Breached during the reporting period.</li> </ul>
<b>Reporting Period</b>	Monthly

**2.24 KPI 24 – Escapes from Temporary Leave**

<b>KPI 24</b>	<b>Escapes from Temporary Leave</b>
<b>Formula</b>	<b>Number of Escapes from Temporary Leave Programs</b>
<b>Calculation of Quality Failure Points</b>	Manage Co will accrue 100,000 Quality Failure Points for each Escape from Temporary Leave.
<b>Definitions</b>	<p><b>Escape from Temporary Leave</b> means when a minimum security Inmate:</p> <p>(a) departs, without lawful authority, from the location of an authorised temporary leave program (whether supervised or unsupervised), and is subsequently charged by NSW Police with escape from lawful custody; or</p> <p>(b) fails to return from an authorised temporary leave program (whether supervised or unsupervised) or returns late and is subsequently charged by NSW Police with escape from lawful custody.</p>
<b>Counting Rules</b>	<p>The number of Escapes from temporary leave during the reporting period.</p> <p>If two or more Inmates Escape from temporary leave at the same time or together, then this is counted as two or more Escapes from Temporary Leave (as relevant).</p>
<b>Reporting Requirements of Manage Co</b>	<ul style="list-style-type: none"> <li>• Compliance with relevant Services Specification.</li> <li>• Summary of the incident, events leading to the Escape from Temporary Leave, detection and the response by Manage Co or its Associates.</li> <li>• Manage Co or its Associates' intended actions to prevent future Escapes from Temporary Leave. If none, the rationale supporting this decision.</li> <li>• Report of the Governor regarding the Escape from Temporary Leave.</li> </ul>
<b>Reporting Period</b>	Monthly

## 2.25 KPI 25 – Drug and Alcohol Referrals for Pregnancies

KPI 25	Drug and Alcohol Referrals for Pregnancies
Formula	Number of pregnant Custodial Patients with a history of drug and or alcohol use received into custody at the Correctional Complex and not Referred within 12 hours in accordance with the Services Specification (Failure).
Calculation of Quality Failure Points	The Quality Failure Points which Manage Co will accrue each Month is 600 per Failure
Definitions	<p><b>Referred</b> means:</p> <p>(a) advice is sought from the addictions specialist or drug and alcohol medical officer in respect of treatment for the pregnant Custodial Patient; and</p> <p>(b) the pregnant Custodial Patient meets with the addictions specialist / drug and alcohol medical officer.</p>
Counting Rules	The 12 hour period commences at the time of the Custodial Patient's initial reception
Reporting Requirements of Manage Co	<ul style="list-style-type: none"> <li>• Number of pregnant Custodial Patients with a history of drug and alcohol use received into custody at the Correctional Complex in the reporting period.</li> <li>• Number of pregnant Custodial Patients with a history of drug and alcohol use received into custody at the Correctional Complex in the reporting period and not Referred to the addictions specialist or drug and alcohol medical officer within 12 hours in accordance with the Services Specification.</li> </ul>
Reporting Period	Monthly



### 3. Charge Events

#### 3.1 Charge Event 1 – Unnatural Deaths

<b>Charge Event 1</b>	<b>Unnatural Deaths</b>
<b>Formula</b>	<b>Number of Unnatural Deaths</b>
<b>Charge</b>	Each Unnatural Death results in a charge of \$500,000.
<b>Definitions</b>	<p><b>Unnatural Death</b> means a death of an Inmate:</p> <ul style="list-style-type: none"> <li>• in the Correctional Complex or when escorting an Inmate; which the State Coroner or the Commissioner determines is the result of an Unnatural Cause; or</li> <li>• in Correctional Complex Custody, which the State Coroner or the Commissioner determines is the result of an Unnatural Cause.</li> </ul> <p><b>Correctional Complex Custody</b> means in the Correctional Complex, or outside the Correctional Complex during participation in a temporary leave program or when the Inmate is being (or is required to be) escorted by Manage Co or its Associates.</p> <p><b>Unnatural Cause</b> includes homicide, suicide, accidental cause or drug overdose.</p>
<b>Counting Rules</b>	<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 Complex Custody or in the Correctional Complex, the Unnatural Death is to be counted.</p> <p>Where more than one Unnatural Death occurs during the one incident or event, the death of each individual will be recorded as an individual death.</p>
<b>Reporting Requirements of Manage Co</b>	<ul style="list-style-type: none"> <li>• Compliance with the Output Specification.</li> <li>• A summary of the Unnatural Death, including its cause, its discovery and the response by Manage Co or its Associates.</li> <li>• 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.</li> <li>• A report from the Governor of the Correctional Complex regarding the Unnatural Death.</li> </ul>
<b>Reporting Period</b>	Monthly

### 3.2 Charge Event 2 - Escapes

<b>Charge Event 2</b>	<b>Escapes</b>
<b>Formulae</b>	<b>Number of Escapes from Secure Custody</b> <b>Number of Escapes from Open Custody</b>
<b>Charge</b>	Each Escape from Secure Custody results in a charge of \$500,000.  Each Escape from Open Custody results in a charge of \$200,000.
<b>Definitions</b>	<b>Escape</b> means the departure (regardless of duration), without lawful authority, of an Inmate: <ul style="list-style-type: none"> <li>from the perimeter or declared boundary of a Correctional Complex, regardless of whether or not there was a breach of a physical barrier; or</li> <li>from any approved locations when outside of the perimeter or declared boundary of a Correctional Complex when the Inmate is being (or is required to be) escorted by Manage Co or its Associates.</li> </ul>
<b>Counting Rules</b>	Count the number of each type of Escape during the reporting period. If two or more Inmates Escape at the same time or together, then this is counted as two or more Escapes (as the case may be).  If an Inmate Escapes, the Escape is classified as an Escape from Open Custody or Secure Custody depending on the security level of the area of the Correctional Complex at which the Inmate was held immediately prior to the Escape. For example, where an Inmate with an individual security classification of Minimum Security is held in the Secure Custody area of the Correctional Complex prior to Escape, that Escape is to be counted as a Secure Custody Escape.  If an Inmate Escapes whilst being escorted by Manage Co or its Associates, the Escape is classified as an Escape from Open Custody or Secure Custody depending on the security level of the area of the Correctional Centre at which the Inmate was held immediately prior to the commencement of the escort by Manage Co or its Associates.
<b>Reporting Requirements of Manage Co</b>	<ul style="list-style-type: none"> <li>Compliance with the Output Specification.</li> <li>Summary of the Escape, the events preceding the Escape, detection and the response by Manage Co or its Associates.</li> <li>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.</li> <li>A report from the Governor of the Correctional Complex regarding the Escape.</li> </ul>
<b>Reporting Period</b>	Monthly

### 3.3 Charge Event 3 - Major Disruption to Correctional Operations

<b>Charge Event 3</b>	<b>Major Disruption to the operation of the Correctional Complex</b>
<b>Formula</b>	<b>Number of Major Disruptions to the operation of the Correctional Complex</b>
<b>Charge</b>	Each Major Disruption results in a charge of \$250,000 per day.
<b>Definitions</b>	<p><b>Major Disruption</b> means an incident involving defiance or disorder by one or more Inmates which results in:</p> <p>(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 a Correctional Centre or the Correctional Complex (such as an accommodation area, common area, recreational area, work area or yard, rather than a cell), or the effective control of an Inmate while that Inmate is on temporary leave or is being (or required to be) escorted by Manage Co or its Associates;</p> <p>(b) the taking of a hostage (whether an Inmate or Non-Inmate);</p> <p>(c) a riot in the Correctional Complex; or</p> <p>(d) the State lawfully intervening to restore good order or security to any part of the Correctional Centre or the Correctional Complex (such as an accommodation area, common area, recreational area, work area or yard, rather than a cell), or any other location while an Inmate is on temporary leave or being (or is required to be) escorted by Manage Co or its Associates.</p>
<b>Counting Rules</b>	<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>
<b>Reporting Requirements by Manage Co</b>	<ul style="list-style-type: none"> <li>• Complete Incident Report Module requirements (as set out in the Output Specification).</li> <li>• Date and time of incident.</li> <li>• Location of incident.</li> <li>• Events preceding the incident.</li> <li>• Inmates, Non-Inmates or any other person involved in the incident.</li> <li>• Details of any injuries to Inmates, Non-Inmates or any other person.</li> <li>• Details of any hostages involved.</li> </ul>

<b>Charge Event 3</b>	<b>Major Disruption to the operation of the Correctional Complex</b>
	<ul style="list-style-type: none"><li>• Attempted interventions to resolve incident.</li><li>• Details on how the incident was resolved.</li><li>• Damage to the Correctional Complex or any other location where the incident occurred.</li></ul>
<b>Reporting Period</b>	Monthly

### 3.4 Charge Event 4 - Compliance with Release Dates

<b>Charge Event 4</b>	<b>Compliance with Release Dates</b>
<b>Formulae</b>	<p><b>Number of Erroneous Releases</b></p> <p><b>Number of Erroneous Detentions</b></p>
<b>Charge</b>	<p>Each Erroneous Release results in a charge of \$10,000 per day from the date of the Erroneous Release until the Inmate is taken into physical custody, up to a maximum of \$500,000.</p> <p>Each Erroneous Detention results in a charge of \$10,000 per day from the date of the Erroneous Detention until the Inmate is released from custody.</p>
<b>Definitions</b>	<p><b>Erroneous Release</b> 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><b>Erroneous Detention</b> 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>
<b>Counting Rules</b>	<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>
<b>Reporting Requirements</b>	<p>For each Erroneous Detention:</p> <ul style="list-style-type: none"> <li>• details of the Inmate;</li> <li>• details of the legal release date and actual release date; and</li> <li>• reason for Erroneous Detention.</li> </ul> <p>For each Erroneous Release:</p> <ul style="list-style-type: none"> <li>• details of relevant Inmate;</li> <li>• details of the legal release date, actual release date, and date when the Inmate is taken into legal custody following the Erroneous Release;</li> <li>• details of the period during which the Inmate was erroneously released; and</li> <li>• reason for Erroneous Release.</li> </ul>
<b>Reporting Period</b>	Monthly

## Schedule 13 — Insurance

### Insurance to be procured and maintained by Manage Co

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 Schedule 13 for the applicable period of insurance upon the minimum terms specified in this Schedule 13.

Summary of cover required:

- (a) Public and Products Liability cover;
- (b) Professional indemnity insurance cover;
- (c) Workers' Compensation cover; and
- (d) Motor Vehicle cover.

#### (a) Public and Products Liability cover

Insured	Each of: <ul style="list-style-type: none"> <li>▪ Manage Co and its Associates; and</li> <li>▪ the State and its Associates in respect of their vicarious liability for the acts and omissions of Manage Co or any of its Associates.</li> </ul>
Limit of Liability	██████████ each and every occurrence with regards to public liability and ██████████ in the annual aggregate with regards to products liability insurance.
Scope of cover:	To cover legal liability for claims in respect of: <ul style="list-style-type: none"> <li>• physical loss, destruction or damage to real or personal property, including property in the care, custody and control of the Insured, for which the Insured is responsible and which is not otherwise already insured for the Insured's benefit, and including consequential economic loss; and</li> <li>• personal injury (including libel and slander), disease or death of any person including resultant economic loss,</li> </ul> arising out of or in connection with its products, the Project Activities and any Project Document during the Term.
Situation of risk	Anywhere in the Commonwealth of Australia (and whilst in transit).
Deductibles	██████████
Additional requirements	<ul style="list-style-type: none"> <li>▪ This policy must include cover for: <ul style="list-style-type: none"> <li>- goods in Insureds care custody and control;</li> <li>- car park vehicles in care, custody or control;</li> <li>- worker to worker liability;</li> <li>- liability arising out of personal injury to contract labour hire persons;</li> <li>- liability arising from construction operations on site;</li> <li>- sudden and accidental pollution;</li> <li>- principal's vicarious liability;</li> <li>- liability associated with the use or operation of mobile plant and equipment not required to be registered/used as</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>- a tool of trade or registered plant whilst used as a tool of trade (unless separate insurance procured for this exposure); and</li> <li>- liability arising from Inmate escape.</li> <li>▪ Policy must include a:             <ul style="list-style-type: none"> <li>- waiver of subrogation and contribution clause in which the insurer agrees to waive all rights of subrogation and contribution against any party required to be insured under this policy;</li> <li>- breach of conditions clause in which the insurer agrees that any non-disclosure, misrepresentation (whether fraudulent or otherwise), any breach of term or condition of the policy, or any fraud or other act, omission or default by one insured party shall not prejudice the right to indemnity of any other insured party;</li> <li>- clause which provides that any notice of claim given to Insurers by any party insured under this policy shall be accepted by the Insurers as a notice of claim given on behalf of all other parties insured under this policy; and</li> <li>- severability clause in which the insurer agrees that where the Insured comprises more than one insured party each operating as a separate and distinct entity then cover shall apply in the same manner and to the same extent as if individual policies had been issued to each such insured party provided that the total liability of the Insurers to all of the insured parties collectively shall not exceed the sums insured and limits of indemnity.</li> </ul> </li> <li>▪ Policy must not exclude or limit liability in connection with:             <ul style="list-style-type: none"> <li>(a) the ownership, purchasing, storage, the use of or creation of any radioactivity, radiation, ionising radiation, radioactive isotopes/material for the purpose of treatment, medical research or any general business use (for the avoidance of doubt, the State will only accept a general war/nuclear activity related exclusion); or</li> <li>(b) biohazards (for the avoidance of doubt, the State will only accept pollution or other similar exclusion that does not exclude liability in connection with biohazardous material).</li> </ul> </li> </ul>
<p>Period of cover</p>	<p>For a period of 12 months commencing on Commercial Close, to be renewed annually until the Expiry Date.</p>

**(b) Professional indemnity insurance cover**

Insurance element	Minimum Requirement
<p>Party responsible for procuring the insurance</p>	<p>Manage Co.</p>
<p>Insured</p>	<p>Manage Co and its Associates.</p>
<p>Sum insured</p>	<p>██████████ for any claim and ██████████ in the annual aggregate.</p>
<p>Scope of cover</p>	<p>Covering legal liability arising from an act error or omission of the insured in relation to the performance of each insured's professional activities and duties in connection with the Project Activities.</p>

Insurance element	Minimum Requirement
Situation of risk	Anywhere in the Commonwealth of Australia.
Retroactive date	No later than the earlier of: (a) the commencement of preparation of Manage Co's Tender; and (b) the release of the request for Manage Co's Tender by the State.
Deductibles	████████████████████
Additional Requirements	The policy must include: <ul style="list-style-type: none"> <li>▪ an indemnity to Manage Co for its vicarious liability arising out of acts, errors and omissions of its contractors, consultants and subcontractors;</li> <li>▪ Severability and non-imputation clauses;</li> <li>▪ a Loss of Documents extension;</li> <li>▪ cover for fraud, dishonesty, defamation, breach of confidentiality, infringement of patent, copyright, design and intellectual property;</li> <li>▪ cover for breach of the Competition and Consumer Act 2010 (Cth) and the Fair Trading Act 2010 (WA) and any similar legislation in any other state or territory in so far as they may relate to the provision of the services provided in connection with the DBFM Works;</li> <li>▪ a Proportionate liability extension; and</li> <li>▪ a Contractual liability extension.</li> </ul>
Period of insurance	From Commercial Close to 7 years after the Expiry Date.

**(c) 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.
Level of Cover	As required by Law
Deductibles	████████████████████
Period of cover	From Commercial Close until the Expiry Date.

**(d) Motor Vehicle cover**

Insurance element	Minimum Requirement
Party responsible for procuring the insurance	Each party is required to procure and maintain its own insurance for vehicles to be used in connection with the Project Activities.
Insured	Each party is required to procure and maintain its own insurance for vehicles to be used in connection with the Project Activities.
Level of cover	Minimum coverage of ██████████ per occurrence and in the aggregate in respect of third party property damage.
Risks covered	Legal liability for third party property damage in respect of all vehicles used in connection with the Project Activities.
Deductibles	████████████████████



Insurance element	Minimum Requirement
Additional requirements	<p>All motor vehicles must be registered currently for compulsory third party insurance as required by Law, if for use on public roads.</p> <p>Policy must cover unregistered vehicles or vehicles used as a tool of trade.</p> <p>Cover for mobile plant and equipment not required to be registered or used as a tool of trade or registered plant whilst used as a tool of trade (unless separate insurance procured for this exposure proof of which is to be provided by Manage Co to the State.</p>
Period of cover	For a period commencing on Commercial Close and ending on the Expiry Date.

## Schedule 15 — Termination Payments Schedule

---

### 1. Definitions

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

**Compensation Date** means the date on which the Termination Payment under section 3 has been agreed or determined pursuant to dispute resolution in accordance with clause 40 (*Dispute Resolution procedure*) of this Deed.

**Force Majeure Subcontractor Breakage Costs** means the amount reasonably and properly payable by Manage Co to Manage Co's Subcontractors on termination of this Deed in respect of offsite materials, plant and equipment procured under the Significant Subcontracts and which cannot be readily substituted for materials, plant and equipment under other contracts to which the relevant Manage Co Subcontractor is a party, provided:

- (a) such amounts are incurred under arrangements and/or agreements on arm's-length commercial terms entered into:
  - (i) prior to the relevant Force Majeure Event occurring; or
  - (ii) if after that date, then with the consent of the State Representative prior to the Termination Date; and
- (b) both Manage Co and the relevant Manage Co Subcontractor have used reasonable efforts to mitigate such amounts.

**Termination Date** means the date of termination of this Deed in accordance with clause 39 (*Termination*).

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

---

### 2. Payment of Termination Payment

#### 2.1 Timing of payment

- (a) The Termination Payment calculated under this Schedule will be paid as follows:
  - (i) if this Deed is terminated pursuant to clause 39.2 (*Voluntary Termination*) or clause 39.3 (*Termination for Force Majeure*) and the Termination Payment is positive, the State must pay Manage Co the Termination Payment on or before the date which is 90 days after the Termination Date;
  - (ii) if this Deed is terminated pursuant to clause 39.2 (*Voluntary Termination*) or clause 39.3 (*Termination for Force Majeure*) and the Termination Payment is negative, Manage Co must pay the amount equal to the absolute value of the Termination Payment on or before the date which is 30 days after the Termination Date;
  - (iii) if this Deed is terminated pursuant to clause 39.4 (*Default Termination Event*), and the Termination Payment is positive, Manage Co must pay the State the Termination Payment on or before the date which is 30 days after the Compensation Date; and
  - (iv) if this Deed is terminated pursuant to clause 39.4 (*Default Termination Event*), and the Termination Payment is negative, the State must pay Manage Co the Termination Payment on or before the date which is 90 days after the Compensation Date.

- (b) If either Party fails to make a payment within the time period specified in section 2.1(a) (**Payor**), the other Party (**Payee**) may issue a notice to the Payor setting out (including calculations) the amount of the Termination Payment outstanding to be paid by the Payor and the Payor 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:

- (a) interest shall accrue on any unpaid element of the Termination Payment:
- (i) 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; and
  - (ii) 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;
- (b) interest shall accrue on the Termination Payment at the Overdue Rate; and
- (c) interest is payable on the date on which the Termination Payment is paid.

## 2.3 Treatment of insurance proceeds

- (a) Notwithstanding any term of this Deed, if the calculation of the Termination Payment requires the parties to take into account insurance proceeds that have not yet been received by 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 37 (*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) 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 Deed.

- (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.

---

## 3. Termination for Default Termination Event

### 3.1 Termination for Default Termination Event

If this Deed is terminated pursuant to clause 39.4 (*Default Termination Event*), the Termination Payment shall be calculated as follows:

**Termination Payment** or TP means:

$$TP = A + B + C + D + E - F$$

where:

- A** = 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 Payments and Monthly Service Payments relating to the performance of the Project Activities (whether or not any such Project Activities are undertaken);
- B** = 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;
- C** = amounts that the State is entitled to set off or deduct under this Deed including, for the avoidance of doubt, the costs of carrying out any works to ensure that the Correctional Complex is in accordance with the requirements of this Deed and all other reasonable costs incurred by the State in connection with the relevant Default Termination Event and as a direct result of terminating this Deed;
- D** = any amounts owing by 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 37 (*Insurance*) and the relevant insurance policy, under any insurance policy; and
- F** = 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.

---

## 4. Voluntary Termination

If this Deed is terminated pursuant to clause 39.2 (*Voluntary Termination*), the Termination Payment shall be calculated as follows:

**TP = A – B – C + D – E**

where:

**A** = the Voluntary Termination Amount for the relevant period 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*		
Contract Year 2		
Contract Year 3		
Contract Year 4		
Contract Year 5		
Contract Year 6		
Contract Year 7	[REDACTED]	
<b>First Extension Period</b>		
Contract Year 8		
Contract Year 9		
Contract Year 10		
Contract Year 11		
Contract Year 12		

**\*Note: Contract Year means:**

- (a) for Contract Year 1, the period commencing on the Operational Commencement Date of the Existing Facility 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, 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 37 (*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 Complex and the Site meets the Handover Condition as at the Expiry Date.

---

## 5. Force Majeure

If this Deed is terminated pursuant to clause 33.6 (*State election not to repair or rebuild*) or clause 39.3 (*Termination for Force Majeure*), the Termination Payment shall be calculated as follows:

$$TP = A - B - C + D - E$$

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 37 (*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 Correctional Complex and the Site meets the Handover Condition as at the Expiry Date.

**Schedule 16 — Subcontract Side Deed**

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Schedule 16

Parklea Correctional Complex  
Subcontract Side Deed

[Insert name of Subcontractor]

[insert ABN/ACN]

[Insert name of Manage Co]

[insert ABN/ACN/ARBN]

[Insert name of State party]

[insert ABN]

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This Subcontract Side Deed is made on

**Between:**

[Insert name of party] ABN [Insert ABN] of [Insert address] (**Subcontractor**)

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

[Insert name of party] ABN [Insert ABN] of [Insert address] (the **State**)

**Recitals:**

- A The State and Manage Co have entered, or will enter, into the Management Deed for the provision of the Project.
- B Manage Co has subcontracted its obligations to [insert purpose of subcontract] to the Subcontractor pursuant to the Subcontract.
- C The Subcontractor has agreed to grant to the State certain rights in relation to the Subcontract.

The parties agree as follows:

---

## 1. Definitions and interpretation

### 1.1 Management Deed definitions incorporated

Unless otherwise expressly defined in this Deed, expressions used in this Deed have the meanings given to them in the Management Deed.

### 1.2 Definitions

In this Deed:

**Approved Nominee** means a person nominated by the State and approved by the Subcontractor in accordance with clause 3.8 as:

- (a) having the legal capacity, power and authority to become a party to and perform the obligations of Manage Co under the Subcontract; and
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and subcontracts) which are sufficient to enable it to perform the obligations of Manage Co under the Subcontract.

**Deed** means this deed and includes all schedules, exhibits, attachments and annexures to it.

**Default Event** means:

- (a) any default (howsoever described) by Manage Co under the Subcontract; or
- (b) any other event or circumstance,

which alone or with the giving of notice or passage of time or both, would entitle the Subcontractor to terminate, rescind, accept the repudiation of, or suspend any or all of the Subcontractor's obligations under the Subcontract.

**Effective Date** means the date specified in the Novation Notice.

**Material Adverse Effect** means a material adverse effect on:

- (a) the ability of Manage Co or the Subcontractor to perform and observe their respective obligations under any Project Document to which it is a party; or
- (b) the rights of the State under any State Project Document, or the ability or capacity of the State to exercise its rights or perform its obligations under a State Project Document.

**Novation Notice** has the meaning given in clause 3.1.

**Management Deed** means the document entitled '*Parklea Correctional Complex – Management Deed*' between the State and Manage Co dated on or about the date of this Deed.

**PPS Law** means:

- (a) the *Personal Property Securities Act 2009* (Cth) and any regulation made at any time under the PPSA, including the *Personal Property Securities Regulations 2010* (Cth) (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (a).

**Security Interest** has the meaning given to the term in the PPS Law.

**Services** means [Insert].

**Subcontract** means the contract titled "[Insert]" between Manage Co and the Subcontractor dated on or about the date of this Deed.

### 1.3 Interpretation

In this Deed:

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

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) **(Deed and Schedule references)**: a reference to:
  - (i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Deed; and
  - (ii) a section is a reference to a section of a Schedule;
- (d) **(document as amended)**: a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;

- (h) (**Policies**): a reference to a Policy includes that Policy as amended or updated from time to time;
- (i) (**definitions**): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) (**'includes'**): 'includes' and 'including' will be read as if followed by the phrase '(without limitation)';
- (k) (**'or'**): the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;
- (l) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (m) (**'\$'**): a reference to '\$', AUD or dollar is to Australian currency;
- (n) (**Business Day**): if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;
- (o) (**day**): except as otherwise provided in this Deed or where a reference is made to 'Business Days', day means a calendar day;
- (p) (**time**): a reference to time is a reference to time in Sydney, Australia;
- (q) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (r) (**function**): a function includes a power, authority or duty;
- (s) (**obligations and liabilities**): a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (t) (**'may'**): except to the extent that the State is expressly required under this Deed to act reasonably in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion (and without regard to Manage Co or the Subcontractor) and the State has no obligation to do so;
- (u) (**construction**): where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
  - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
  - (ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (v) (**asset**): references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset;
- (w) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision; and
- (x) (**PPS Law defined terms**): each of the terms 'financing statement', 'financing change statement' and 'verification statement' have the meanings given to them in the PPS Law.

## 1.4 Inconsistencies

To the extent of any inconsistency between the terms of this Deed and the Subcontract, this Deed will prevail over the Subcontract.

## 1.5 Management Deed

The Subcontractor acknowledges that they have received a copy of the Management Deed.

## 1.6 Exclusion of Civil Liability Act

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

## 1.7 State's executive rights, duties and functions

- (a) **(Acknowledgements):** The parties acknowledge the substance, operation and potential effect and consequences of clause 2.8 (*State's executive rights, duties and functions*) of the Management Deed in relation to this Deed.
- (b) **(No Claim):** Subject to clause 1.7(c), Manage Co and the Subcontractor will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach):** Clauses 1.7(a) and 1.7(b) do not limit any Liability which the State would have had to Manage Co or the Subcontractor under any State Project Document as a result of a breach by the State of a term of any State Project Document but for these clauses.

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## 2. State's rights and liability

### 2.1 Subcontracting and Probity Investigations

- (a) The Subcontractor acknowledge the State's rights and Manage Co's obligations under the following clauses of the Management Deed:
  - (i) clause 22 (*Subcontracting and third party arrangements*);
  - (ii) the clauses listed in clause 22.3(a)(iii) (*Requirements for subcontracting*); and
  - (iii) clause 52 (*Probity Events and Probity Investigations*).
- (b) The Subcontractor must not subcontract any of its obligations under the Subcontract without ensuring that Manage Co has obtained the prior consent of the State to that subcontract, where the State's consent is required in accordance with clause 22 (*Subcontracting and third party arrangements*) of the Management Deed.
- (c) Without limiting the previous paragraphs, the Subcontractor acknowledges and agrees that:
  - (i) in accordance with clauses 22 (*Subcontracting and third party arrangements*) and 52 (*Probity Events and Probity Investigations*) of the Management Deed, the State may, from time to time, or may require Manage Co to, conduct Probity Investigations of the Subcontractor and/or Relevant Persons in respect of the Subcontractor (excluding the Manage Co Representative), or other persons to whom the Subcontractor is proposing to subcontract any of its obligations under the Subcontract;
  - (ii) it will procure all relevant consents from any persons in respect of whom a Probity Investigation is to be conducted; and
  - (iii) it will not appoint, or retain the appointment of, and will ensure that no other person appoints, or retains the appointment of, a person to the position of a

Relevant Person in relation to the performance of any Project Activities unless the State has given approval (including following a Probity Investigation and any other investigations that the State reasonably requires in accordance with the Management Deed).

## 2.2 No liability for information

The Subcontractor acknowledges and agrees that:

- (a) any information, data and documents provided by the State:
  - (i) are provided for information purposes only and all of the State's and its Associates' Intellectual Property Rights therein remain the property of the State or its Associates (as the case may be); and
  - (ii) do not form part of this Deed or constitute an invitation, offer or recommendation by or on behalf of the State or its Associates; and
- (b) to the extent permitted by Law, neither the State nor any of its Associates will have any Liability to the Subcontractor or any of its Associates, nor will the Subcontractor or any of its Associates be entitled to make any Claim against the State, or seek, pursue or obtain an indemnity against or contribution to Liability from the State or any of its Associates arising out of or in connection with:
  - (i) the provision of, or purported reliance upon, or use of any information, data and documents referred to in clause 2.2(a) by the Subcontractor or any other person to whom such information is disclosed by the Subcontractor and any of its respective Associates or any person on any of their behalf;
  - (ii) any reference to the State in the Subcontract; or
  - (iii) any review of, comments upon, acceptance, approval or certification of the form or substance of the Subcontract by the State.

## 2.3 Subcontract not to affect State's rights

Each of Manage Co and the Subcontractor acknowledge and agree that:

- (a) where the Subcontractor is expressed in the Subcontract to have a right (or possible right) to compensation or relief which is dependent on or determined by reference to the Management Deed or an equivalent or similar right of Manage Co:
  - (i) this does not of itself expand Manage Co's rights, or the State's Liability, under the Management Deed to include the compensation or relief to which the Subcontractor is or may become entitled under the Subcontract; and
  - (ii) Manage Co's rights, and the State's Liability, under the Management Deed will be determined solely in accordance with the terms of the Management Deed;
- (b) as between the State (on the one hand) and Manage Co and the Subcontractor (on the other hand), Manage Co and the Subcontractor accept and will bear the risk of any inconsistency, ambiguity or discrepancy between the terms of the Subcontract and this Deed; and
- (c) notwithstanding anything to the contrary in the Subcontract, the Subcontractor has no right to deal directly with the State or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:
  - (i) expressly provided to the contrary in the Management Deed or this Deed; or
  - (ii) the State consents in writing.

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### **3. Novation of Subcontract**

#### **3.1 Option**

The State may require a novation of the Subcontract in accordance with this clause 3 upon the termination of the Management Deed by giving a notice to Manage Co and the Subcontractor (**Novation Notice**).

#### **3.2 Novation of Subcontract**

With effect from the Effective Date:

- (a) the parties novate the Subcontract so that the State (or, if applicable, the Approved Nominee) and the Subcontractor are parties to a new contract on the same terms as the Subcontract as amended by this Deed; and
- (b) any reference in the Subcontract to Manage Co shall be read as a reference to the State (or, if applicable, the Approved Nominee).

#### **3.3 Rights and obligations of the State and the Subcontractor under the Subcontract**

If the State gives a Novation Notice then, subject to clause 3.6, with effect from the Effective Date:

- (a) the State (or, if applicable, the Approved Nominee):
  - (i) is entitled to all rights and benefits under the Subcontract to which, but for this Deed, Manage Co would have been entitled at and after the Effective Date;
  - (ii) must perform all obligations and discharge all liabilities under the Subcontract which, but for this Deed, Manage Co would have been required to perform or discharge at and after the Effective Date; and
  - (iii) is bound by and must comply with all other provisions of the Subcontract by which, but for this Deed, Manage Co would have been bound at and after the Effective Date; and
- (b) the Subcontractor:
  - (i) is entitled to all rights and benefits under the Subcontract to which, but for this Deed, it would have been entitled at and after the Effective Date;
  - (ii) must perform all obligations and discharge all liabilities under the Subcontract which, but for this Deed, it would have been required to perform or discharge at and after the Effective Date; and
  - (iii) is bound by and must comply with all other provisions of the Subcontract by which, but for this Deed, it would have been bound at and after the Effective Date,

as if the State (or, if applicable, the Approved Nominee) had originally been a party to the Subcontract in place of Manage Co.

#### **3.4 Release by Subcontractor**

With effect from the Effective Date, the Subcontractor releases Manage Co from all obligations and liability under or in respect of the Subcontract to be performed or discharged at or after the Effective Date.

#### **3.5 Release by Manage Co**

With effect from the Effective Date, Manage Co releases the Subcontractor from all obligations and liability under or in respect of the Subcontract to be performed or discharged at or after the Effective Date.

### 3.6 Obligations and liability prior to the Effective Date

Nothing in this Deed releases Manage Co or the Subcontractor from any obligation or liability under the Subcontract arising or accruing before the Effective Date and the State (or, if applicable, the Approved Nominee) does not assume any such obligation or liabilities under this Deed.

### 3.7 Amendments to Subcontract

- (a) With effect from the Effective Date, the terms of the Subcontract will be deemed to be amended as required to reflect the fact that the Management Deed is at an end, and that the Subcontract must operate independently of the Management Deed, on the basis that:
- (i) the rights and obligations that the State (or, if applicable, the Approved Nominee) will assume under the Subcontract from the Effective Date will be equivalent to those that Manage Co would have had under the Subcontract had the Management Deed not been terminated;
  - (ii) the rights and obligations that the Subcontractor will assume under the Subcontract from the Effective Date will be equivalent to those that the Subcontractor would have had under the Subcontract had the Management Deed not been terminated;
  - (iii) any provisions of the Management Deed incorporated by reference into the Subcontract prior to the Effective Date are incorporated in the Subcontract from the Effective Date; and
  - (iv) without affecting the generality of this clause 3.7(a), clauses [insert relevant clauses of the Subcontract] of the Subcontract will be deleted.
- (b) If at or after the Effective Date, there is a dispute between the State (or, if applicable, the Approved Nominee) and the Subcontractor as to how the terms of the Subcontract are deemed to have been amended pursuant to clause 3.7(a), then upon either party serving a written notice to this effect on the other, the dispute will be determined in accordance with clause 7.

### 3.8 Approved Nominee

- (a) The State's nominee may be named as a party to the Subcontract in substitution for Manage Co if the State's nominee is an Approved Nominee.
- (b) The Subcontractor must:
- (i) notify the State as to whether the State's nominee is an Approved Nominee, on or before the date falling 30 days after the date of receipt of all information reasonably required by the Subcontractor to decide whether the nominated person is an Approved Nominee;
  - (ii) not unreasonably withhold or delay its decision on whether the State's nominee is an Approved Nominee; and
  - (iii) enter into a side deed with the State and the Approved Nominee on substantially the same terms as this Deed.
- (c) If the Novation Notice specifies that the Approved Nominee is a person other than the State, the State must, at the time it gives a Novation Notice, provide to the Subcontractor the following particulars of the Approved Nominee:
- (i) name, place of incorporation and identity of shareholder(s);
  - (ii) if available, its most recent published audited accounts; and
  - (iii) sufficient particulars of the finance available to the Approved Nominee to enable the Subcontractor to decide whether to grant its consent to the Approved Nominee.



### 3.9 Bonds

If the State gives a Novation Notice then, as from the Effective Date, Manage Co must (with the support of the Subcontractor to effect this provision) either:

- (a) procure the novation or assignment to the State (or, subject to clause 3.8, the Approved Nominee) of any performance security (including any performance guarantees or bonds) held by Manage Co under the Subcontract prior to the Effective Date (**Bonds**); or
- (b) procure the issue to the State (or, if applicable, the Approved Nominee) of replacement bonds for the same undrawn value and on the same terms as the Bonds held by Manage Co under the Subcontract prior to the Effective Date.

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## 4. Representations and warranties

### 4.1 Representations and warranties by Subcontractor

- (a) The Subcontractor represents and warrants for the benefit of the State that:
  - (i) (**power to execute**): it has the power to execute, deliver and carry out its obligations under this Deed and each other Project Document to which it is a party and all necessary action has been taken to authorise that execution, delivery and performance;
  - (ii) (**legality**): the execution, delivery and performance of this Deed and each other Project Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
  - (iii) (**validity**): this Deed and each other Project Document to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;
  - (iv) (**registration**): it is duly registered, properly constituted and remains in existence;
  - (v) (**no trust relationship**): except as stated in this Deed, it is not the trustee, manager or Responsible Entity of any trust nor does it hold any property subject to or impressed by any trust;
  - (vi) (**information true and correct**): all information provided by it to the State is as at the date on which it is provided true and correct and the Subcontractor is not aware of any material facts or circumstances that have not been disclosed to the State and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed or consent to the entry into the Subcontract;
  - (vii) (**litigation**): no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a Material Adverse Effect upon it or its ability to perform its financial and other obligations under this Deed or any other Project Document to which it is a party;
  - (viii) (**Insolvency Event**): no Insolvency Event has occurred in respect of it;
  - (ix) (**accounts**):
    - (A) its most recent consolidated audited (if the requirement for auditing is applicable) accounts give a true and fair view of its and its subsidiaries' state of affairs as at the date to which they relate and the results of its and its subsidiaries' operations for the accounting period ended on such date;
    - (B) there has been no material adverse change in its or its subsidiaries' state of affairs since such date; and
    - (C) such accounts have been prepared in accordance with the Corporations Act and accounting principles and practices generally accepted in Australia

consistently applied, except to the extent of departures from such principles and practices disclosed in such accounts;

- (x) **(no default)**:
  - (A) it is not in default under any document or agreement binding on it or its assets which relates to financial indebtedness; and
  - (B) nothing has occurred which would, with the giving of notice and/or lapse of time, constitute an event of default, cancellation, prepayment event (pursuant to a bona fide right to exercise prepayment) or similar event (whatever called) under any such document or agreement,
 

which would have a Material Adverse Effect;
- (xi) **(no immunity)**: neither it nor any of its assets enjoys any immunity from set off, suit or execution in any jurisdiction; and
- (xii) **(own investigations)**: in entering into this Deed, the Subcontract and any other Project Document to which it is a party it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by the State, Manage Co or any other person unless in respect of Manage Co or any other person, other than the State or an Associate of the State, it is expressly permitted to do so in accordance with a Project Document to which it is a party.

#### 4.2 Repetition of representations and warranties

The representations and warranties in this clause 4 are taken to be repeated immediately before Commercial Close, on the basis of the facts and circumstances as at that date.

#### 4.3 Reliance on representations and warranties

The Subcontractor acknowledges that the State executed this Deed and agreed to take part in the transactions that this Deed contemplates in reliance on the representations and warranties that are made or repeated in this clause 4.

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### 5. Undertakings by Subcontractor

The Subcontractor undertakes to the State as follows:

- (a) **(notification of Default Event)**: it will notify the State of any Default Event promptly after it gives notice of that Default Event in accordance with the Subcontract;
- (b) **(documents in relation to Default Event)**: it will promptly give the State a copy of all documents issued by the Subcontractor to Manage Co in relation to a Default Event;
- (c) **(no amendment without consent)**: it will not, without first obtaining the consent of the State:
  - (i) make or permit any amendment or replacement of or addition to;
  - (ii) terminate, surrender, rescind or accept repudiation of;
  - (iii) permit the novation, assignment or substitution of any party's rights, obligations or interest in, except when in accordance with this Deed; or
  - (iv) allow any express waiver of its material rights and obligations under,
 

the Subcontract, provided that the State will not withhold its consent to an amendment or other action contemplated in clauses 5(c)(i) to 5(c)(iv) to which it has consented in accordance with the Management Deed;
- (d) **(disposals)**: it will not, after Commercial Close, transfer, assign, mortgage, charge, encumber or otherwise deal with its rights, obligations or interests in the Subcontract

without first procuring that the proposed transferee, assignee, mortgagee or chargee executes a deed in favour of the State (in form and substance approved by the State) pursuant to which the transferee, assignee, mortgagee or chargee agrees to accept and be bound by this Deed as if it were the Subcontractor;

- (e) **(attend meetings and inspections):** it will (when reasonably requested by the State):
- (i) attend, where reasonable and appropriate, meetings with the State or any of the State's Associates;
  - (ii) provide the State or any of the State's Associates and authorised personnel with:
    - (A) in the case of the Subcontractor, full access to any place where any Services are being carried out or materials are being prepared or stored, to the extent provided in the Management Deed; and
    - (B) any other information, records or documents that the State or any of its Associates (acting reasonably) requires in relation to the carrying out of the Services or compliance with the Subcontract or any information required by the State to comply with requests from the New South Wales Auditor-General; and
  - (iii) permit the State or any of the State's Associates to attend all tests and inspections to be carried out in connection with the Project in accordance with the terms of the Subcontract, to the extent provided in, and in accordance with, the Management Deed; and
- (f) **(access to records):** at the request of the State to the extent provided in, and in accordance with, the Management Deed, it will:
- (i) permit the State or any of its Associates to inspect all records, reports, plans, programs, specifications and design documents prepared or kept by the Subcontractor in relation to the Services and the Project; and
  - (ii) supply the State or any of its Associates with a copy of any such report or document which they may require from time to time.

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## 6. Acknowledgement by Manage Co

Manage Co consents to the terms of this Deed and will co-operate in the implementation of this Deed.

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## 7. Dispute Resolution

If any dispute or difference of opinion arises between the parties under this Deed, each party may refer any such matter for resolution in accordance with this clause 7 and the dispute or difference of opinion must be resolved in the same manner that disputes or differences of opinion under the Management Deed are resolved. Accordingly, the provisions of clauses 40 (Dispute Resolution procedure) to 43 (Arbitration) of the Management Deed are incorporated into this Deed but as if:

- (a) the only persons party to the Management Deed, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
- (b) the only matters for expert determination under those provisions are the matters referred for expert determination under this Deed.

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## 8. GST

- (a) **(Interpretation):**
  - (i) Except where the context suggests otherwise, terms used in this clause 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 8.
  - (iii) Unless otherwise expressly stated, all consideration to be provided under this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 8.
  - (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) **(Reimbursements):** Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(Additional amount of GST payable):** Subject to clause 8(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:
- (i) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 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 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 8(c) and clause 8(e)), varies from the additional amount paid by the Recipient under clause 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 8(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 8(c).
  - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) **(Exchange of non-monetary consideration):**
- (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 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 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 8(c) (or the time at which such GST Amount would have been payable in accordance with clause 8(c) but for the operation of clause 8(e)(i)).
- (f) **(No merger):** This clause 8 will not merge on completion or termination of this Deed.
- (g) **(Application of Management Deed):** If clause 24 (*Payments Adjustments & Taxes*) of the Management Deed would apply in connection with a Taxable Supply to which this clause 8 also applies then clause 24 (*Payments Adjustments & Taxes*) of the

Management Deed will apply in connection with that supply and the provisions of this clause 8 (but for this paragraph) will not apply.

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## 9. PPSA

- (a) If the State determines that this Deed is or contains a Security Interest, the parties (other than the State) agree to promptly do anything (including amending any document or executing any new document) which the State reasonably requires for the purposes of:
- (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
  - (ii) enabling the State to apply for registration, or give any notification, in connection with the Security Interest; or
  - (iii) enabling the State to exercise rights in connection with the Security Interest.
- (b) The parties (other than State) agree not to exercise its rights to make any request of the State under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- (c) The parties (other than the State) irrevocably and unconditionally waives its right to receive any notice of any verification statement in respect of any financing statement or financing change statement relating to this Deed.

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## 10. Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

### State

Name: [Insert]

Address: [Insert]

Email: [Insert]

For the attention of: [Insert]

### Manage Co

Name: [Insert]

Address: [Insert]

Email: [Insert]

For the attention of: [Insert]

### Subcontractor

Name: [Insert]

Address: [Insert]

Email: [Insert]

For the attention of: [Insert]

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 10(b); and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 10(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 10(f), in the case of prepaid post, on the fourth Business Day after the date of posting to an address within Australia and on the tenth Business Day after the date of posting by airmail to an address outside Australia;
  - (iii) in the case of email, the first to occur of:
    - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
    - (B) the time that the communication enters an information system which is under the control of the addressee; or
    - (C) the time that the communication is first opened or read by the addressee, unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day; and
- (f) **(notices sent by post)**: if sent by post from within Australia, must be sent using the 'priority' postal service offered by Australia Post (or any other postal service provider that assumes any or all of the functions of Australia Post) or other such similar service.

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## 11. Confidential Information and disclosure

### 11.1 Confidential Information and disclosure by the State

- (a) Subject to clause 11.1(b), the State and any Authority may disclose any information in connection with the Project, including Project Information.
- (b) The State may only disclose the Commercially Sensitive Information:
  - (i) in accordance with:
    - (A) Laws or for the enforcement of any criminal law;
    - (B) where disclosure is in the course of the official duties of a minister, the Treasurer, the Premier or the Attorney General;
    - (C) to satisfy the disclosure requirements of the NSW Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW);
    - (D) to satisfy the requirements of Parliamentary accountability;

- (E) to any Associate of the State to the extent necessary for the purpose of the Project provided they agree to maintain the confidentiality of any Commercially Sensitive Information;
  - (F) in annual reports of the State; or
  - (G) in accordance with policies of the State or the NSW Government or any Authority;
- (c) for any tender process required to be conducted under the Termination Payments Schedule; or
  - (d) where the Commercially Sensitive Information is any part of the Services Requirements, for the purpose of conducting any tender process required by the terms of the Management Deed.

## 11.2 Confidential Information and disclosure by Subcontractor

- (a) **(Confidentiality obligation):** Subject to clauses 11.2(b) and clause 11.4(b), the Subcontractor must treat as secret and confidential all Confidential Information and must not, and must procure that its Associates do not, without the prior written consent of the State, make public or disclose to any person any Confidential Information.
- (b) **(Disclosure of Confidential Information):** Without limiting the Subcontractor's obligations under clause 11.2(a) and subject to clause 11.2(c), the Subcontractor may disclose Confidential Information:
  - (i) to its Associates to the extent necessary for the purpose of undertaking the Project; and
  - (ii) in accordance with clause 11.4.
- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, the Subcontractor must ensure that the person to whom the information is disclosed enters into a confidentiality deed with it to keep the Confidential Information confidential in accordance with this clause 11.
- (d) **(Permitted disclosure):** The Subcontractor may disclose Confidential Information and will not be required to seek the State's consent to a disclosure, announcement or statement under clause 11.2(a) or 11.3(a) or to enter into a confidentiality deed under clause 11.2(c) where the disclosure announcement or statement is:
  - (i) required by Law, provided that it:
    - (A) notifies the State of the requirement to make that disclosure; and
    - (B) takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
  - (ii) required to obtain legal or other advice from its advisers, provided that the relevant adviser is under a duty of confidentiality;
  - (iii) required to be made to a court in the course of proceedings to which the Subcontractor is a party; or
  - (iv) required by a relevant recognised stock exchange, subject to:
    - (A) the disclosure, announcement or statement does not refer to the State's or any of its Associates' involvement in the Project; and
    - (B) the Subcontractor 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.

### 11.3 Public announcements by Subcontractor

Subject to clause 11.2(d), the Subcontractor must:

- (a) not make any public disclosures, announcements or statements in relation to the Project or the State's or any of the State's Associates' involvement in the Project, without the State's prior consent;
- (b) comply with any terms and conditions the State imposes and must use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Project or the State's or any of the State's Associates' involvement in the Project before the relevant disclosure, announcement or statement is made; and
- (c) as soon as practicable, give to the State a copy of any public disclosure, announcement or statement agreed to or approved by the State in accordance with this clause 11.3 or for which the State's consent or approval was not required in accordance with clause 11.4.

### 11.4 Information public or known

Notwithstanding anything in this clause 11, any party may disclose information in connection with the Project (including any Confidential Information) if:

- (a) the party can demonstrate that the relevant information is already generally available and in the public domain otherwise than as a result of breach of this clause 11; or
- (b) the relevant information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party.

### 11.5 Disclosure by the State under GIPA Act

- (a) Notwithstanding the other provisions of this clause 11, the parties acknowledge that:
  - (i) the Project Documents and information concerning the Project Documents will be published on the State's contracts register in accordance with Division 5 of Part 3 of the GIPA Act; and
  - (ii) the State may make the Project Documents (other than the Significant Subcontracts) or any of them available to any person.
- (b) The parties acknowledge that:
  - (i) the State will notify the Subcontractor of any proposed disclosure of Commercially Sensitive Information by the State under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;
  - (ii) following notification by the State in accordance with clause 11.5(b)(i), the State will take reasonable steps to consult with the Subcontractor before disclosing Commercially Sensitive Information under the GIPA Act;
  - (iii) if, following:
    - (A) notification by the State in accordance with clause 11.5(b)(i); or
    - (B) consultation between the State and the Subcontractor in accordance with clause 11.5(b)(ii),

the Subcontractor objects to disclosure of some or all of the Commercially Sensitive Information, the Subcontractor must provide details of any such objection within five Business Days after the date the Subcontractor received notification from the State or the date on which the consultation process concluded (as relevant);



- (iv) the State may take into account any objection received from the Subcontractor pursuant to clause 11.5(b)(iii) in determining whether the Commercially Sensitive Information identified by the Subcontractor should be disclosed; and
- (v) nothing in this clause 11.5 will limit or otherwise affect the discharge of the State's obligations under the GIPA Act.

## 11.6 Personal Information

The Subcontractor must:

- (a) not collect any Personal Information except in accordance with the Services Requirements, all Laws and Policies;
- (b) not disclose any Personal Information to any person other than as is necessary to provide the Services or to comply with Laws, and then only in accordance with the Services Requirements, all Laws and Policies; and
- (c) keep, and make available to the State on request, records detailing the recipient of any Personal Information that the Subcontractor has disclosed, the date of disclosure and the Personal Information that has been disclosed.

## 11.7 Privacy

- (a) **(Compliance):** Without limiting any obligations in respect of privacy set out in the Services Requirements, the Subcontractor agrees to, and will ensure that the Subcontract and any other subcontract entered into by the Subcontractor in relation to the Project contains terms which require the Subcontractor to, be bound by the Privacy Legislation with respect to any act done, or practice engaged in, by it in connection with this Deed or with the Subcontract or other relevant subcontract (as the case may be), in the same way as the State would be bound by the Privacy Legislation, in connection with that act or practice had it been directly done or engaged in by the State.
- (b) **(Release and Indemnity):** The Subcontractor must release, indemnify and must keep indemnified on demand the State and its Associates from and against any Claim or Liability (including any Claim made by, or Liability to, a third party) which the State or any of its Associates suffer or incur resulting from any act done or practice engaged in by the Subcontractor or any of its respective Associates in connection with the Project, which would, had that act or practice been done or engaged in by the State, have contravened any of the Privacy Legislation.

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## 12. Termination of this Deed

- (a) **(Satisfaction of obligations under the Subcontract):** This Deed will terminate upon the performance and satisfaction of all of the obligations under the Subcontract.
- (b) **(Does not affect rights of parties):** The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.
- (c) **(Surviving clauses):** All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:
  - (i) the State's rights to set-off and recover money;
  - (ii) confidentiality or privacy;
  - (iii) Intellectual Property Rights;
  - (iv) any obligation to make any records available to the State;
  - (v) any indemnity or financial security given in accordance with this Deed;

- (vi) any limitation or exclusion of liability; and
  - (vii) any right or obligation arising on termination or expiry of this Deed.
- (d) **(Interpretation):** No provision of this Deed which is expressed to survive the termination, rescission or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination, rescission or expiration of this Deed.
- (e) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.

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## 13. Governing law and jurisdiction

### 13.1 Governing law

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

### 13.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought within an inconvenient forum, if that venue falls within clause 13.2(a).

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## 14. Miscellaneous

### 14.1 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

- (a) **(entire understanding):** embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) **(prior agreements):** supersedes any prior agreement of the parties.

### 14.2 Further acts and documents

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

### 14.3 Waiver

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

#### 14.4 Consents and approvals

A consent or approval required under this Deed from the State may be given or withheld, or may be given subject to any conditions, as the State (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

#### 14.5 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

#### 14.6 Expenses

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

#### 14.7 Severance

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

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

#### 14.8 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.
- (b) Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.

#### 14.9 Counterparts

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

#### 14.10 Moratorium legislation

The provisions of all Laws which come into effect after the date of this Deed and operate to:

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

are expressly waived.

#### 14.11 Limitation of liability

*[Note: This clause is to be reviewed in respect of the relevant subcontract.]*

- (a) Despite any other provision of any Project Document, the maximum aggregate liability of the Subcontractor to the State, Associates of the State, Manage Co and Associates of Manage Co arising out of or in connection with the Project Documents whether in contract, in tort (including negligence) or otherwise is no greater than the maximum liability of the

Subcontractor under clause *[insert]* of the Subcontract, subject to the same exceptions, exclusions and limitations as are specified in the Subcontract, less the liability incurred (from time to time) by the Subcontractor under the Subcontract.

- (b) The payment by the Subcontractor of any moneys owing to Manage Co under the Subcontract:
- (i) to the State in accordance with this Deed; or
  - (ii) in accordance with a direction of the State given under or in connection with this Deed,

will be deemed full discharge of the Subcontractor's obligations in respect of that amount under the Subcontract.

- (c) The Subcontractor must, within 10 Business Days of a request by the State, notify the value of any claim against the Subcontractor by Manage Co or their respective Associates, together with any further detail regarding the calculation of such amount as reasonably requested by the State.

**Executed** as a deed.

*[Execution blocks to be inserted prior to execution.]*

## Schedule 17 — Food Services

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### 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 10%.
- (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 Complex at the time of that Meal Service plus up to an additional 10% to restock temporary food storage.
- (c) The State is only obliged to provide one Meal a day for each Inmate, being dinner. Manage Co may choose to order breakfast and lunch Meals in its Meal Order to the State and the State will notify Manage Co whether it accepts the addition of breakfast or lunch Meals to the Meal Order. Where the State accepts breakfast or lunch Meals being added to the Meal Order the obligations under this Schedule 17 will also apply to breakfast or lunch (as the case may be).
- (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 of 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 in section 1(f), 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 17, 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.

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## 2. 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 (for example, kosher or halal 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 order that special meal. As at Commercial Close, that extra cost is ██████ per special meal.
- (c) The State will invoice Manage Co monthly for the relevant amount calculated under this section 2. Manage Co must pay those amounts to the State within 5 Business Days after receipt of that invoice.
- (d) The State (or CSI on behalf of the State) may review and increase amounts under this Schedule 17 to reflect movements in overheads and to maintain the profit margin on the anniversary date of 8 February each year.

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## 3. Definitions

In Schedule 10, 11 and this Schedule 17, unless the context otherwise requires:

**CSI Contact Person** means the person identified as such in the Contract Particulars, subject to replacement or delegation in accordance with clause 19.6.

**Delivery Point** means gate to the Correctional Complex, as agreed by the parties or as is notified by Manage Co to the State from time to time.

**Delivery Time** means at 11am daily (Monday to Friday) or such other times agreed by the parties to reflect operation routines at the Correctional Complex

**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.

**Meal** means for each Inmate, if purchased from CSI:

- (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) one 7 slice bread pack known as a 7 up;
- (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". Portions have been provided as a guide, if it is not purchased through CSI:

	Meal Component	CSI Meal Component Cost	Portions per Inmate per week
1	Milk (300ml)		7
2	Breakfast pack		7
3	7 Up (7 slice bread pack)		7
4	Weekday lunch (other than Fruit)		5
5	Weekend lunch (other than Fruit)		2
6	Dinner		7
7	Dessert		4
8	Fruit (apple or pear or banana or similar)		10

**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, 10am on the Wednesday 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 Complex.

**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 17; 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.