



Government of **Western Australia**
Department of **Justice**

2020

STATE OF WESTERN AUSTRALIA

AND

SERCO AUSTRALIA PTY LIMITED

ACACIA PRISON SERVICES AGREEMENT

**State Solicitor's Office
David Malcolm Justice Centre
28 Barrack Street
Perth WA 6000
Tel 61 08 9264 1888
Ref 4614-19**

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DATE:

16 December

2020

PARTIES:

Dr Adam Tomison, Director General of the Department of Justice, of David Malcom Justice Centre, Level 23, 28 Barrack St, Perth, Western Australia, 6000, for and on behalf of the State of Western Australia (the **State**)

Serco Australia Pty Limited ABN 44 003 677 352 of Level 23, 60 Margaret Street Sydney NSW 2000 (the **Contractor**)

BACKGROUND

- A. The Contractor submitted, in response to the Request for Proposal number DOJ2019/04870 a proposal to provide the Services to the State (**Contractor's Proposal**) and the State, after considering the Contractor's Proposal and the subsequent written and oral submissions of the Contractor, wishes to engage the Contractor to provide the Services.
- B. The State and the Contractor have agreed to enter into this Agreement to set out their respective rights and obligations in relation to the Services. This Agreement is an agreement for the provision of prison services within the meaning of the Prisons Act.

OPERATIVE PART

It is agreed as follows:

1. DEFINITIONS AND INTERPRETATION

In this Agreement unless the context otherwise requires, the following definitions apply.

1.1 Definitions

Abandonment is deemed to have occurred if the Contractor:

- (a) ceases or suspends for any reason the performance of the Services or the discharge of the Contractor's Obligations; or
- (b) fails to respond to reasonable communications or requests from or on behalf of the State concerning whether the Contractor has or has not ceased or suspended the performance of the Services or the discharge of the Contractor's Obligations.

Abatement Amount means each abatement amount set out in Schedule 4.

Aboriginal Workforce Plan means the plan of that name prepared in accordance with clause 8, as may be amended in accordance with this Agreement.

Aboriginal refers to persons who identify as being of Aboriginal or Torres Strait Islander origin.

Act means any Act of the Parliament of the Commonwealth or of the State of Western Australia.

Actual Aggregate Monthly Staffing means the actual number of Custodial Officers or Unit Managers (as applicable) who actually attend, and who may, pursuant to clause 10.1(g), be attributed as attending, Day Shifts or Night Shifts (as applicable) at the Prison over the relevant Operation Month.

Additional Preventative Maintenance Costs has the meaning given in section 1 of Part A of Schedule 3.

Adjustment has the meaning given by the GST Law.

Adjustment Event has the meaning given by the GST Law.

Adjustment Note has the meaning given by the GST Law.

Affected Obligations has the meaning given in clause 34.2.

Aggregate Monthly Minimum Staffing Requirement means the number of Custodial Officers or Unit Managers (as applicable) required to attend Day Shifts or Night Shifts (as applicable) at the Prison in aggregate over the relevant Operation Month.

Agreement means this agreement.

Annual Report means the report referred to in clause 16.6.

Approved Auditor means an independent auditor appointed by the Contractor and the State.

Approved Submitted Document means the version of a Submitted Document which has most recently been approved by the State pursuant to the Review Procedures.

Asset Register means a register documenting the State Assets which are present on the Site and the condition of each of those assets. The Signature Asset Register, Baseline Asset Register and Live Asset Register each comprise different versions of an Asset Register.

Asset Replacement Fee has the meaning given in section 1 of Part A of Schedule 3.

Asset Replacement Work has the meaning given in in section 1 of Part A of Schedule 3.

Associate means, in relation to a body corporate, each of:

- (a) that body's related bodies corporate;
- (b) that body's directors; and
- (c) the persons who have a substantial holding (as that term is defined in the Corporations Act) in that body.

Baseline Asset Register means the Asset Register agreed by the Parties pursuant to clause 13.2(c) or determined by an expert pursuant to clause 13.2(d).

Best Industry Practice means practices, methods and acts undertaken in accordance with that degree of skill, diligence, prudence and foresight and that would reasonably be expected from leading internationally respected operators operating in the same or similar type of undertaking, under the same or similar circumstances and conditions.

Business Day means a day other than Saturday, Sunday or a public holiday in Western Australia.

Canteen Goods has the meaning given in clause 9.1(e).

Canteen List has the meaning given in clause 9.1(e).

CCTV means closed circuit television.

CEO means the chief executive officer as defined in the Prisons Act and includes, where the context permits, any person exercising delegated power of the CEO.

Cell means a secure unit of accommodation for occupation by a Prisoner or Prisoners.

Change in Control means, in respect of a person, a change in the person or persons who, directly or indirectly, ultimately Control that person.

Change in Law means:

- (a) an amendment to the Prisons Act, the Prisons Regulations or any instrument issued under them which affects the provision of the Services or the discharge of the Contractor's Obligations;
- (b) an amendment to a Legislative Requirement (including the enactment of a new Legislative Requirement) which specifically applies to prisons in Western Australia, including the Prison, and not generally to the community;
- (c) the introduction of new, or a change to existing, Departmental Policies; or
- (d) a change in the way a Legislative Requirement referred to in paragraph (a) or (b) is applied or is interpreted as a result of a decision of a court of competent jurisdiction,

provided that:

- (e) such change occurs after the Signature Date;
- (f) such change was not reasonably foreseeable as at the Signature Date, and the Parties acknowledge that a Change in Law as a result of COVID-19 will not be precluded from constituting a Change in Law solely on the basis that COVID 19 is a known event (for instance social distancing measures that are not in force at the Signature Date but are subsequently introduced, will not be treated as reasonably foreseeable); and
- (g) such change is not an Excluded Change in Law.

Change in Law Quotation has the meaning given in clause 21.

Claim means any claim, action, proceeding or demand made against the person concerned and whether in contract, tort, under any Act, or otherwise, or present or future, fixed or unascertained, actual or contingent.

Commencement Date means the date on which the last of the conditions set out in clause 3.1 is satisfied as certified in writing by the State in accordance with clause 3.4.

Commencement Tests means the tests contemplated in clause 3.3(b)(vi).

Commissioner means the Commissioner of Corrective Services, Department of Justice.

Commissioner's Instructions mean interim operational instruments as approved by the Commissioner from time to time that support the COPPs.

Commissioner's Operational Policies and Procedures or **COPPs** means operational instruments as approved by the Commissioner from time to time that provide instructions as to how relevant Legislative Requirements are to be implemented.

Conditions Precedent means the conditions documented in clause 3.1(b).

Confidential Information means all information, documents, reports, notes, memoranda, material or knowledge, in whatever form, including stored in writing, in a computer, in software or otherwise, relating to this Agreement, the Prison or the performance of the Services which is expressed by the State to be confidential, or which the Contractor knows or ought to have known is confidential in nature, and includes:

- (a) information relating to individual Prisoners; and
- (b) the subset of Departmental Policies which are subject to restricted release.

Consideration has the meaning given by the GST Law.

Consumables means:

- (a) foodstuffs;
- (b) toiletries;
- (c) linen, cutlery and crockery (irrespective of whether such items are expected to be consumed or expended within 12 months of purchase); and
- (d) all other items acquired or required for the purpose of providing the Services that would normally be consumed or expended within 12 months of purchase.

Contamination means the presence, in or under the Prison or the surrounding environment, of a substance (whether solid, liquid, or gas, heat, sound, vibration, radiation or any other Hazardous Material) at a concentration above the concentration at which the substance is normally present in the relevant locality, being a presence that presents a risk of harm to human health or to any other aspect of the Environment or makes, or may make, the Prison or the surrounding environment:

- (a) unsafe or unfit for habitation or occupation by persons or animals;
- (b) degraded in its capacity to support plant life; or
- (c) otherwise degraded or harmed.

Contract Manager means the person appointed by the State under clause 6.1.

Contract Worker means a 'contract worker' within the meaning of section 15A of the Prisons Act engaged to provide any part of the Services and, for the avoidance of doubt, includes a natural person engaged to provide any part of the Services who is:

- (a) an employee or agent of the Contractor; or
- (b) a Subcontractor or an employee or agent of a Subcontractor.

Contractor Computer means the computer system, software and ancillary facilities established by the Contractor among other things to record data and information relating to the Prison, the provision of the Services and this Agreement.

Contractor Representative means the person appointed as the representative of the Contractor under clause 6.2.

Contractor Resources has the meaning given in clause 15.1, but excludes any State Assets.

Contractor Resources Register has the meaning given in clause 15.4(a).

Contractor Superintendent means the person appointed by the Contractor and authorised by the CEO under clause 6.3.

Contractor's Associate means any Associate of the Contractor.

Contractor's Confidential Information means:

- (a) employee work rosters, lists of employees and contractors, job descriptions, and organisation charts;
- (b) personal information and sensitive information of employees, contractors and other persons;
- (c) Contractor's documents containing Intellectual Property Rights;

- (d) specific documents marked “Commercial in Confidence”, “in confidence”, or “confidential” (or similar notation) provided the contents of such documents are confidential in nature;
- (e) information regarding the Contractor's finances, pricing, internal costs, and margins, business plans, IT systems and business processes, including as disclosed in connection with pricing discussions during the tender process and pursuant to tender submissions (except to the extent the relevant information is included in this Agreement);
- (f) details of original insurance policies and certificates of currency; and
- (g) information about the operations of the Contractor where disclosure of that information would be detrimental to the provision of the Services, including security information, crisis management procedures, business continuity, and internal procedures,

and includes any copies or notes of the information described above.

Contractor's Liability Limit has the meaning given in clause 32.5(a)

Contractor's Obligations means the obligations of the Contractor under this Agreement or imposed by Law.

Contractor's Proposal has the meaning given in Recital A.

Control has the same meaning as defined in the Corporations Act.

Controller means a person who has Control of another entity.

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

Corrective Maintenance Costs means the amount payable by the State under section 5.7(b) of Part B of Schedule 3.

CPI Adjustment has the meaning given in section 1 of Schedule 4.

Custodial Functions means a power, duty, responsibility and authority that a superintendent or a prison officer has under the Prisons Act except a function referred to in section 15J.

Custodial Officer means a Contract Worker performing Custodial Functions who is not in charge of supervising other Contract Workers performing Custodial Functions.

DAP has the meaning given in section 1 of Schedule 4.

DAP Band means the bands set out in the left hand column of Table 1 of section 10 of Schedule 4.

Day Shift means any day shift, whether on a weekday, Saturday, Sunday or public holiday.

Default means any breach or default by:

- (a) the Contractor, of the Contractor's Obligations; or
- (b) the State, of the State's Obligations.

Default Notice means a notice by either Party to the other Party given under clause 23.

Default Rate means the rate which is 2% above the Interest Rate.

Department means Department as defined in the Prisons Act which, as at the Signature Date, is the Department of Justice.

Departmental Policies means any policy, procedure, instruction, manual or strategy adopted or updated by the Department from time to time in connection with the operation, management and maintenance of any prison, prison service or service delivered in the community, which has been made available to the Contractor, including the COPPs, Standing Orders and Commissioner's Instructions, but excluding Legislative Requirements.

Departmental System means the information system as used by the Department in relation to the operation and management of prisons in Western Australia from time to time, including:

- (a) all software (including TOMS) used at the Prison for the purpose of operating the Prison and managing the Prisoners;
- (a) all information technology equipment including local area network, hardware, including cabling and network racking;
- (b) the PTS; and
- (c) any upgrade or replacement of that information system after the Commencement Date.

Direction means any notice entitled 'Direction' given by the State to the Contractor, and the term 'Direct' is to be construed accordingly.

Dispute means any dispute arising between the Parties in connection with any fact, matter or thing in connection with this Agreement.

Education and Vocational Training Checklist has the meaning given in clause 7.12(a)(ii).

Emergency Management Plan means the plan contemplated in section 1.1 of Schedule 2.

Enabling Works mean the works described in Schedule 11.

Encumbrance means any mortgage, charge, licence, lease, lien, option over or other encumbrance or third party interest of any nature, and Encumber has a corresponding meaning.

Environment means all components of the earth, including:

- (a) land, air and water;
- (b) any layer of air atmosphere;
- (c) any organic or inorganic matter;
- (d) any living organism; and
- (e) natural or modified features or structures, and includes ecosystems and all elements of the biosphere.

Environmental Law includes:

- (a) any Act; and
- (b) any Legislative Requirements,

regulating or otherwise relating to the Environment.

Escape means an escape by a Prisoner from lawful custody of the Contractor or from a Cell or place within the Prison in which he is confined or from any place where he is obliged to remain by prison routine or any order.

Essential Service means the provision of the following services:

- (a) accommodation;
- (b) food and water;
- (c) visits required by Law;
- (d) security and supervision;
- (e) medical services; and
- (f) any other services which, if not provided, may result in death or serious health problems or disruption to the maintenance of good government, good order and security in the Prison,

as required to be provided by the Contractor as part of the Services during the Operation Period.

Excluded Change in Law means any Change in Law that is related to:

- (a) taxation;
- (b) superannuation; or
- (c) terms of employment, including but not limited to, an approved agreement (including a registered or unregistered workplace agreement or deed), or change to any Industrial Award, Agreement or Order.

Expiry Date means the date this Agreement:

- (a) expires pursuant to clause 5; or
- (b) is terminated (on any basis) pursuant to this Agreement or at Law.

External Prisoner Purchase List has the meaning given in clause 9.3(b).

External Prisoner Purchases has the meaning given in clause 9.3(a).

Facility Management Services means the Maintenance Services and the Soft Facility Management Services.

Factor UTB means Factor UTB Pty Ltd ACN 008024 726 of 100 Greenhill Road, Unley, South Australia.

Fit for Purpose means that the relevant asset:

- (a) is free of faults or defects other than minor defects or omissions which do not adversely affect its utility, operation or safety;
- (b) is fit for each of the purposes, objectives, functions and uses as reasonably ascertainable having regard to the nature of the relevant asset; and
- (c) in respect of Cells, meets the requirements imposed at clause 14.4.

Force Majeure Event means any of the following events or occurrences, and the effect of the following events and occurrences, but only to the extent that a Party is prevented from, or delayed in, performing that Party's obligations under this

Agreement, taking into account contingency measures that Party should reasonably have in place particularly in regard to the primacy of the security of the Prison:

- (a) acts of God, including fire (except where caused by a Prisoner within the Prison), bushfire, lightning, storm, tidal wave, cyclone, earthquake, landslide, mudslide, washouts and flood;
- (b) epidemics (other than epidemics arising within the Prison);
- (c) war, revolution or other state of armed hostility of a like nature;
- (d) insurrection, civil disturbances, riot or terrorism (except where arising within the Prison); and
- (e) collisions or accidents which constitute a major catastrophe, an example being an aircraft crash.

Force Majeure Party means a Party that is unable to perform that Party's obligations under this Agreement as a result of a Force Majeure Event.

Further Period has the meaning given in clause 5.2(a).

Government Agency means any:

- (a) government or governmental, semi-governmental or judicial entity or authority; or
- (b) minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government.

Government Authorisation means:

- (a) a licence, approval or authorisation from a Government Agency; and
- (b) any approval or authorisation regarded as given by a Government Agency due to the expiry of the period specified by an Act within which the Government Agency should have acted if the Government Agency decided to refuse the approval or authorisation.

Gross Canteen Sales means the total sale price of all goods sold from the Prison Canteen Service after deduction of any credits for goods which have been returned to the Contractor as a result of being defective.

GST has the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.

GST Group has the meaning given by the GST Law.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guarantee Amount means \$5,000,000 (Indexed).

Guarantee Expiry Date has the meaning given in clause 31.2.

Handover Bank Guarantee means the bank guarantee provided by the Contractor pursuant to clause 31.

Handover Condition has the meaning given in clause 29.2.

Handover Inspection has the meaning given in clause 29.3(a).

Handover Period means the period commencing on the occurrence of a Handover Trigger, and ending on the Expiry Date.

Handover Plan means the plan described in clause 29.1.

Handover Report has the meaning given in clause 29.4(a)

Handover Trigger means any of the following has occurred:

- (a) the State has given notice under clause 5.2 that the Agreement will not be extended for a Further Period;
- (b) either Party has given notice under clause 5.3 that the Rolling Further Period will come to an end;
- (c) the date which is 12 months before the expiry of the final Further Period occurs; or
- (d) either Party gives the other Party valid notice that this Agreement will be terminated for any reason.

Handover Works has the meaning given in clause 29.4(a).

Handover Works Program has the meaning given in clause 29.4(a).

Hazardous Material means anything that, if it escapes while being produced, stored, moved, used or otherwise dealt with, may cause personal injury or death, or damage to property or the Environment.

High-level Security Work means high-level security work within the meaning of section 15M of the Prisons Act or as declared under section 15N of the Prisons Act.

IMP Cessation Date has the meaning given in clause 7.12(g).

IMP Commencement Date has the meaning given in clause 7.12(c).

Incident means an incident which is required to be reported under a relevant Departmental Policy from time to time (the relevant Departmental Policy at the Signature Date being *COPP 13.1 Incident Notifications, Reporting and Communications*).

Incumbent Provider means, as context demands:

- (a) Serco Australia Pty Limited, ABN 44 003 677 352; or
- (b) Sodexo Remote Sites Australia Pty Limited, ABN 47 009 105 980.

Indexation Factor has the meaning given in section 1 of Schedule 4.

Indirect or Consequential Loss means:

- (a) loss of opportunity, profit, anticipated profit, business, business opportunities or revenue, including any failure to realise anticipated savings;
- (b) cost of capital and financing costs;
- (c) damage to reputation; and
- (d) direct expenditure of time by managers and employees consequential on any Loss.

Industrial Action means any strike, lockout or failure to attend for work, the imposition of any ban, limitation or delay in the performance of work, any refusal by an employee to work in accordance with that employee's contract of employment or

the provisions of any Industrial Award, Agreement or Order, or the performance of work in a manner different from that in which it is customarily performed.

Industrial Award, Agreement or Order means an award, a registered or certified agreement or an order of the Western Australian Industrial Relations Commission, Australian Industrial Relations Commission or Fair Work Australia and includes transitional instruments under schedule 3 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)*, Preserved State Agreements and Notional Agreements Preserving State Awards, and any agreement including a workplace or enterprise agreement between an individual or group of individuals and the Contractor or a Subcontractor that is lodged, registered or certified in accordance with any Law applying in Western Australia.

Industrial Relations Matter means any matter arising in connection with the Prison or the performance of the Services and which relates to:

- (a) a claim for payment for or on behalf of any Contract Worker;
- (b) any demand for terms of employment in excess of or outside the scope of relevant Industrial Award, Agreement or Order;
- (c) a claim arising out of or in connection with, safety, work procedures, negotiated contracts or agreements, conditions on payments, increases in labour costs, overtime costs, changed work practices or procedures, working calendar, site allowances and bonuses now or in the future to become allowable or payable (including a claim in respect of any of those matters described above which arises out of any change in State or Federal awards or work practices); or
- (d) any reduction in working hours per week.

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a Party includes an Input Tax Credit for an acquisition made by that Party but to which another member of the same GST Group is entitled under the GST Law.

Insolvency Event means the occurrence of any of the following in respect of a corporation:

- (a) the corporation is or becomes, or any action is taken to make that corporation, insolvent within that meaning as specified in section 95A(2) or section 922 of the Corporations Act;
- (b) the corporation has a controller appointed, as defined in section 9 of the Corporations Act, in respect of any of that corporation's property;
- (c) the corporation informs any Party, or creditors generally, that that corporation is insolvent, or is financially unable to proceed with this Agreement;
- (d) execution is levied against the corporation in an amount exceeding \$500,000 and the execution is not satisfied or withdrawn within 20 Business Days of being issued;
- (e) the Corporation gives or has given in relation to the corporation a notice of a meeting of creditors;
- (f) the corporation is, or becomes the subject of, an application or resolution for:
 - (i) its winding up; or
 - (ii) the appointment of a liquidator or provisional liquidator of the corporation;

- (g) the corporation is or states that it is unable to pay its debts when they fall due;
- (h) by operation of section 459F(1) of the Corporations Act, the corporation is taken to have failed to comply with a statutory demand;
- (i) the corporation implements any procedure to obtain protection or is granted protection from its creditors, under any applicable legislation; or
- (j) anything analogous or having a substantially similar effect to any of the events specified above happens under the Law of any applicable jurisdiction.

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

Insurance Adjustment has the meaning given in section 1 of Schedule 4.

Intellectual Property means anything, whether tangible or intangible, that attracts, or is susceptible of protection by, Intellectual Property Rights.

Intellectual Property Rights means any and all intellectual and industrial property rights and rights relating to all systems and information (including the Confidential Information and in any developments, improvements, modifications and enhancements to the Confidential Information), trade secrets, know-how, goodwill and business reputation, whether registered or unregistered, including rights in or to or arising under copyright, patents, inventions, trade marks, designs, plant varieties, circuit layouts or Laws relating to breach of confidence or passing off.

Interest Rate means:

- (a) the rate (which is expressed as a yield per centum per annum to maturity) which is the buying rate for bank accepted Bills quoted at approximately 10.10am (Perth time) on page "BBSY" of the Reuters Monitor System on that day, having a term of one month; or
- (b) if that rate is no longer available or, if in the reasonable opinion of the State, that rate becomes an inappropriate rate to benchmark the Default Rate or becomes incapable of application, the "Interest Rate" means the rate reasonably determined by the State to be the appropriate equivalent rate having regard to prevailing market conditions.

Joint Management Board means the joint management board established under clause 6.6.

Key Personnel means:

- (a) a person engaged to perform a role listed in Schedule 1 (irrespective of whether such person has been engaged as at the Signature Date);
- (b) any replacement Key Personnel approved under this Agreement; or
- (c) any person who the State (acting reasonably) Directs is a Key Personnel from time to time.

Key Subcontractor means:

- (a) a Subcontractor performing a role listed in Schedule 1 (irrespective of whether such Subcontractor has been engaged as at the Signature Date);
- (b) any replacement Key Subcontractor approved under this Agreement; or

- (c) any person who the State (acting reasonably) Directs is a Key Subcontractor from time to time.

Law means:

- (a) Legislative Requirements;
- (b) common law; and
- (c) principles of equity.

Legislative Requirement means a requirement imposed or arising under any of the following, whether now in existence or coming into existence in the future:

- (a) an Act;
- (b) an ordinance, rule, regulation, by-law, proclamation, licence, permit, authorisation, code, order or other instrument made or issued under an Act (including minimum standards established under section 15D of the Prisons Act and rules made under section 35 of the Prisons Act); and
- (c) any other enforceable requirement of a Government Agency.

Limited Obligations Period the period of time commencing from the date specified in the Take Out Notice and, if no date is specified, from the date of service of the Take Out Notice and ending on the Expiry Date.

Live Asset Register has the meaning given in clause 13.3(b)

Loss means any loss, cost, damage, diminution in value, expense or liability, including:

- (a) all interest and all amounts payable to third parties; and
- (b) all legal (on a full indemnity basis) and other expenses incurred in connection with investigating or defending any Claim or action and all amounts paid or payable in settlement of a Claim or action .

Loss of Control means a situation where the Contractor does not exercise proper management, control and security in respect of:

- (a) a significant part of the Prison or a significant number of Prisoners at the Prison; or
- (b) the welfare of a significant number of Prisoners at the Prison.

Maintenance Services means the maintenance services to be performed by the Contractor, as described in Part B of Schedule 3 and includes the Prison Infrastructure Maintenance Services and the Prison Equipment and State Resources Maintenance Services.

Maintenance Services Plan means the plan of that name prepared by the Contractor in accordance with section 6 of Part B of Schedule 3.

Material Cost Impact had the meaning given in clause 19.6 or clause 21.4 (as applicable).

Minimum Staffing Requirements means:

- (a) the number of Custodial Officers or Unit Managers (as applicable) documented in the 'total' line items in the Minimum Staffing Tables (when clause 10.1(c) is not applicable); or

- (b) the number of Custodial Officers or Unit Managers (as applicable) documented in the 'total' line items in the Minimum Staffing Tables, as adjusted pursuant to clause 10.1(c) (where clause 10.1(c) is applicable).

Minimum Staffing Tables means the tables, to be included in the Prison Operating Manual, documenting minimum numbers of Custodial Officers and Unit Managers required at the Prison.

Minister means the Minister of the State from time to time responsible for the administration of the Prisons Act.

Minor Works means any:

- (a) works to the Prison required by the State during the Operating Phase which has a total Minor Works Price less than \$20,000 in connection with each Minor Works Notice;
- (b) Enabling Works contemplated within clause 20.1(a)(ii) (irrespective of value); and
- (c) any other works agreed by the Parties to be Minor Works,

but does not include any works or services that form part of the Services other than pursuant to clause 20.

Minor Works Notice has the meaning given to it in clause 20.2(a).

Minor Works Price means the fixed lump sum price payable to the Contractor in connection with the Minor Works.

Minor Works Order means an order given under clause 20.2(h).

Minor Works Quotation means a quotation prepared in accordance with clause 20.2(b).

Monthly Report means the report required pursuant to clause 16.3.

Monthly Service Payment has the meaning given in Schedule 4.

Moral Rights means the moral rights set out in the *Copyright Amendment (Moral Rights) Act 2000* (Cth).

Night Shift means any night shift, whether on a weekday, Saturday, Sunday or public holiday.

Ombudsman means the person who holds the position of commissioner under the Ombudsman Act.

Ombudsman Act means the *Parliamentary Commissioner Act 1971*.

Ongoing Training Program means the training program contemplated at clause 10.5.

Operational Readiness a state where the Contractor has satisfied all Transition Obligations and is ready and able to deliver the Services to the standards required by the Agreement.

Operational Services mean the Services defined in Schedule 2 of this Agreement.

Operation Month means each month during an Operation Year, provided that:

- (a) the first Operation Month will commence on the Operations Commencement Date and end on the last day of the calendar month in which the Operations Commencement Date falls; and
- (b) the last Operation Month will commence on the first day of the last calendar month in the Operation Period and end on the last day of the Operation Period.

Operation Period means the period of time for the performance of the Services specified in clause 5.1(b), and for the avoidance of doubt includes any applicable Further Period or Rolling Further Period.

Operation Quarter means each period of 3 months, ending on the last day of March, June, September and December during the Operation Period provided that:

- (a) the first Operation Quarter will commence on the Operations Commencement Date and end on the last day of the quarter in which the Operations Commencement Date falls; and
- (b) the last Operation Quarter will commence on the first day of the last quarter in the Operation Period and end on the last day of the Operation Period.

Operation Year means each period of 12 months ending on 30 June during the Operation Period, provided that:

- (a) the first Operation Year will commence on the Operations Commencement Date and end on the 30 June following the Operations Commencement Date; and
- (b) the last Operation Year will commence on 1 July immediately preceding the date of expiry or termination of the Operation Period and end on the last day of the Operation Period.

Operations Commencement Date means the date on which the Contractor commences providing the Services pursuant to clause 4.3(e) or 4.3(f)(ii).

OSH Law means all occupational health and safety related:

- (a) Laws that are in, or come into, force during the Operating Period in the State of Western Australia and the Commonwealth in connection with:
 - (i) occupational health and safety including the *Occupational Safety and Health Act 1984* (WA), the *Occupational Safety and Health Regulations 1996* (WA) and Model WHS Laws; and
 - (ii) to the extent relevant, any occupational health and safety accreditation scheme established under the *Fair Work (Building Industry) Act 2012* (Cth) or the *Fair Work (Building Industry - Accreditation Scheme) Regulations 2005* (Cth);
- (b) Australian Standards;
- (c) codes of practice and guidance materials issued by an Government Agency;
- (d) directions on safety or notices issued by any relevant Government Agency (including any commissioners and inspectors appointed or employed in respect of a relevant Government Agency) in accordance with any OHS Laws; and
- (e) directions, instructions, requests or requirements from a Government Agency or the State relevant to or associated with or necessary for compliance by the Contractor, any Contractor Associate or the State with any of the instruments identified in paragraphs (a) to (d) and including any such matters of which the Contractor has been informed by the State orally or in writing,

relevant to the provision of the Services or the discharge of the Contractor's Obligations.

Party means a party to this Agreement and Parties has a corresponding meaning.

Parent Guarantee means the parent company guarantee referred to in clause 31.1 and in the form set out in Schedule 8 (Parent Guarantee).

Parent Guarantor means each person required to give a Parent Guarantee as specified in Schedule 1.

Payment Certificate means a certificate in a form determined by the State from time to time issued by the State to the Contractor pursuant to clause 18.3.

Payment Claim means a claim for payment made by the Contractor pursuant to, and containing the content required by, clause 18.2.

Performance Improvement Notice or **PIN** means a notice given pursuant to clause 22.1 of this Agreement.

Performance Linked Fee has the meaning given in Schedule 5.

Performance Measures has the meaning given in Schedule 5.

Planned Commencement Date means 18 December 2020 or such later date as extended by the State pursuant to clause 3.2.

Planned Operations Commencement Date means 16 May 2021.

PPS Law means:

- (a) the PPSA; and
- (b) any amendment made at any time to the Corporations Act or any other legislation as a consequence of the PPSA.

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

Pre-Service Induction Training Program means the training program contemplated at clause 10.4.

Progressive Targets has the meaning given in Schedule 5.

Prison means the prison for male, medium security Prisoners constructed on the Site and declared a prison under section 5 of the Prisons Act, and includes:

- (a) the Prison Infrastructure, Prison Equipment, fixtures and fittings and other improvements forming part of the Prison; and
- (b) the Site.

Prison Canteen Service has the meaning given in clause 9.1(a).

Prison Equipment means each item of plant and equipment which is attached to and forms part of the Prison Infrastructure or is otherwise installed on the Site but does not include fixtures which are wholly funded by the Contractor and which the Parties have agreed in writing comprise Contractor Resources.

Prison Infrastructure means each building, permanent structure or improvement which forms part of the Prison.

Prison Equipment and State Resources Maintenance Services means the maintenance services described in section 2 of Part B of Schedule 3.

Prison Infrastructure Maintenance Services means the maintenance services described in section 1 of Part B of Schedule 3.

Prison Operating Manual means the document prepared by the Contractor in accordance with clause 7.8, as approved by the State in accordance with this Agreement.

Prison Vending Machine means a vending machine required to be provided by the Contractor pursuant to clause 9.2(a).

Prisoner means a person who is a prisoner within the definition contained in section 3 of the Prisons Act.

Prisoner Property means the personal property of each Prisoner which is held in storage on behalf of the Prisoner while he is at the Prison, including credit cards and other valuable personal property, but excluding any personal property retained by the Prisoner in his Cell.

Prisoner Trust Account means the trust account established in accordance with clause 9.9.

Prisoner Welfare Trust Fund means the trust fund established in accordance with clause 9.4.

Prisons Act means the *Prisons Act 1981* (WA).

Prisons Regulations means the *Prisons Regulations 1982* (WA) and any other Regulations issued under the Prisons Act.

Probity Event includes any event or thing which:

- (a) relates to the Contractor or a Related Party and has a material adverse effect on the public interest, or on public confidence in the proper administration of the Prison;
- (b) has a material adverse effect on, or on the perception of, the character, integrity or honesty of the Contractor or a Related Party; or
- (c) involves a material failure of the Contractor to achieve or maintain:
 - (i) good corporate citizenship;
 - (ii) the avoidance of conflicts of interest which will have a material adverse effect on the ability of the Contractor to perform and observe its obligations in connection with the proper administration of the Prison; or
 - (iii) other standards of conduct that would otherwise be expected of a person involved in a State government project.

Probity Investigation means such probity and criminal investigations to report on the character, honesty and integrity of persons or standards of conduct of corporations or other entities as are required by Law or by the State from time to time, to ensure that a person or entity is fit and proper for its proposed or continued involvement in the Project.

PTS means the Department's recorded telephone system for Prisoners known as the Prisoner Telephone System or any replacement of that system.

Quarterly Report means the report referred to in clause 16.5.

Recipient has the meaning given by the GST Law.

Records means all records and information of any kind, including originals and copies of all accounts, financial records, books, files, reports, records, correspondence, documents, drawings, diagrams, graphs, photographs, videos, computer models, design models and other materials created for, or relating to, or used in connection with this Agreement, the discharge of the Contractor's Obligations, or the performance of the Services, whether or not containing Confidential Information, and however those records and information are held, stored or recorded.

Rectification Plan means the plan contemplated in clause 22.1(c).

Related Party means Associates of the Contractor, Subcontractors of the Contractor, and officers, employee and agents of the Contractor.

Relevant Amount has the meaning given in clause 31.6(a).

Relevant Period means the period commencing on the Signature Date and ending on the later of:

- (a) the Expiry Date; and
- (b) the transfer of all Records to the State pursuant to clause 29.

Removed Services has the meaning given in clause 25.1(a)(i).

Reputable Insurer means an insurance company having a financial performance rating of at least A- by Standard and Poor's (Australia) Pty Limited or an equivalent rating from another internationally recognised rating agency and approved by the State acting reasonably.

Retained Services means the balance of the Services and Contractor's Obligations once the Removed Services have been removed.

Review Procedures mean the procedures for State review of Contractor drafted documents, as documented in clause 36.

Rolling Further Period has the meaning given in clause 5.3.

Security Interest includes any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind or any other right of, or arrangement with, any creditor to have its claim satisfied in priority to other creditors with, or from the proceeds of, any asset.

Services means the management, control and security of the Prison and the welfare of Prisoners at the Prison in accordance with this Agreement, and includes:

- (a) the Operational Services;
- (b) the Facility Management Services;
- (c) any other service or function of the kind contemplated under the Prisons Act as services that may be provided by a contractor; and
- (d) any other services that would reasonably be required for the proper performance and provision of the services described in paragraphs (a) to (c).

Service Handover has the meaning given in clause 29.9(a).

Service Retender has the meaning given in clause 29.7.

Signature Asset Register means the Asset Register annexed at Schedule 12.

Signature Date means the date of execution of this Agreement.

Site means the land situated at Wooroloo in the State as shown bounded by a thick white line on the Site Plan.

Site Plan means the plan comprising Schedule 10.

Soft Facility Management Services means the soft facility management services to be performed by the Contractor, including cleaning, laundry, waste management, grounds maintenance and pest control services, as described in Part C of Schedule 3.

Soft Facility Management Services Plan means the plan of that name prepared by the Contractor in accordance with Part C of Schedule 3.

Specified Event means each of the events described in section 9(b) of Schedule 4.

Standing Orders means legislated operational instruments (including as updated from time to time) where the Superintendent of a prison may, with the approval of the Chief Executive Officer or delegate, make and issue written standing orders with respect to the management and routine of that prison.

State Assets mean the Prison, the Prison Infrastructure, the Prison Equipment and the State Resources.

State's Associates means the State, the Department, the Minister, the CEO, the Contract Manager and any Western Australian Government Agency and any other employee, agent, contractor, consultant or adviser of or to the State, the Department, the Minister, the CEO, the Contract Manager or any Western Australian Government Agency, but does not include the Contractor or any Contract Worker or Subcontractor.

State's Liability Limit has the meaning given in clause 32.6.

State's Obligations means the obligations of the State under this Agreement or imposed by Law in relation to the provision of Services.

State Resources means any vehicle, moveable equipment, chattel or other moveable property of the State or any of the State's Associates, other than the Prison, the Site and the Prison Equipment.

Statutory Power means any right, power, discretion, authority, duty or function exercisable by the State or any of the State's Associates or by a superintendent, prison officer or any other officer as defined in the Prisons Act, vested in them pursuant to any Act.

Subcontract means a contract, agreement or arrangement between the Contractor and a Subcontractor.

Subcontractor means a person engaged by the Contractor, other than as an employee of the Contractor, to provide any part of the Services, and for the avoidance of doubt, includes the Key Subcontractors.

Submitted Document has the meaning given under clause 36.1.

Successor Operator means a person nominated by the State (including the State or any of the State's Associates) as succeeding the Contractor in the provision of all or any of the Services.

Superintendent means a superintendent as defined in the Prisons Act.

Supplier has the meaning given at clause 18.8(a).

Take Out Notice means a notice given pursuant to clause 25.1(a).

Taxable Supply has the meaning given by the GST Law excluding the reference to section 84-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Tax Invoice has the meaning given by the GST Law.

Termination Notice means a notice given under clause 26.1(b) or clause 27.2 (as applicable).

TOMS means the Department's information system known as the Total Offender Management Solution or any replacement of that system.

Training Program means the Pre-Service Induction Training Program or the Ongoing Training Program or both (as applicable).

Transition Manager means the person performing the role contemplated at clause 4.2.

Transition Obligations means the obligation the Contractor is required to discharge during the Transition Period, as documented in clause 4.1.

Transition Period means the period commencing on the Commencement Date and ending on the Operations Commencement Date.

Transition Plan means the plan contemplated at clause 3.3 of this Agreement.

Transition Report means the report required by clause 4.4 of the Agreement.

Trust Fund Purpose means the purpose of facilitating or improving the health, education, protection, well-being, comfort or advantage of the Prisoners, or any classes or groups of Prisoners, or any Prisoner, in the Prison.

Uninsurable Risk means a risk that is required to be insured in accordance with this Agreement and for which insurance is available at the Signature Date but:

- (a) becomes unavailable in the recognised international insurance market in connection with that risk by a Reputable Insurer; or
- (b) in connection with which the insurance premium payable for insuring that risk with a Reputable Insurer becomes, after the Signature Date, at such a level or the terms and conditions are such that the risk is not generally being insured against by private sector providers of services similar to the Services in Australia or the United Kingdom,

provided that the uninsurability in accordance with paragraphs (a) or (b) is not caused or contributed to by any act or omission of the Contractor, Subcontractor, a Contract Worker or a Contractor's Associate (and if the Contractor, Subcontractor, a Contract Worker or a Contractor's Associate has contributed to the uninsurability, the quantum of loss associated with the Uninsurable Risk that the State is required to pay to the Contractor is reduced in the same proportion as that party's contribution).

Unit Manager means a Contract Worker performing Custodial Functions that is:

- (a) entitled to supervise other Contract Workers performing Custodial Functions; and
- (b) placed in charge of an accommodation block listed in the Minimum Staffing Tables.

Unwanted Contractor Resource means a Contractor Resource that no Successor Operator wishes to purchase from the Contractor pursuant to clause 29.14(b).

Utility Service means gas, electricity, water, telecommunications and any other service which is required for the provision of the Services.

Variation means an increase or a decrease, or a change in any part of the Contractor's Obligations, but does not include an increase or decrease, or change in any part of the Contractor's Obligations arising from:

- (a) a Direction by the State, acting reasonably, to perform the Contractor's Obligations under this Agreement;
- (b) the exercise by the State of rights the State is entitled to exercise under this Agreement;
- (c) any Direction or determination under clause 1.3;
- (d) any exercise of statutory functions or powers by a Government Agency under clause 1.4;
- (e) a Direction under clause 20.2(k) to rectify defects in a Minor Work;
- (f) a Direction under clause 21.5 to submit a Change in Law Quotation;
- (g) the issue of a PIN under clause 22.1;

- (h) any exercise by the State of rights following a Default by the Contractor including the giving of a Direction under clause 23.3(b);
- (i) any reasonable exercise by the State of its discretions under the Review Procedures, including any reasonable Direction given pursuant to clause 36.7 or clause 36.9(c);
- (j) a Direction under clause 39.9 to remove a Subcontractor;
- (k) any matter expressed to be at the Contractor's own cost or risk under this Agreement;
- (l) any matter expressed not to comprise a Variation under this Agreement; or
- (m) (without prejudice to the Contractor's entitlement to be paid in accordance with the payment tables in section 10 of Schedule 4) any change in the volume of the Services that the Contractor will be required to provide under this Agreement or any change in the level of usage of the Prison.

Variation Notice means a notice given by the State under clause 19.2.

Variation Order means a notice given by the State under clause 19.5(e).

Variation Quotation means the document provided pursuant to clause 19.4.

Vending Machine List has the meaning given in clause 9.2(b).

Visitor means any person who is a visitor to the Prison, and is authorised to be at the Prison for that purpose.

Waste Water Treatment Plant means the waste water treatment plant located adjacent to and servicing the Prison.

WPI Adjustment has the meaning given in section 1 of Schedule 4.

WWTP Contractor means the person contracted by the State to undertake the operation and maintenance of the Waste Water Treatment Plant.

1.2 Rules for interpreting this Agreement

In this Agreement unless the context otherwise requires:

- (a) (persons): references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), a trust, a trustee or a partnership;
- (b) (includes): the words 'including', 'includes' and 'include' will be read as if followed by the words 'without limitation';
- (c) (or): the meaning of 'or' will be that of the inclusive 'or', that is meaning one, some or all of a number of possibilities;
- (d) (other persons): a reference to any party or person includes each of their legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any person taking part by way of novation;
- (e) (Authority): a reference to any authority, utility company, institute, association or body is:

- (i) if that authority, utility company, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that authority, utility company, institute, association or body are transferred to another organisation, a reference to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as applicable; and
 - (ii) if that authority, utility company, institute, association or body ceases to exist, a reference to the organisation which serves substantially the same purposes or objectives as that authority, utility company, institute, association or body;
- (f) (this Agreement): a reference to this Agreement or to any other deed, agreement, document, circular, policy or instrument includes a reference to this Agreement or such other deed, agreement, document, circular, policy or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (g) (legislation): a reference to any legislation or to any section or provision of it includes any amendment to or re-enactment of, or any statutory provision substituted for that legislation, section or provision;
- (h) (rights): a reference to a right includes any benefit, remedy, discretion, authority or power;
- (i) (singular): words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (j) (headings): headings are for convenience only and do not affect the interpretation of this Agreement;
- (k) (schedules): a reference to this Agreement includes all Schedules and attachments;
- (l) (Clauses): a reference to:
 - (i) a clause, Schedule or attachment is a reference to a clause, Schedule or attachment of or to this Agreement;
 - (ii) a paragraph is a reference to a paragraph in the clause in which the reference appears; and
 - (iii) a section is a section of a Schedule;
- (m) (defined meaning): where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (n) (\$): a reference to '\$' is to Australian currency;
- (o) (time): a reference to time is a reference to Australian Western Standard Time;
- (p) (form): writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions and communication by email;

- (q) (construction): no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward or drafted this Agreement or any part;
- (r) (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;
- (s) (remedy): the use of the word 'remedy' or any form of it in this Agreement means that the event to be remedied must be cured or its effects overcome;
- (t) (may): the term 'may', when used in the context of a power or right exercisable by the State means that the State or a State's Associate (as the case may be) can exercise that right or power in its absolute and unfettered discretion and the State or the State's Associate has no obligation to the Contractor to do so;
- (u) (no double counting): if this Agreement requires calculation of an amount payable to a Party there must be no double counting in calculating that amount, which, for the avoidance of doubt includes amounts calculated in accordance with the Schedules to this Agreement; and
- (v) (writing): references to a notice, request, Claim, consent, approval, record or report means that the notice, request, Claim, consent, approval, record or report must be in writing unless otherwise agreed by the Parties or expressly stated in this Agreement.

1.3 Related matters

- (a) (Provisions limiting or excluding liability): Any provision of this Agreement which seeks either expressly or by implication to limit or exclude any liability of a Party is to be construed as doing so only to the extent permitted by Law.
- (b) (Cost of performing obligations): Each Party must perform its obligations in accordance with this Agreement at its own cost, unless expressly provided otherwise.
- (c) (Contractor obligations): In complying with or accepting any obligation or risk in accordance with this Agreement, the Contractor must procure that, to the extent applicable, each of the Contractor's Associates are required to comply with or accept the relevant obligation or risk and not cause the Contractor to breach its obligations in accordance with this Agreement.
- (d) (Business Day): If the day on or by which any thing is to be done in accordance with this Agreement is not a Business Day, that thing must be done on the next Business Day.
- (e) (Discretion): Any consent or approval in accordance with this Agreement from the State or the State's Associates may be given or withheld, or may be given subject to such conditions (other than the payment of money), as the State, or a State's Associate (in its absolute discretion) think fit, unless this Agreement provides otherwise.
- (f) (Agreement composition):
 - (i) This Agreement comprises:
 - (A) clauses 1 to 44; and

(B) Schedules 1 to 13.

(g) (Order of precedence within this Agreement): The following order of precedence applies in the event of any inconsistency, ambiguity or discrepancy between the various documents comprising this Agreement:

(i) clauses 1 to 44; and

(ii) Schedules 1 to 13,

except to the extent that any part of the various documents listed above impose a greater or higher requirement, standard, quality, level of service, quantum or scope than any other part of the documents listed above, in which case, that greater or higher requirement, standard, quality, level of service, quantum or scope prevails.

(h) (Ambiguous terms):

(i) If either Party identifies any inconsistency, ambiguity or discrepancy within or between any of the documents or categories of documents identified in clause 1.3(f) then that Party must notify the other Party of the inconsistency, ambiguity or discrepancy as soon as possible and in no case later than 5 Business Days after becoming aware of the inconsistency, ambiguity or discrepancy.

(ii) If the Contractor issues a notice in accordance with clause 1.3(h)(i), it must not take any further action in connection with the ambiguity, discrepancy or inconsistency until a Direction is issued by the State in accordance with clause 1.3(h)(iii) or if no Direction is issued, 5 Business Days has elapsed.

(iii) Within 5 Business Days of receipt of a notice in accordance with clause 1.3(h)(i) the State will Direct the Contractor as to how to resolve any ambiguity, discrepancy or inconsistency the subject of the notice in accordance with:

(A) the order of precedence in clause 1.3(g); or

(B) if the relevant inconsistency, ambiguity or discrepancy cannot be resolved in accordance with clause 1.3(g), otherwise as determined by the State acting reasonably.

(iv) The Contractor must comply with any Direction issued by the State in accordance with this clause 1.3(h).

(i) (Inconsistency between this Agreement, Legislative Requirements, and Departmental Policies): Where there is an inconsistency or discrepancy between a provision of this Agreement, a Legislative Requirement, or a Departmental Policy:

(i) if that inconsistency or discrepancy can be resolved by applying the higher or more rigorous standard, the higher or more rigorous standard shall apply; or

(ii) if the inconsistency or discrepancy cannot be resolved by applying the higher or more rigorous standard, the following order of precedence applies:

(A) the Legislative Requirements;

- (B) the provisions of this Agreement; and
- (C) the Departmental Policies.

1.4 Government Agencies

The Contractor agrees that:

- (a) there are Government Agencies with jurisdiction over the Prison and parts of the Site;
- (b) such Government Agencies may, from time to time and at any time, exercise their statutory functions and powers in such a way that may disrupt, interfere with or otherwise affect the Prison and parts of the Site; and
- (c) except as otherwise expressly provided in this Agreement, the Contractor bears the full risk of all occurrences of the kind referred to in clause 1.4(b) and will not be entitled to make any Claim against the State in connection with such occurrences.

1.5 Indexation

When an amount in clauses 1 to 44 of this Agreement is expressed to be 'Indexed' the following provisions will apply:

- (a) The amount will be indexed each time the State exercises its right to extend this Agreement for a Further Period.
- (b) The indexed amount (as calculated in accordance with clause 1.5(c) below) will apply from the first date of the relevant Further Period.
- (c) The indexed amount will be calculated by applying the following formula:

$$IA = OA \times (((NCPI_{FP} / OCPI) \times CPIW) + ((NWPI_{FP} / OWPI) \times WPIW))$$

where:

- IA** means the indexed amount.
- OA** means the original amount, as documented in this Agreement as at the Signature Date.
- NCPI_{FP}** means the CPI Index Number (as that term is defined in Schedule 4) for the quarter most recently published prior to the commencement of the Further Period, rounded to four decimal points.
- OCPI** has the meaning given in section 1 of Schedule 4.
- CPIW** has the meaning given in section 1 of Schedule 4.
- NWPI_{FP}** means the WPI Index Number (as that term is defined in Schedule 4) for the quarter most recently published prior to the commencement of the Further Period, rounded to four decimal points.
- OWPI** has the meaning given in section 1 of Schedule 4.
- WPIW** has the meaning given in section 1 of Schedule 4.

1.6 Changes to indices

- (a) This clause 1.6 sets out the rules that apply to all amounts in this Agreement that are required to be adjusted in accordance with an index.

- (b) If:
 - (i) there is a substantial change in the calculation or coverage of an index; or
 - (ii) there is a change in its periodicity,
 the Parties must agree:
 - (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 this Agreement.
- (c) If the Parties are unable to reach an agreement in accordance with clause 1.6(b) within 20 Business Days, the Parties must request that the President of the Institute of Actuaries (or the President's nominee) determine the matter set out in clause 1.6(b) and that determination will be final and binding on the Parties.
- (d) If there is a change in the reference base of the index from that applying at the Signature Date and the Australian Bureau of Statistics:
 - (i) provides a conversion factor, that conversion factor must be appropriately applied in undertaking indexation calculations; or
 - (ii) does not provide a conversion factor, the Parties must request the President of the Institute of Actuaries (or the President's nominee) to calculate a conversion factor, and that calculation is final and binds the Parties.
- (e) If the index ceases to be published and the Australian Bureau of Statistics publishes another index which is a replacement of that index, then the replacement index will apply subject to appropriate conversion.
- (f) If the index ceases to be published and the Australian Bureau of Statistics does not publish another index which is a replacement of that index:
 - (i) the Parties must attempt to agree a replacement index and any appropriate conversions; and
 - (ii) if the Parties cannot reach agreement the Parties must request the President of the Institute of Actuaries (or the President's nominee) to propose a replacement index and any appropriate conversions, and that decision is final and binds the Parties.
- (g) If the President of the Institute of Actuaries advises the Parties that a matter for determination by the President contemplated in this clause 1.6 is not within the President's scope or expertise, or if the President is otherwise unwilling to determine the matter, the matter will be determined in accordance with clause 37.

2. APPLICABLE ACTS

2.1 Prisons Act

- (a) This Agreement:

- (i) has been entered pursuant to section 15B of the Prisons Act;
 - (ii) does not affect the operation of the Prisons Act; and
 - (iii) is not to be construed as requiring a Party to breach any provision of the Prisons Act.
- (b) If there is any inconsistency between the provisions of this Agreement and the provisions of the Prisons Act, then in addition to the consequences in clause 1.3(i), the State and the Contractor must promptly consult with each other and negotiate in good faith, with a view to agreeing any appropriate amendments (if any) to this Agreement so that the intent of this Agreement may, to the extent possible, be achieved.
- (c) The Contractor must, and must ensure that all Contract Workers, at all times give full assistance to, and co-operate fully with, the person from time to time appointed to the office of Inspector of Custodial Services under the *Inspector of Custodial Services Act 2003* and, in particular, to enable the Inspector of Custodial Services and any person acting with his authority to carry out in relation to the Prison the functions set out in the *Inspector of Custodial Services Act 2003*.

2.2 Exercise of Statutory Powers by Contractor and Contract Workers

- (a) Where the performance of the Services or the Contractor's Obligations involves the use or exercise of any Statutory Powers by the Contractor, any Subcontractor or any Contract Worker, the exercise of these powers must be in accordance with all applicable Legislative Requirements.
- (b) The Contractor must assist the State and the State's Associates in exercising their Statutory Powers.

2.3 Contractor within jurisdiction of Ombudsman

The Parties acknowledge the following.

- (a) For the purpose of section 3(1) of the Prisons Act:
- (i) the Contractor is a contractor; and
 - (ii) a Subcontractor is a subcontractor.
- (b) Accordingly, for the purpose of sections 4A(1)(f) and 13 of the Ombudsman Act, the Contractor and each Subcontractor will be considered to be an authority:
- (i) in any way affecting or applying to the Prison; or
 - (ii) in the performance of, or compliance with, the Contractor's Obligations, or the Services.
- (c) With regard to any decision or recommendation made, or any act done or omitted by the Contractor or any Subcontractor:
- (i) the Ombudsman will have jurisdiction under the Ombudsman Act to investigate; and

- (ii) in the event that the Ombudsman exercises a discretion to commence an investigation, the provisions of the Ombudsman Act will apply.

2.4 Principal officer of the Contractor

In accordance with section 15C(l) of the Prisons Act and for the purposes of the:

- (a) *Corruption, Crime and Misconduct Act 2003*;
- (b) *Freedom of Information Act 1992*; and
- (c) Ombudsman Act,

the principal officer of the Contractor is the person from time to time appointed as the Contractor Superintendent under clause 6.3.

2.5 Principal officer of Subcontractors and other persons

In accordance with section 15C(l) of the Prisons Act and for the purposes of the:

- (a) *Corruption, Crime and Misconduct Act 2003*;
- (b) *Freedom of Information Act 1992*; and
- (c) Ombudsman Act,

the principal officer of:

- (d) a Subcontractor;
- (e) a person with whom the Subcontractor contracts; and
- (f) a person, with whom a person referred to in subclause (e) contracts,
is:
 - (g) in the case of a natural person, that person; and
 - (h) in the case of a body corporate, the secretary of that body.

3. CONDITIONS PRECEDENT AND INITIAL OBLIGATIONS

3.1 Satisfaction and waiver of conditions

- (a) This Agreement (with the exception of this clause 3 and clauses 6, 10.4, 17, 30, 31.1, 33, 35, 36, 40, 41 and 42) is conditional upon, and does not become binding until, the satisfaction or waiver of each of the Conditions Precedent.
- (b) The Conditions Precedent are:
 - (i) the State having approved the Contractor's Transition Plan;
 - (ii) the Contractor having effected and maintained the Insurances required under Part A of Schedule 6 in accordance with clause 30 and having provided evidence in accordance with clause 30.5;

- (iii) the State having approved the Pre-Service Induction Training Program;
 - (iv) the State having received a Parent Guarantee from the Parent Guarantor in the form set out in Schedule 8;
 - (v) the Contractor Representative and Transition Manager have been employed by the Contractor and are ready to commence duties; and
 - (vi) the State having approved the Contractor's Minimum Staffing Tables.
- (c) The Conditions Precedent may only be waived by the State notifying the Contractor of its waiver.
- (d) The Parties must:
 - (i) use reasonable endeavours (other than waiver) to ensure that the Conditions Precedent are satisfied on or before the Planned Commencement Date; and
 - (ii) keep each other informed of any circumstances which may result in any of the Conditions Precedent not being satisfied.

3.2 Result of non-satisfaction of conditions

- (a) The State may, by notice in writing the Contractor, and in the State's unfettered discretion, extend the Planned Commencement Date to a later date, regardless of whether the Planned Commencement Date has already passed.
- (b) If each of the Conditions Precedent are not satisfied or waived on or before the Planned Commencement Date, and the State elects not to extend that date, then the State may, by notice in writing to the Contractor, terminate this Agreement.

3.3 State approval of the Transition Plan

- (a) To the extent relevant, the Transition Plan must be based upon and consistent with the Contractor's Proposal.
- (b) The Transition Plan must document the activities the Contractor will undertake during the Transition Period in order to be ready, and demonstrate readiness, for delivering the Services, including:
 - (i) equipment the Contractor will procure, install and commission during the Transition Period;
 - (ii) the extent to which the Contractor will purchase Contractor Resources (including Consumables and Canteen Goods) from an Incumbent Provider (which must be agreed with the relevant Incumbent Provider);
 - (iii) systems, workflows and procedures the Contractor will put in place during the Transition Period to prepare for the delivery of the services;

- (iv) how the Contractor will source Contract Workers (which must be agreed with an Incumbent Provider to the extent the Contractor intends engaging employees of that Incumbent Provider);
 - (v) how the Contractor will take over from the Incumbent Providers on or around the Operations Commencement Date (which must be agreed with the Incumbent Providers);
 - (vi) tests the Contractor will undertake to demonstrate to the State that its equipment, Contract Workers, systems, processes and workflows are in a state of readiness to deliver the Services from the Operations Commencement Date, and it is otherwise wholly ready to deliver the Services in an uninterrupted manner from this date (**Commencement Tests**); and
 - (vii) how the Contractor will interact with the Incumbent Providers in order to access and interact with Site and the Prison for transition related purposes (which must be agreed with the Incumbent Providers).
- (c) The Transition Plan must include a detailed program for undertaking the activities contemplated in the Transition Plan.
 - (d) The State may approve or not approve the Transition Plan in the State's discretion (acting reasonably).

3.4 Certificate of Commencement

The State must issue a certificate of commencement promptly on becoming aware that all the Conditions Precedent have been satisfied or waived. The certificate must specify as the Commencement Date the date on which the last of the Conditions Precedent is satisfied or waived. The State must deliver the certificate of commencement to the Contractor as soon as practicable after the Commencement Date.

4. TRANSITION

4.1 Transition Obligations

- (a) The Contractor must, during the Transition Period, take all steps and undertake all activities so the Contractor will be able to provide the Services to the standards required by this Agreement from the Operations Commencement Date.
- (b) Without limiting clause 4.1(a), the Contractor must undertake the following activities, discharge the following obligations, and obtain the following State approvals during the Transition Period:
 - (i) comply with all obligations contained in the Transition Plan (including successfully completing all Commencement Tests);
 - (ii) obtain State approval of the Contractor Superintendent;
 - (iii) obtain State approval of all Contract Workers in accordance with the requirements of clause 10.2;
 - (iv) ensure each Contract Worker who requires a high security permit under the Prisons Act has obtained a high security permit;

- (v) ensure each Key Personnel is engaged and able to commence their role as contemplated under this Agreement;
- (vi) ensure each Key Subcontractor is engaged and able to commence its role as contemplated under this Agreement;
- (vii) ensure the Pre-Service Induction Training Program is delivered to all Contract Workers;
- (viii) obtain State approval of its Prison Operating Manual (which must contain the Minimum Staffing Tables as approved by the State pursuant to clause 3.1(b)(vi));
- (ix) obtain State approval of its Maintenance Services Plan;
- (x) obtain State approval of its Soft Facility Management Services Plan;
- (xi) establish and obtain State approval of the electronic Prisoner information system contemplated at clause 16.14;
- (xii) obtain State approval of its Emergency Management Plan;
- (xiii) obtain State approval of its Aboriginal Workforce Plan;
- (xiv) obtain State approval of the Canteen List;
- (xv) obtain State approval of the Vending Machine List;
- (xvi) obtain State approval of the External Prisoner Purchase List;
- (xvii) establish a Prisoner Welfare Trust Fund in accordance with clause 9.4;
- (xviii) establish a Prisoner Trust Account in accordance with clause 9.9;
- (xix) obtain State acceptance of a Minor Works Quotation relating to each Enabling Work which will be performed by the Contractor pursuant to Schedule 11; and
- (xx) effect and maintain the Insurances required under Part B of Schedule 6 in accordance with clause 30 and provide evidence in accordance with clause 30.5.

4.2 Transition Manager

- (a) The Contractor must, during the Transition Period, appoint a suitably experienced and skilled Transition Manager.
- (b) The role of Transition Manager may be performed by the same person who performs the role of the Contractor Representative, or alternately the Transition Manager must report directly to the Contractor Representative.
- (c) The Transition Manager must:
 - (i) oversee, coordinate and manage the discharge of the Transition Obligations; and

- (ii) liaise with the State, and keep the State informed, as to the discharge of the Transition Obligations.

4.3 Operational Readiness

- (a) When the Contractor considers it has discharged all Transition Obligations and achieved Operational Readiness it must notify the State in writing.
- (b) If the State, in its absolute discretion, is satisfied Operational Readiness has been achieved, it must notify the Contractor in writing that Operational Readiness has been achieved.
- (c) The State may, in its absolute discretion, waive any of the Transition Obligations, or may defer the satisfaction of any Transition Obligation until after the Operations Commencement Date (and such waiver or deferral may be subject to conditions reasonably required by the State).
- (d) The Contractor must achieve Operational Readiness by the date which is 10 Business Days before the Planned Operations Commencement Date.
- (e) If the Contractor has achieved Operational Readiness by the date which is 10 Business Days prior to the Planned Operations Commencement Date, the Contractor must deliver the Services from the Planned Operations Commencement Date.
- (f) If the Contractor has not achieved Operational Readiness by the date which is 10 Business Days prior to the Planned Operations Commencement Date:
 - (i) the Contractor must achieve Operational Readiness as soon as possible thereafter;
 - (ii) the Contractor must deliver the Services from the date which is 10 Business Days after Operational Readiness is achieved, or such other date as the State may notify in writing; and
 - (iii) if Operational Readiness is not achieved by a date which is 3 months after the Planned Operations Commencement Date, the State may terminate this Agreement on that date (or on any date thereafter) provided that the State's right to terminate under this clause 4.3(f)(iii) will cease on the Operations Commencement Date.

4.4 Transition Reports

- (a) The Contractor must provide the State with a written Transition Report on a monthly basis (at a time reasonably required by the State) and at such other times as reasonably required by the State.
- (b) Each Transition Report must:
 - (i) address progress against each of the Transition Obligations;
 - (ii) contain an estimate of when Operational Readiness is anticipated to be achieved; and
 - (iii) contain any other information reasonably required by the State.

5. COMMENCEMENT OF AGREEMENT AND OPERATION PERIOD

5.1 Duration of this Agreement

- (a) This Agreement commences on the Commencement Date and, unless terminated prior to the commencement of the Operation Period pursuant to clause 3.2 or clause 4.3(f)(iii), expires on the last day of the Operation Period.
- (b) The Operation Period:
 - (i) commences on the Operations Commencement Date; and
 - (ii) ends on the fifth anniversary of the Operations Commencement Date, subject to:
 - (A) earlier termination of this Agreement under a provision of this Agreement or the Prisons Act or at Law; and
 - (B) any extension under clause 5.2 or continuation under clause 5.3.

5.2 Option to extend Operation Period

- (a) The State may elect, at its absolute discretion, to extend the Operation Period for up to 2 consecutive further periods of up to 5 years each, commencing on the date the Operation Period would have expired but for the extension (each a **Further Period**).
- (b) By the date which is 6 months before the end of the Operation Period (or such later date as the Parties may agree in writing), the State must give the Contractor written notice specifying:
 - (i) whether the Agreement will be extended for a Further Period; and
 - (ii) if the Agreement is to be extended, the length of the Further Period.
- (c) If the State gives notice under clause 5.2(b) extending this Agreement, the Operation Period will be extended for the Further Period.
- (d) The terms and conditions of this Agreement will continue to apply during all Further Periods except that, in the case of the second Further Period, the State will not have an option to extend the Agreement pursuant to clause 5.2(b).
- (e) Unless the Parties otherwise agree, the State may not exercise its option to extend this Agreement for a Further Period during any extension of the Operation Period under clause 5.3.

5.3 Rolling Further Period

- (a) The State may require the Contractor to continue to perform the Services on an indefinite basis by notice to the Contractor at least 3 months before the expiry of the Operation Period (**Rolling Further Period**). The terms and conditions of this Agreement will continue to apply during any Rolling Further Period.

- (b) Clause 5.3(a) applies even if the State has given the Contractor notice under clause 5.2(b) that this Agreement will not be extended for a Further Period.
- (c) At any time after the commencement of the Rolling Further Period either Party may end the Rolling Further Period by giving at least 3 months' notice to the other Party. The Rolling Further Period will end, and this Agreement will expire, on conclusion of that notice period.

6. ADMINISTRATION OF AGREEMENT

6.1 The Contract Manager

- (a) The State:
 - (i) must, as soon as practicable after the Signature Date, appoint a person to be the Contract Manager; and
 - (ii) may replace the Contract Manager from time to time by notice to the Contractor.
- (b) Subject to clause 6.1(e) and any other provisions of this Agreement, and except as otherwise specified by the State, the Contract Manager:
 - (i) is the agent of the State for the purpose of doing anything to be done under this Agreement; and
 - (ii) has authority to make and give, or accept, on the State's behalf, any approvals, acceptances, Directions, notices and other decisions that the State may make, give or accept under this Agreement.
- (c) The State must ensure that the person appointed as Contract Manager has the appropriate authority under the Prisons Act and any other applicable Laws to perform the functions of a Contract Manager under this Agreement.
- (d) If the Contractor requests that the Contract Manager confirm an oral Direction, the Contractor must promptly comply with the Direction, but the Contract Manager must as soon as practicable confirm the Direction in writing.
- (e) Where the Prisons Act requires anything to be done on behalf of the State by the CEO, the Contract Manager's authority and agency under clause 6.1(b) will be deemed to exclude that thing, and the CEO will be the agent of the State, with the authority, as specified in clause 6.1(b) in respect of that thing.

6.2 The Contractor Representative

- (a) The Contractor:
 - (i) must, as soon as practicable after the Signature Date, appoint a person to be the Contractor Representative; and
 - (ii) may replace the Contractor Representative from time to time by notice to the State.

- (b) The Contractor Representative:
 - (i) is the agent of the Contractor for the purpose of doing any thing to be done under this Agreement; and
 - (ii) has authority to make and give, or accept, on the Contractor's behalf, any approvals, acceptances, Directions, notices and other decisions that the Contractor may make, give or accept under this Agreement.
 - (iii) will generally be the first point of contact for the Contract Manager in respect of matters arising under this Agreement (save for significant issues or concerns relating to the provision of the Services).

6.3 The Contractor Superintendent

- (a) The Contractor:
 - (i) must, as soon as practicable after the Signature Date, notify the State of a suitable and appropriately qualified Contract Worker whom the Contractor wishes to be authorised by the CEO pursuant to section 15I of the Prisons Act to perform the functions of a Superintendent; and
 - (ii) may from time to time request that a replacement Contract Worker be authorised by the CEO pursuant to section 15I of the Prisons Act to perform the functions of a Superintendent by notice to the State.
- (b) Upon receipt of a notice pursuant to clause 6.3(a), the CEO will determine whether to authorise the Contract Worker identified in the notice to perform the functions of a Superintendent. The CEO's authorisation of, or refusal to authorise, a Contract Worker shall be in his or her absolute discretion and may be subject to such conditions and limitations specified in the authorisation as the CEO thinks fit. If the CEO refuses to authorise the Contract Worker notified to the State under clause 6.3(a), the Contractor must, as soon as practicable after receiving notification of the CEO's refusal, notify the State of an alternative Contract Worker whom the Contractor wishes to be authorised by the CEO pursuant to section 15I of the Prisons Act.
- (c) The CEO's authorisation of a Contract Worker to perform the functions of a Superintendent may specify any powers or duties that the Contract Worker may delegate to other Contract Workers.
- (d) The Contractor Superintendent:
 - (i) is the Contract Worker authorised by the CEO pursuant to clause 6.3(b) who is responsible for performing the functions of a Superintendent of the Prison, to the extent authorised by the CEO in accordance with section 15I of the Prisons Act;
 - (ii) is the person primarily responsible for supervising the day to day provision of the Services; and
 - (iii) will generally be the first point of contact for the Contract Manager in respect of significant issues or concerns relating to the provision of the Services.

- (e) Nothing in this clause requires or authorises the Contractor Superintendent to perform any functions of a Superintendent which may not be delegated to a Contract Worker under the Prisons Act.
- (f) For the avoidance of doubt:
 - (i) the Contractor may, but is not required, to nominate as Contractor Superintendent the same natural person it appoints as Contractor Representative; and
 - (ii) clause 6.3(b) will apply to any person so nominated.

6.4 Notification of appointments

Each Party must, as soon as practicable (and in any event within 5 Business Days) after the appointment, or any reappointment or replacement, of a person to represent that Party under the provisions of this clause 6, notify the other Party in writing of:

- (a) the name;
- (b) the contact address;
- (c) the email address; and
- (d) the facsimile and telephone numbers,

of the person who has been appointed, reappointed or who has replaced the person previously representing that Party (as the case may be).

6.5 Qualifications, imputation of knowledge and other requirements of appointed representatives

- (a) The exercise of a right or the discharge of an obligation under this Agreement by:
 - (i) the Contract Manager, is to be taken to be performed by the State to the extent it is within the Contract Manager's authority under clause 6.1;
 - (ii) the CEO, is to be taken to be performed by the State to the extent it is within the CEO's Statutory Powers under the Prisons Act; and
 - (iii) the Contractor Representative or the Contractor Superintendent, is to be taken to be performed by the Contractor.
- (b) Where a matter is known by:
 - (i) the Contract Manager, that matter will be treated as being known by the State; and
 - (ii) the Contractor's Representative or the Contractor Superintendent, that matter will be treated as being known by the Contractor.
- (c) Each Party must ensure that each person appointed under this clause 6 to represent that Party is:
 - (i) an appropriately qualified and experienced person to perform the responsibilities that person is required to perform under this Agreement; and

- (ii) available at all reasonable times, on reasonable notice, to consult on behalf of that Party in connection with matters arising under this Agreement.

6.6 Joint Management Board

- (a) The Joint Management Board comprises:
 - (i) the Commissioner, the Contract Manager, and other senior officers invited by the Commissioner; and
 - (ii) the Contractor's Representative and two other senior executives of the Contractor appointed by the Contractor.
- (b) The Commissioner will be the Chairperson of the Joint Management Board.
- (c) Each of the Contractor and the State may replace any of its representatives on the Joint Management Board at any time by giving notice to the other Party, provided that replacement representatives are of equivalent seniority to the representatives being replaced.
- (d) The functions of the Joint Management Board are to:
 - (i) monitor the performance of the Services, the operation of the Prison and discharge of the State's Obligations and the Contractor's Obligations;
 - (ii) seek to resolve any matters referred to it in accordance with this Agreement; and
 - (iii) consider any other matters as agreed.
- (e) Meetings of the Joint Management Board must be held at least once each Operation Quarter and on an ad hoc basis for the purpose of seeking to resolve matters referred to it in accordance with this Agreement. The Contract Manager will be responsible for convening the meetings of the Joint Management Board. At least 10 Business Days' notice must be given of each meeting and of the agenda for the meeting.
- (f) The Contract Manager must arrange for a secretary to attend all meetings and record all resolutions and actions arising out of each meeting.

6.7 Key Personnel

- (a) The Contractor must employ or engage the Key Personnel to perform the roles and functions stated in Schedule 1.
- (b) The Contractor must not replace the Key Personnel without the State's prior approval in accordance with clause 6.7(c).
- (c) If the Contractor seeks to replace a Key Personnel, the State may not unreasonably withhold or delay its approval of a proposed replacement if:
 - (i) the Key Personnel has resigned from his or her employment or has terminated his or her engagement with the Contractor;
 - (ii) the Key Personnel has died;

- (iii) the Key Personnel has become incapable of performing his or her duties due to injury or illness; or
- (iv) the Key Personnel has committed a breach of any express or implied term of his or her contract of employment or independent contract which would warrant termination of his or her employment or engagement,

and the Contractor has demonstrated that the proposed replacement person is appropriately technically qualified, has adequate experience (technical or otherwise, as the role requires) in relation to the proposed role and is of good repute.

7. SERVICES

7.1 Contractor's appointment and acceptance of appointment

- (a) The State appoints the Contractor to provide the Services for the Operation Period in accordance with the terms of this Agreement.
- (b) The Contractor accepts the appointment under clause 7.1(a).

7.2 Compliance with Law

The Contractor must provide the Services and perform the Contractor's Obligations in compliance with all applicable Laws, standards, and codes of practice from time to time applicable to the performance of the Services, including:

- (a) the Prisons Act, the Prisons Regulations and any rule, code, order, standard, direction or other instrument made under them;
- (b) all other Legislative Requirements;
- (c) all Government Authorisations; and
- (d) all Departmental Policies.

7.3 Compliance with standards and maintenance of accreditation

From the date that is 12 months after the Operations Commencement Date, the Contractor must ensure that:

- (a) it is certified under AS/NZS ISO 9001:2016 Quality Management Systems – Requirements (**AS/NZS ISO 9001**) and the scope of its certification covers the provision of all of the Services and the discharge of all of the Contractor's Obligations;
- (b) the certification under AS/NZS ISO 9001 is maintained throughout the Operation Period;
- (c) it provides the Services and discharges the Contractor's Obligations in compliance with the quality management systems certified under AS/NZS ISO 9001 or its successor standard;
- (d) the quality management systems established by the Contractor in accordance with AS/NZS ISO 9001 are consistent with the Prison Operating Manual;

- (e) it is registered, or has in place arrangements with third parties who are registered, by the Training Accreditation Council of Western Australia, or an equivalent organisation in another State, to train, assess and award such qualifications to Contract Workers as are necessary for the Contractor to perform the Services and otherwise fulfil the Contractor's Obligations; and
- (f) the quality management systems established by the Contractor in accordance with AS/NZS ISO 9001 include processes and procedures for updating and maintaining the Prison Operating Manual.

7.4 Operation Service Requirements

The Contractor must provide the Operational Services in accordance with the Schedule 2 of this Agreement.

7.5 Maintenance Service Requirements

The Contractor must provide the Facility Management Services in accordance with Schedule 3 of this Agreement.

7.6 Exemption reporting obligations

- (a) The State has been granted an exemption under section 15 of the *Western Australian Jobs Act 2017* in relation to this Agreement.
- (b) The Contractor must submit:
 - (i) exemption reporting to the State on an annual basis on the anniversary of the Signature Date, or on such other date each year as is notified by the State to the Contractor; and
 - (ii) a final report no later than two months after the Expiry Date,
 in accordance with this clause 7.6.
- (c) Each report submitted under clause 7.6(a) must be in the form of, and must address the matters outlined in, the exemption reporting template for WAIPS Contracts which is available to download from the Industry Link portal at <https://industrylink.wa.gov.au/resources-library>
- (d) The Contractor must:
 - (i) permit the State, or its duly authorised representative, from time to time to undertake an audit or investigation of the Contractor's performance of its obligations under this clause 7.6;
 - (ii) ensure that its Contract Workers give all reasonable assistance to any person authorised by the State to undertake such audit or inspection; and
 - (iii) if the State requests from the Contractor information or documentation in connection with any report referred to in clause 7.6(b) the Contractor must promptly comply with such request, ensuring that the information or documentation provided, or to which access is provided, is accurate, up-to-date, comprehensive, sufficiently detailed, and in no way misleading or deceptive.
- (e) The Contractor authorises the State, and any duly authorised representative of the State, to obtain information from any relevant persons, firms or

corporations, including third parties, regarding the Contractor's compliance with the Contractor's obligations under this clause 7.6.

- (f) The Contractor must ensure that each report required under clause 7.6(a) is endorsed and verified as being true and correct by the Contractor's Chief Executive Officer, Managing Director or equivalent.
- (g) The State may use or disclose any report provided under clause 7.6(b), or any other information or documentation referred to in this clause 7.6 for the legitimate purposes of or relating to government or the business of government.
- (h) The Contractor acknowledges that if the Contractor does not comply with its obligations under this clause 7.6, this may result in the State (including any agency, department, authority or instrumentality of the State) not awarding a supply contract, or supply contracts, to the Contractor in the future.
- (i) This clause survives the termination or expiration of the Agreement.

7.7 Best Industry Practice

The Contractor must provide the Services and discharge the Contractor's Obligations in accordance with Best Industry Practice.

7.8 Prison Operating Manual and Standing Orders

- (a) The Contractor must prepare and submit for the State's approval a Prison Operating Manual in accordance with the requirements of Schedule 2, including covering the following areas:
 - (i) custody and containment incorporating the systems and procedures described in section 1 of Schedule 2;
 - (ii) care and well-being, including Prison administration, Prisoner services and Prisoner management, incorporating the systems and procedures described in section 2 of Schedule 2;
 - (iii) rehabilitation and reintegration, including sentence and case management, Prisoner programs and other Prisoner matters, incorporating the systems and procedures described in section 3 of Schedule 2;
 - (iv) reparation, including through the operation of prison industries and the provision of goods and services to the community, incorporating the systems and procedures described in section 4 of Schedule 2;
 - (v) business systems, including information management and operational and other matters, incorporating the systems and procedures described in section 5 of Schedule 2; and
 - (vi) human resources and occupational health and safety, including the development and implementation of relevant processes and the recruitment, training and management of appropriate personnel, incorporating the systems and procedures described in section 6 of Schedule 2 and including the Minimum Staffing Tables; and

- (vii) a process, to be developed in consultation with the State, for the regular transfer of hard copy Records to the State.
- (b) The Prison Operating Manual must:
 - (i) except where otherwise agreed by the State, be consistent with the Contractor's Proposal;
 - (ii) be consistent with this Agreement;
 - (iii) be consistent with all Departmental Policies and Legislative Requirements;
 - (iv) specify in detail the strategies and processes the Contractor proposes to use to deliver the Services;
 - (v) demonstrate that the strategies and processes the Contractor proposes to use are based on sound operational practices;
 - (vi) describe how the Contractor will use internal systems, such as performance indicators and complaints (including complaints by Prisoners and Contract Workers), to monitor and evaluate the Contractor's performance and compliance with its proposed strategies and processes; and
 - (vii) be prepared in accordance with Best Industry Practice.
- (c) In preparing the Prison Operating Manual, the Contractor must procure that the Contractor Superintendent:
 - (i) prepares Standing Orders that are consistent with Legislative Requirements and Departmental Policies; and
 - (ii) has those Standing Orders approved by the CEO pursuant to section 37(1) of the Prisons Act.
- (d) The Standing Orders will form part of the Prison Operating Manual, and must be clearly identified and described as Standing Orders.
- (e) The first draft of the Prison Operating Manual must be submitted to the State no later than 50 Business Days prior to the Planned Operations Commencement Date.
- (f) The Contractor must review the Prison Operating Manual once each Operation Year, at a time reasonably required by the State, and where required, propose updates which will (subject to clause 7.8(h) below) be subject to the Review Procedures.
- (g) The Prison Operating Manual must be updated and maintained in accordance with relevant processes and procedures documented in the quality management systems established by the Contractor in accordance with AS/NZS ISO 9001.
- (h) Notwithstanding anything in the Review Procedures to the contrary, the State may accept or reject any proposal to amend the Minimum Staffing Tables in its absolute discretion and the State is not required to provide reasons for rejection of any such proposal.

7.9 Compliance with Prison Operating Manual

- (a) The Contractor must comply with, and ensure that all Contract Workers comply with, the Prison Operating Manual.
- (b) Without limiting clause 7.9(a), the Contractor must ensure Contract Workers have a high degree of awareness and knowledge of the Prison Operating Manual, reflective of its importance.

7.10 Obligations to act fairly and dealings with local community

The Contractor must:

- (a) act openly, fairly and reasonably in all the Contractor's dealings with; and
- (b) use the Contractor's reasonable endeavours to enhance good relations with, and minimise disruption and inconvenience to,

members of the local communities in the vicinity of the Prison, including the Shires of Mundaring and Northam and members of local and other relevant Aboriginal groups.

7.11 Consultation and minimising disruption

Without limiting the Contractor's obligations under subclause 7.10, the Contractor must:

- (a) consult on a regular basis with public interest groups which have a legitimate interest in the Prison or the Services and local communities to ensure that their interests are considered and, where possible, met; and
- (b) keep the State informed of any issues relating to the Prison or the Services which are of concern to the public interest groups or local communities.

7.12 Option to have Contractor assume responsibility for development and completion of initial Individual Management Plans

- (a) For the purposes of this clause 7.12:
 - (i) **'IMP Period'** means, subject to clause 5.2, each 5 year period during the Operation Period with:
 - (A) the first IMP Period commencing on the Operations Commencement Date and ending on the fifth anniversary of the Operations Commencement Date; and
 - (B) the last IMP Period ending on the last day of the Operation Period, which IMP Period may be less than 5 years; and
 - (ii) the terms **'Individual Management Plan'**, **'Treatment Assessment Report'** and **'Education and Vocational Training Checklist'** have the meanings given in section 3.1 of Schedule 2.
- (b) The State may, in the State's discretion on one occasion at any time during each IMP Period, by written notice to the Contractor, require the Contractor to assume responsibility for the development and completion of initial Individual Management Plans.

- (c) Any notice given pursuant to clause 7.12(b) must specify the date (not being less than 4 months from the date of the notice) from which the Contractor will assume responsibility for the development and completion of initial Individual Management Plans for new Prisoners received at the Prison without an initial Individual Management Plan (the **IMP Commencement Date**). For the avoidance of doubt, the Contractor will not be responsible for the development and completion of any initial Individual Management Plans for Prisoners received at the Prison prior to the IMP Commencement Date.
- (d) If the State gives notice pursuant to clause 7.12(b), the State must provide training to the Contract Workers tasked with preparing Treatment Assessment Reports, Individual Management Plans and Education and Vocational Training Checklists (at no additional cost to the Contractor).
- (e) From the IMP Commencement Date:
 - (i) existing section 3.2 of Schedule 2 will be deleted and replaced with the replacement section 3.2 documented at Schedule 13; and
 - (ii) the dollar amount in each cell in the column of Table 1 of section 10 of Schedule 4 entitled 'Column B Monthly OS' will be increased by \$16,138.03 (excluding GST).
- (f) Subject to clause 7.12(g) and clause 7.12(i), if the State has given notice under clause 7.12(b), the State may, in the State's discretion and at any point in time, by written notice to the Contractor, require the Contractor to cease responsibility for the development and completion of initial Individual Management Plans.
- (g) Any notice given pursuant to clause 7.12(f) must specify the date (not being less than three months from the date of the notice) from which the Contractor will cease responsibility for the development and completion of initial Individual Management Plans (the **IMP Cessation Date**) provided that the IMP Cessation Date must not be less than 12 months after the relevant IMP Commencement Date.
- (h) From the IMP Cessation Date:
 - (i) the amendment to section 3.2 of Schedule 2 contemplated at clause 7.12(e)(i) will cease to apply; and
 - (ii) the dollar amount in each cell in the column of Table 1 of section 10 of Schedule 4 entitled 'Column B Monthly OS' will be reduced by \$16,138.03 (excluding GST).
- (i) If:
 - (i) the State issues a notice to the Contractor under clause 7.12(f) directing the Contractor to cease responsibility for the development and completion of initial Individual Management Plans;
 - (ii) the Contractor has engaged an employee solely for the purpose of completing and/or developing initial Individual Management Plans as a result of a notice issued by the State under clause 7.12(b) and the employee does not perform any other functions or duties; and
 - (iii) as a direct result of the direction by the State to cease responsibility for the development and completion of initial

Individual Management Plans, the employee's position is no longer required by the Contractor and as a result the employee's employment is terminated by the Contractor,

the State will reimburse the Contractor for the redundancy pay paid to the employee which the Contractor is legally obliged to pay under section 119 of the *Fair Work Act 2009* (Cth) or under any Industrial Award, Agreement or Order upon the termination of that employee's employment with the Contractor, subject to:

- (iv) the Contractor having used reasonable endeavours to redeploy the employee in an alternative role with the Contractor at the Prison; and
- (v) providing the State with evidence, to the reasonable satisfaction of the State:
 - (A) that the requirements of clauses 7.12(i)(i) to 7.12(i)(iv) have been met; and
 - (B) of the amount of redundancy pay paid actually paid to the employee and the basis for the calculation of the amount paid.

8. FURTHER OBLIGATIONS OF THE CONTRACTOR

8.1 Aboriginal Participation

- (a) The Contractor acknowledges that it is the State's aim that Aboriginal participation in the delivery of the Services is maximised. In order to support this aim the Contractor must, during the Transition Period, prepare and submit to the State for approval, an Aboriginal Workforce Plan in accordance with the requirements of this clause 8 (**Aboriginal Workforce Plan**).
- (b) The Aboriginal Workforce Plan must:
 - (i) detail the Contractor's strategies, resourcing and activities for optimising Aboriginal participation through employment, retention and training of Aboriginal people in all aspects of the Services;
 - (ii) include a strategy setting out how the Contractor will endeavour to achieve or exceed 3.2% Aboriginal employment over the term of this Agreement;
 - (iii) provide the methodology for promoting increased Aboriginal employment, retention and participation in the Contractor's activities including:
 - (A) processes by which the Contractor will support career progression and support leadership skills development for Aboriginal people;
 - (B) how the Contractor will increase Aboriginal representation at senior and executive levels of the Contractor's operations; and
 - (C) detail culturally safe training and development opportunities for Aboriginal people, including:

- (I) processes by which the Contractor will assure the State that training is accredited, monitored and delivered; and
 - (II) how the Contractor will work with support bodies or not for profit agencies or other agencies or groups including those that might be identified by the State, and identifying which available funding schemes if any the Contractor may utilise; and
- (D) how the Contractor will work with support bodies or not for profit agencies or other agencies or groups, including those identified by the State from time to time, and identifying which available funding schemes if any the Contractor may utilise;
- (iv) detail the Contractor's strategies, resourcing and activities for engaging Aboriginal business when selecting subcontractors; and
- (v) provide the methodology for engaging Aboriginal businesses when selecting subcontractors, including how the Contractor will engage with the relevant State and national directories of interested suppliers and contractors, which at the Signature Date included:
 - (A) *"Aboriginal Business Directory Western Australia"* which is accessible via the following website: <https://www.abdwa.com.au/home.asp?cmd=register&CID>; and
 - (B) *"Supply Nation's Indigenous Business Direct"* which is accessible via the following website: <https://supplynation.org.au/>.
- (c) The Contractor must comply with the Aboriginal Workforce Plan once approved by the State.
- (d) The Contractor must review and report on the progress on the Aboriginal Workforce Plan to the Department on a yearly basis.

8.2 Reconciliation action plan

The Contractor acknowledges that it is the State's aim to increase the Aboriginal cultural competency and awareness in connection with the performance of the Services, and promote cultural safety for Aboriginal Contract Workers and Subcontractors. In order to support this aim the Contractor must:

- (a) from the Signature Date, and in consultation with the State, plan and prepare a reconciliation action plan:
 - (i) in accordance with the reconciliation action plan framework published by Reconciliation Australia;
 - (ii) having regard to the current stage of the Contractor's reconciliation journey, with a view to either establish, consolidate or advance its reconciliation action plan having regard to the four stages set out in the reconciliation action plan framework; and

- (iii) having regard to the Department's reconciliation action plan to ensure appropriate level of alignment (to the extent practicable);
- (b) within 6 months from the Operations Commencement Date (or such other time as agreed by the State) submit to the State for approval its reconciliation action plan which once approved by the State must be registered with Reconciliation Australia and implemented by the Contractor;
- (c) once registered with Reconciliation Australia, maintain a current reconciliation action plan for the duration of the Operation Period; and
- (d) provide to the State on an annual basis documentation of progress against the actions set out in the Contractor's approved reconciliation action plan.

8.3 Cultural competency training

In support of the State's aim as defined in clause 8.2, the Contractor must:

- (a) ensure that all Contract Workers receive ongoing Aboriginal cultural competency training approved by the State which addresses:
 - (i) working with Aboriginal people;
 - (ii) creating cultural safety;
 - (iii) recognising and overcoming systemic racism;
 - (iv) diversity of Aboriginal cultures and languages in Western Australia;
 - (v) impact of colonialism and dispossession; and
 - (vi) understanding intergenerational trauma;
- (b) conduct specific regular Aboriginal consultation with respect to the performance of the Services which impact on Aboriginal people and/or Aboriginal communities, for the purpose of improving those Services for Aboriginal people and their communities and to discuss developing practices in the issue of the recruitment and retention of Aboriginal Contract Workers;
- (c) within 10 Business Days of the commencement of each Operation Year, submit to the State a report which outlines the consultation undertaken in accordance with clause 8.3(b) and the Contractor's proposed actions arising from the consultation and how the actions will be implemented; and
- (d) establish an Aboriginal Services Committee chaired by the Superintendent with a focus on appropriate management and delivery of services to Aboriginal Prisoners.

9. PRISONER SERVICES AND PRISONER WELFARE TRUST FUND

9.1 Prison Canteen Services

- (a) The Contractor must operate a Prison Canteen Service (**Prison Canteen Service**) in accordance with this clause 9.1.

- (b) The Contractor must offer, as a minimum, snacks, confectionary, non alcoholic drinks, toiletries, magazines, books, stationery and any other items as specified from time to time by the State.
- (c) The Contractor must make the Canteen Goods purchased by Prisoners available for collection by Prisoners at least once a week at a designated secure location in the Prison during designated hours. The Contractor must establish and maintain systems to minimise theft of Canteen Goods available for collection.
- (d) The Canteen Goods must be offered for sale at prices which are no higher than the prices at which those goods, or equivalent goods, are sold to Prisoners at the Wooroloo prison, or if that prison ceases to operate, at an alternate reference prison nominated by the State (acting reasonably). To enable compliance with this subclause, the State must provide the Contractor with a copy of the Canteen Goods price list for the Wooroloo prison or, if that prison ceases to operate, the alternate reference prison, within 10 Business Days after the Signature Date or after any revision to any such price lists.
- (e) The Contractor must provide to the State, for its approval, a list of goods (the **Canteen Goods**) available for sale through the Prison Canteen Service and the prices for those Canteen Goods (**the Canteen List**).
- (f) The Contractor must obtain the approval of the State prior making any change to the Canteen List. The State must notify the Contractor whether or not it approves the change to the Canteen List within 10 Business Days of receipt of a notice seeking approval under this subclause. The State may require the addition or removal of specified goods from the Canteen List as a condition of its approval. The Contractor must comply with any condition of the State's approval.
- (g) The Contractor must establish and operate the Prison Canteen in accordance with the then current Canteen List. The Contractor must not sell any goods through the Prison Canteen Service which are not on the Canteen List, or at a price other than on the Canteen List.

9.2 Prison Vending Machines

- (a) The Contractor must establish and operate Prison Vending Machines at appropriate locations accessible to Prisoners within the Prison. The Prison Vending Machines must:
 - (i) operate on a cashless basis such that the price of each purchase is electronically debited from the balance held in respect of the relevant Prisoner in the Prison Trust Account; and
 - (ii) stock a broad range of brands and products which are generally available for sale by vending machine.
- (b) The Contractor must provide to the State a list of Prison Vending Machines installed throughout the Prison together with the location of those vending machines, a list of goods to be sold through the vending machines and the prices at which those goods are to be sold (**Vending Machine List**).
- (c) The Contractor must obtain the approval of the State prior making any change to the Vending Machine List. The State must notify the Contractor whether it approves the proposed change within 10 Business Days of receipt of a notice seeking approval under this subclause. The State may require the addition or removal of specified vending machine goods or the

removal or relocation of vending machines as a condition to its approval. The Contractor must comply with any condition of the State's approval.

- (d) The Contractor must establish and operate the Prisoner Vending Machines in accordance with the then current Vending Machine List

9.3 External Prisoner Purchases

- (a) The Contractor must offer a service to Prisoners which enables Prisoners to order and purchase a reasonable range of goods which are not available through the Prison Canteen Service or Prison Vending Machines (**External Prisoner Purchases**).
- (b) The Contractor must provide to the State, for State approval, a list of goods available by External Prisoner Purchases, and the prices at which those goods are to be sold (**External Prisoner Purchase List**).
- (c) Prices on the External Prisoner Purchase List must be no greater than the aggregate of the actual cost to the Contractor (or the Contractor's Associates) of the item and the actual cost to the Contractor (or the Contractor's Associates) of transport of the item. The Contractor must use reasonable endeavours to negotiate arrangements with suppliers to minimise the transport costs incurred in the delivery of goods ordered through this service.
- (d) The Contractor must obtain the approval of the State prior making any change to the External Prisoner Purchase List. The State must notify the Contractor whether it approves the proposed change within 10 Business Days after receipt of a notice seeking approval under this subclause. The State may require the addition or removal of specified goods available for External Prisoner Purchase as a condition of its approval. The Contractor must comply with any conditions of the State's approval.
- (e) The Contractor must offer the External Prisoner Purchase service to Prisoners in accordance with the then current External Prisoner Purchase List.

9.4 Prisoner Welfare Trust Fund

- (a) The Contractor must establish a Prisoner Welfare Trust Fund with effect from the Commencement Date.
- (b) The Contractor must open and operate an account with a commercial bank carrying on business in Perth that is approved by the State, which account must:
 - (i) be established for the sole purpose of deposits and withdrawals from the Prisoner Welfare Trust Fund in accordance with this clause;
 - (ii) be in the name of the Contractor;
 - (iii) incorporate in the account name the words 'Acacia Prison Prisoner Welfare Trust Fund'; and
 - (iv) be operated by two signatories, one nominated by the State and the other nominated by the Contractor.

- (c) The Contractor must pay into the Prisoner Welfare Trust Fund on a monthly basis an amount equal to 2% of Gross Canteen Sales in respect of the previous month.
- (d) All money paid into the Prisoner Welfare Trust Fund must be held on trust solely for the Trust Fund Purpose.

9.5 Application of Prisoner Welfare Trust Fund

- (a) The proceeds of the Prisoner Welfare Trust Fund must be applied solely for the Trust Fund Purpose and with the approval of the State.
- (b) The State may make, and notify the Contractor of, rules concerning the manner in which the Contractor may apply the proceeds from the Prisoner Welfare Trust Fund in accordance with this clause and the Records which must be maintained in relation to the application of the Prisoner Welfare Trust Fund.
- (c) The Contractor must comply with any rules notified by the State in accordance with clause 9.5(b).

9.6 Records and audit

Without limiting the Contractor's obligations under clause 16:

- (a) the Contractor must maintain accurate and comprehensive Records of all transactions relating to the Prison Canteen Service, Prison Vending Machines and External Prisoner Purchases in accordance with clause 16.10; and
- (b) the Records referred to in clause 9.6(a) must be made available for inspection and audit by the State in accordance with clause 16.11.

9.7 Monthly Sales Statements by Contractor

Within 10 Business Days after the end of each Operation Month, the Contractor must provide to the State a statement setting out the following:

- (a) the value of Gross Canteen Sales during that Operation Month;
- (b) the value of sales from Prison Vending Machines during that Operation Month;
- (c) the value of External Prisoner Purchases during that Operation Month, separately itemising the cost of each item and the cost of transport of each item, and providing verification of those costs; and
- (d) the amount deposited by the Contractor into the Prisoner Welfare Trust Fund in respect of that Operation Month in accordance with clause 9.4, accompanied by deposit slips or statements evidencing such deposits.

9.8 Annual Sales Statement

- (a) Within 3 months after the end of each Operation Year, the Contractor must provide to the State a statement setting out the following:
 - (i) the value of Gross Canteen Sales during that Operation Year;

- (ii) the value of sales from Prison Vending Machines during that Operation Year;
 - (iii) the value of External Prisoner Purchases during that Operation Year, separately itemising the cost of each item and the cost of transport of each item, and providing verification of those costs; and
 - (iv) the amount deposited by the Contractor into the Prisoner Welfare Trust Fund in respect of that Operation Year in accordance with clause 9.4.
- (b) The statement specified in clause 9.8(a) must be accompanied by a certificate from an Approved Auditor certifying the accuracy of the statement.
 - (c) The Contractor must pay the costs of the Approved Auditor.

9.9 Prisoner Trust Account

- (a) The Contractor must establish and maintain a trust account for the deposit and withdrawal of Prisoners' personal funds with effect from the Commencement Date and throughout the Operation Period.
- (b) The Contractor must open and operate an account with a commercial bank carrying on business in Perth that is approved by the State, which account must:
 - (i) be established for the sole purpose of deposits and withdrawals from the Prisoner Trust Account in accordance with this clause;
 - (ii) be in the name of the Contractor; and
 - (iii) incorporate in the account name the words 'Acacia Prison Prisoner Trust Account'.
- (c) The Contractor acknowledges funds within the Prisoner Trust Account are held on trust for the benefit of each individual Prisoner.
- (d) The Contractor must:
 - (i) maintain accurate accounts, reflecting deposits and withdrawals from the Prisoner Trust Account;
 - (ii) establish and maintain separate ledgers in the Prisoner Trust Account for each Prisoner;
 - (iii) ensure members of the public are able to deposit funds into Prisoner Trust Account without physically attending to the Prison;
 - (iv) ensure funds deposited by the public are credited to the Prison Trust Account on the day they are received or as soon as practicable thereafter;
 - (v) transfer funds earned by Prisoners (gratuities) to the Prisoner Trust Account on a weekly basis;
 - (vi) ensure the Prison Trust Account has 3 signatories one of whom is the CEO;

- (vii) not withdraw funds, or allow funds to be withdrawn, from the Prisoner Trust Account without the consent of the relevant Prisoner; and
- (viii) transfer to each Prisoner an amount of money equal to that Prisoner's balance within the Prisoner Trust Account when their term of imprisonment ends.

9.10 Prisoner Property

- (a) The State undertakes to transfer to the Contractor at the Operations Commencement Date:
 - (i) all items of Prisoner Property held at the Operations Commencement Date;
 - (ii) any cash balances held by the State on behalf of Prisoners, required to be deposited in the Prisoner Trust Account at the Commencement Date; and
 - (iii) all records applicable to the Prisoner Property and balances under paragraphs (i) and (ii).
- (b) The State indemnifies the Contractor for any errors or omissions in the Prisoner Property, cash balances, or the records transferred to the Contractor in accordance with this clause. This indemnity will continue until such time as an audit of Prisoner Property and cash balances is completed to the satisfaction of the Contractor and the State.
- (c) The Prisoner Property remains the property of the Prisoners at all times, and must be returned to Prisoners when their term of imprisonment ends.

10. CONTRACT WORKERS

10.1 Provision of Contract Workers

- (a) The Contractor is responsible for providing all Contract Workers and making all staffing arrangements required for the performance of the Services and the discharge of the Contractor's Obligations in accordance with this Agreement, including staffing the Prison with adequate numbers of Contract Workers 24 hours a day and 7 days a week and, from time to time, providing Contract Workers as external escorts to Prisoners.
- (b) Without limiting clause 10.1(a), the Contractor must:
 - (i) ensure the Prison is staffed with Custodial Officers and Unit Managers in accordance with the Minimum Staffing Requirements; and
 - (ii) take all reasonable steps to comply with the obligation under clause 10.1(b)(i) including by rostering for each shift at the Prison in accordance with the Minimum Staffing Requirements.
- (c) The parties acknowledge and agree that, should the DAP in any Operation Month fall outside the 1501-1525 DAP Band, the Minimum Staffing Requirements for Custodial Officers will be adjusted as follows:

- (i) each minimum staff number recorded in each cell in the 'total' line items of the Minimum Staffing Tables will be multiplied by a conversion factor;
 - (ii) the conversion factor will be calculated as $X/1525$, where X equals the upper limit of the applicable DAP Band during that Operation Month;
 - (iii) if the result of applying the conversion factor is not a whole number, the minimum staffing requirement shall, subject to clause 10.1(c)(iv) be rounded to the nearest whole number; and
 - (iv) if the result of applying the conversation factor is a number ending in exactly 0.5 (for example 17.5) the minimum staffing requirement shall be rounded to the nearest even whole number.
- (d) By way of worked example of an adjustment under clause 10.1(c), if a cell within the 'total' line item of the Minimum Staffing Tables required 101.5 Custodial Officers for a particular shift, and the DAP during the relevant Operation Month was 1389:
 - (i) the relevant DAP Band would be the 1351-1400 DAP Band;
 - (ii) X would equal 1400;
 - (iii) the conversion factor would equal $1400/1525 = 0.918$;
 - (iv) the required number of Custodial Officers would be calculated as $101.5 * 0.918 = 93.177$;
 - (v) this number would be rounded down to 93; and
 - (vi) the Minimum Staffing Requirement for Custodial Officers for the relevant shift would therefore be 93 Custodial Officers.
- (e) The Contractor will not be in breach of clause 10.1(b)(i) in circumstances where, by reason of unplanned staff absences:
 - (i) in respect of Custodial Officers on Day Shifts, the shortfall in Actual Aggregate Monthly Staffing as against the Aggregate Monthly Minimum Staffing Requirement is no greater than 120;
 - (ii) in respect of Custodial Officers on Night Shifts, the shortfall in Actual Aggregate Monthly Staffing as against the Aggregate Monthly Minimum Staffing Requirement is no greater than 25; and
 - (iii) in respect of Unit Managers on Day Shifts, the shortfall in Actual Aggregate Monthly Staffing as against the Aggregate Monthly Minimum Staffing Requirement is no greater than 15.
- (f) If a Custodial Officer or Unit Manager works less than a full shift but greater than 50% of that shift, and one of the following circumstances applies:
 - (i) the Custodial Officer or Unit Manager is required to work at short notice to cover an unplanned absence, and due to the short notice is unable to attend the Prison for the commencement of the relevant shift; or

- (ii) the Custodial Officer or Unit Manager is unable, by reason of injury or illness, to complete the relevant shift,

then the Contractor may treat that Custodial Officer or Unit Manager as if they had attended the relevant shift in full for the purposes of calculating Actual Aggregate Monthly Staffing.

- (g) For the purposes of calculating Actual Aggregate Monthly Staffing:
 - (i) subject to clause 10.1(g)(ii), if for any shift the Contractor staffs the Prison with Custodial Officers or Unit Managers in excess of the Minimum Staffing Requirements required for that shift, the numbers of Custodial Officers or Unit Managers in excess of the Minimum Staffing Requirements will not be taken into account; and
 - (ii) if the Minimum Staffing Requirement for a shift is not a whole number and the Contractor staffs that shift at or in excess of the next whole number (rounding up) the Contractor may attribute to that shift the next whole number of Custodial Officers or Unit Managers (rounding up) but not anything in excess of that next whole number.
- (h) By way of worked example, if the Minimum Staffing Requirement for Custodial Officers for Day Shifts on October 5, 6 and 7 2020 was in each case 101.5, and if the relevant shifts were in fact attended by 100, 102 and 105 Custodial Officers, the Contractor would be entitled to attribute the following numbers to the Actual Aggregate Monthly Staffing:
 - (i) October 5: 100 Custodial Officers;
 - (ii) October 6: 102 Custodial Officers; and
 - (iii) October 7: 102 Custodial Officers.
- (i) For the purposes of calculating Aggregate Monthly Minimum Staffing Requirements, if the aggregate number of Custodial Officers or Unit Managers required for an Operation Month is not a whole number, the aggregate requirement shall be rounded down to the nearest whole number.
- (j) By way of worked example of a calculation of Aggregate Monthly Minimum Staffing Requirements:
 - (i) the Contractor is required to staff the Prison with a total of 101.5 Custodial Officers for each weekday Day Shift and 79.5 Custodial Officers for each Saturday, Sunday or public holiday Day Shift;
 - (ii) in the month of October 2020 there are 9 Saturday and Sunday Day Shifts which must each be staffed by 79.5 Custodial Officers, resulting in a total of 715.5 Custodial Officers;
 - (iii) in the month of October 2020 there are also 22 weekday Day Shifts which must each be staffed by 101.5 Custodial Officers, resulting in a total of 2233 Custodial Officers;
 - (iv) the numbers generated at clauses 10.1(j)(ii) and 10.1(j)(iii) added together results in 2948.5 Custodial Officers;
 - (v) this number is rounded down to 2948 pursuant to clause 10.1(i) above;

- (vi) for the month of October 2020 the Aggregate Monthly Minimum Staffing Requirement for Custodial Officers for Day Shifts is therefore 2948;
- (vii) if the Actual Aggregate Monthly Staffing for Custodial Officers for Day Shifts for the month of October 2020 is less than 2828 (being the relevant Aggregate Monthly Minimum Staffing Requirement of 2948 less the allowable tolerance of 120 contemplated at clause 10.1(e)(i) above), the Contractor will be in breach of clause 10.1(b); and
- (viii) if the Actual Aggregate Monthly Staffing for Custodial Officers for Day Shifts for the month of October 2020 is 2828 or greater, all staff absences are unplanned and the Contractor has otherwise complied with its obligations under this clause 10.1, the Contractor will not be in breach of clause 10.1(b).

10.2 Engagement of Contract Workers

The Contractor must:

- (a) in respect of each person who is proposed to be engaged as a Contract Worker make all appropriate enquiries and carry out a proper investigation of the person and their suitability to perform the Services, including:
 - (i) any offence for which the person has been convicted or charged;
 - (ii) any disciplinary proceedings conducted against the person in the course of his or her employment;
 - (iii) relevant academic and other qualifications obtained by the person; and
 - (iv) any other matter that is relevant to the suitability of the person to perform the Services, including the person's medical history;
- (b) make available to the State full details of each person who is proposed to be engaged as a Contract Worker including the resume and any other information relating to that person and the results of the Contractor's enquiries and investigation carried out pursuant to clause 10.2(a) in relation to that person, to enable the State to conduct checks of the person's criminal record within Australian and overseas and to determine whether to approve the engagement of the person as a Contract Worker;
- (c) obtain the State's prior approval to the engagement of each Contract Worker, provided that the Contractor must not seek the State's approval until it has fully complied with the requirements of clause 10.2(a) and 10.2(b);
- (d) in connection with the engagement of each Contract Worker, comply with all Legislative Requirements including any requirements relating to discrimination, whether on the basis of gender, race or any other basis, and the Department's equal opportunity policy as notified to the Contractor from time to time; and
- (e) consult with Aboriginal groups in the vicinity of the Prison and any other relevant Aboriginal groups to promote and encourage the engagement of Aboriginals as Contract Workers in all categories of employment.

10.3 Requirements for performance

The Contractor must ensure that:

- (a) each Contract Worker holds all appropriate qualifications, accreditation, permits and licences and has completed all required Training Programs;
- (b) each Contract Worker complies and acts in a manner at all times consistent with the Prisons Act, any other Legislative Requirement and any requirements of this Agreement;
- (c) each Contract Worker does not perform any of the Services, interact with Prisoners, or operate any vehicles, plant or equipment in connection with the Services, whilst under the influence of alcohol or any other substance which may impair such performance or operation;
- (d) each Subcontractor and Contract Worker complies with any codes (including codes of ethics and conduct) approved by the CEO under the Prisons Act to apply to the Contractor, any Subcontractors or any Contract Workers; and
- (e) each Subcontractor and Contract Worker complies with any staff disciplinary procedures set out in the Prison Operating Manual.

10.4 Pre-Service Induction Training Program

- (a) The Contractor must, prior to the Transition Period, develop a Pre-Service Induction Training Program for Contract Workers addressing all matters that may be reasonably required for the purpose of training new Contract Workers and providing them with the skills required to provide the Services in the manner and at the standard required by this Agreement.
- (b) The Pre-Service Induction Training Program must address the following training, which must be delivered to all Contract Workers:
 - (i) custody and containment including the training referred to in section 1 of Schedule 2;
 - (ii) care and wellbeing including the training referred to in section 2 of Schedule 2;
 - (iii) rehabilitation and reintegration including the training referred to in section 3 of Schedule 2;
 - (iv) reparation including the training referred to in section 4 of Schedule 2;
 - (v) business systems including the training referred to in section 5 of Schedule 2;
 - (vi) human resources and occupational health and safety including the training referred to in section 6 of Schedule 2;
 - (vii) compliance with Legislative Requirements or other requirements applicable to the performance of Contract Workers' functions including where appropriate, the use of force and instruments of restraint and the handling and disclosure of information about the Prison and any Prisoners;

- (viii) the Aboriginal cultural competency training contemplated in clause 8.3; and
 - (ix) any general training required under Departmental Policies from time to time.
- (c) In addition to the general training to be delivered to all Contract Workers, the Pre-Service Induction Training Program must include specific training that will be delivered to specific Contract Workers or specific categories of Contract Workers, including:
 - (i) training in the performance of Custodial Functions;
 - (ii) emergency and incident response training as required pursuant to section 1.1 of Schedule 2; and
 - (iii) any specific training required under Departmental Policies from time to time.
- (d) The Pre-Service Induction Training Program must be submitted for State approval in accordance with the Review Procedures. The State may, as part of its review, make reasonable additions to the Pre-Service Induction Training Program, and neither the inclusion of such content within the Pre-Service Induction Training Program, nor the delivery of that additional training to Contract Works, shall comprise a Variation.
- (e) The Contractor must ensure the delivery of:
 - (i) the general elements of the Pre-Service Induction Training Program to all Contract Workers; and
 - (ii) the specific elements of the Pre-Service Induction Training Program to all relevant Contract Workers,

including to new Contract Workers who are engaged at the Prison after the Operations Commencement Date.

10.5 Ongoing Training Program

- (a) The Contractor must develop ongoing training and staff development programs for Contract Workers (**Ongoing Training Program**), for the purpose of:
 - (i) updating and developing Contract Workers' skills required in the performance of their duties and functions, in the manner and at the standard required by this Agreement;
 - (ii) where required, assisting Contract Workers to achieve the training qualifications referred to in section 6.5 of Schedule 2; and
 - (iii) addressing any other matters that the State (acting reasonably) considers should be the subject of an Ongoing Training Program.
- (b) The Contractor must prepare and submit to the State, within 6 months of the Operations Commencement Date, a draft Ongoing Training Program.
- (c) The State will review that program in accordance with the Review Procedures. The State may, as part of its review, make reasonable additions to the Ongoing Training Program, and neither the inclusion of such

content within the Ongoing Training Program, nor the delivery of that additional training to Contract Works, shall comprise a Variation.

10.6 Completion of Training Programs by Contract Workers

- (a) The Contractor must ensure that each Contract Worker:
 - (i) has satisfactorily completed the general elements of the Pre-Service Induction Training Program before the Contract Worker has any contact with Prisoners;
 - (ii) has satisfactorily completed all relevant specific elements of the Pre-Service Induction Training Program before the Contract Worker commences performance of any duties and functions to which the specific training elements relate; and
 - (iii) satisfactorily completes applicable ongoing training, as documented in the Ongoing Training Program.
- (b) A Contract Worker will be deemed to have satisfactorily completed a Training Program if the Contract Worker has been formally assessed as having passed the relevant Training Program or, where no formal assessment is required to be made, the Contract Worker has completed the class hours scheduled for that Training Program.
- (c) The Contractor must provide the State with any information reasonably required by the State concerning or demonstrating the Contractor's compliance with this clause 10.6 within 10 Business Days of written request from the State.

10.7 Contract Worker uniforms

- (a) The Contractor must ensure that all Contract Workers required to perform Custodial Functions wear uniforms at all times when performing the Services.
- (b) The style of any uniform to be worn by Contract Workers performing Custodial Functions:
 - (i) must be distinguishable from the style of uniform worn by the employees of the State and the State's Associates; and
 - (ii) is subject to the prior approval of the State.

10.8 Use of force by Contract Workers

- (a) The Contractor must not, and must ensure that Contract Workers do not, use force or instruments of restraint to control Prisoners or the behaviour of a Visitor other than:
 - (i) to the degree permitted by, and in accordance with the requirements of, the Prisons Act and any other Legislative Requirements; and
 - (ii) at the minimum level and for the minimum time necessary to control the relevant behaviour and only where no other means of control is reasonably available.

- (b) The Contractor must ensure that the use of force and instruments of restraint by Contract Workers pursuant to this clause 10.8, and the degree to which force and instruments of restraint are used, are reasonable in the circumstances.
- (c) The Contractor acknowledges that the Prisons Act empowers the CEO to authorise the use of force by Contract Workers against a Prisoner or Prisoners in certain circumstances, including the degree of force to be used.

10.9 Removal of Contract Workers

- (a) The State may, at any time by notice to the Contractor:
 - (i) withdraw its approval of the engagement of any Contract Worker; and
 - (ii) require the Contractor or, in the case of a Contract Worker engaged by a Subcontractor, require the Contractor to cause a Subcontractor, to terminate the engagement of any Contract Worker of whom the State has withdrawn its approval and remove that person from:
 - (A) the Prison; and
 - (B) the performance of any Services.
- (b) If the State issues a notice under clause 10.9(a) the Contractor must, at the Contractor's cost, comply with the State's notice and must not thereafter engage, or allow that person to be engaged by a Subcontractor:
 - (i) at the Prison without the State's prior consent; or
 - (ii) in any capacity without the State's prior consent, which consent may not be unreasonably withheld.
- (c) The Contractor must provide the State with the information necessary for the State to determine whether to withdraw its approval of the engagement of any Contract Worker within 10 Business Days after receiving a written request from the State for such information.

10.10 High-Level Security Work

- (a) The Parties acknowledge that the Prisons Act permits certain Contract Workers to perform High-level Security Work and the Contractor agrees that the requirements of Part IIIA Division 4 of the Prisons Act apply to any Contract Workers performing, or proposing to perform, High-level Security Work.
- (b) In addition to any requirements in this clause 10 applying to Contract Workers generally, the Contractor must ensure that each Contract Worker who performs High-level Security Work:
 - (i) holds the necessary permit and all other authorisations as may be required under the Prisons Act to perform that High-level Security Work;
 - (ii) performs the High-level Security Work in accordance with the relevant permit and any conditions and limitations specified in that permit and all other authorisations; and

- (iii) has received all training as may be required under the Prisons Act to perform that High-level Security Work.
- (c) The Contractor acknowledges the CEO's power under the Prisons Act to:
 - (i) determine the suitability of any applicant for a permit to perform High-level Security Work having regard to the matters referred to in section 15P of the Prisons Act in respect of the applicant;
 - (ii) refuse to issue a permit to perform High-level Security Work in accordance with section 15S of the Prisons Act;
 - (iii) determine the suitability of a Contract Worker, in accordance with section 15T of the Prisons Act, to continue to perform High-level Security Work; and
 - (iv) suspend or revoke a permit issued to perform High-Level Security Work under section 15U of the Prisons Act.
- (d) The Contractor must, on request by the State:
 - (i) assist the State to make the enquiries contemplated under section 15T and 15Q of the Prisons Act about a Contract Worker who applies for a permit to perform High-level Security Work, including any enquiries about the honesty and integrity of the Contract Worker's known associates; and
 - (ii) provide to the State the information contemplated under section 15T and 15Q of the Prisons Act.
- (e) In this clause 10.10 the word "perform" includes the exercise of a power, responsibility or authority.

10.11 State's approvals under this clause

The Contractor acknowledges that an approval given by the State under this clause 10 does not imply:

- (a) any release of the Contractor from the Contractor's Obligations; or
- (b) any assumption by the State of any responsibility or liability as to the adequacy of the Contractor's staffing arrangements to meet the Contractor's Obligations.

10.12 Contractor to keep Records relating to Contract Workers

Without limiting clause 16, the Contractor must keep Records of the following matters relating to each Contract Worker:

- (a) the name, address and relevant personal details of the Contract Worker;
- (b) the results of the Contractor's pre-engagement enquiries as to suitability, and the Contract Worker's resume;
- (c) the qualifications, accreditation, permits and licences held, and training completed, by the Contract Worker;
- (d) any disciplinary proceedings conducted against the Contract Worker arising in connection with the performance of the Services;

- (e) any offence for which the Contract Worker has been charged; and
- (f) any other material matters relating to the Contract Worker or their performance of the Services and any matters of which the State may notify the Contractor from time to time.

11. INDUSTRIAL RELATIONS

11.1 Industrial Relations Matters

- (a) The Contractor is responsible for managing all industrial relations issues arising in connection with the delivery of the Services and the discharge of the Contractor's Obligations.
- (b) The Contractor must use reasonable endeavours to maintain good industrial and employee relations with the Contract Workers.
- (c) The Contractor must:
 - (i) attend meetings from time to time for the purpose of discussing Industrial Relations Matters, as requested by the State;
 - (ii) meet the terms of employment prescribed in any applicable Industrial Award, Agreement or Order or any other statutory or legal obligation applying to the Contract Workers who are engaged in connection with this Agreement. This includes payment of wages, superannuation, taxes, and any other payments or contributions required by Law to be made in respect of employees, and all tax deductions required by Law;
 - (iii) ensure that Subcontractors are aware of and meet the terms of employment prescribed in any applicable Industrial Award, Agreement or Order or any other statutory or legal obligation applying to each Subcontractor's employees who are engaged in connection with this Agreement. This includes payment of wages, superannuation, taxes, and any other payments or contributions required by Law to be made in respect of employees, and all tax deductions required by Law;
 - (iv) ensure that its employees and agents do not engage in workplace behaviour which contravenes the Contractor's policies in respect of workplace behaviour and fitness for work; and
 - (v) provide evidence of its compliance with this clause if requested by the State to do so.

11.2 Industrial Action

If any Industrial Action involving any Contract Workers occurs, or is threatened, the Contractor must:

- (a) immediately inform the State and continue to keep the State informed throughout the course of the Industrial Action;
- (b) take all reasonable action required to bring the Industrial Action to an end in the shortest time practical, including referring the dispute to an appropriate forum for resolution;
- (c) take all reasonable action to ensure that the Contract Workers conform to the provisions of any dispute settling procedures provided for in an applicable Industrial Award, Agreement or Order; and
- (d) while appropriate steps are implemented to resolve the Industrial Action:

- (i) continue to provide Essential Services; and
- (ii) use reasonable endeavours to provide all other Services.

11.3 No Claims as a result of changes in terms of employment

Any liability incurred from the change in terms of employment arising in connection with any cause, including an approved change, an approved agreement (including a registered or unregistered workplace agreement or deed), or change to an Industrial Award, Agreement or Order must be satisfied by the Contractor at its own cost.

11.4 No Claims as a result of Industrial Relations Matters and Industrial Action

- (a) Except where this Agreement expressly provides otherwise, the Contractor is responsible for all Loss, delay or disruption it suffers arising in connection with, any Industrial Relations Matter or Industrial Action.
- (b) The Contractor must before commencing work on the Site inform itself of:
 - (i) all Industrial Relations Matters relevant to the Prison, the performance of the Services, and the discharge of the Contractor's Obligations; and
 - (ii) all matters relevant to the employment of labour at the Prison.

11.5 Increase to wages in accordance with WPI

- (a) Schedule 4 provides that the Base Operating Sum and other amounts payable under Schedule 4 will be adjusted on an annual basis in accordance with the Indexation Factor of which WPI is a predominant component (each as defined in section 1 of Schedule 4).
- (b) It is the State's intent that the Contractor's employees obtain the benefit of the adjustment contemplated in clause 11.5(a) to the extent attributable to WPI.
- (c) In order to satisfy the State's intention detailed in clause 11.5(b), subject to clauses 11.5(d) and 11.5(e), the Contractor must ensure that the percentage increases in the wages of the Contractor's employees engaged to work at the Prison, are on average, generally consistent with the average percentage increases in WPI.
- (d) The obligation in clause 11.5(c) does not apply to wages set by an Industrial Award, Agreement or Order that is in force as at the Signature Date but will apply to wages in any new or renewed Industrial Award, Agreement or Order that comes into force after the Signature Date.
- (e) The obligation in clause 11.5(c) does not apply to those of the Contractor's employees who are engaged by the Contractor and are not subject to an Industrial Award, Agreement or Order.

12. OCCUPATIONAL SAFETY AND HEALTH

12.1 Occupational health and safety during Operation Period

During the Operation Period, the Contractor must:

- (a) ensure the health, safety and welfare of all persons present on or entering the Prison, including Prisoners, Contract Workers, State's Associates and Visitors;

- (b) comply with, and ensure that all Contractor Associates, Subcontractors and Contract Workers comply with, all OSH Laws, including OSH Laws applicable or relevant to the Services;
- (c) upon the request of the State demonstrate compliance with OSH Laws; and
- (d) retain up to date health and safety Records with respect to the Services and make these available to the State as requested by the State from time to time.

12.2 Occupational health and safety incident reports

The Contractor must:

- (a) comply with all OSH Laws requiring an employer, a person with management or control of the Prison or otherwise applicable to the role of the Contractor under this Agreement, to provide notification of health or safety related incidents; and
- (b) without limiting any other incident reporting requirements, notify the State immediately (and, in any case, within 24 hours) of any accident, incident which is notifiable under OSH Laws, injury or property damage which occurs in connection with the provision of the Services or at the Prison.

12.3 Breach of OSH Laws

- (a) Without limiting any of the State's rights at Law, any breach by the Contractor, a Contractor Associate, Subcontractor or Contract Worker, of an OSH Law or the requirements of this Agreement which:
 - (i) gives rise to circumstances which present actual or potential risk to life or serious injury; or
 - (ii) is otherwise required to be notified under an OSH Law,
 entitles the State to suspend the whole or part of the Services, and the Contractor must bear any cost it incurs as a result of the suspension.
- (b) When the State is satisfied that the Contractor has adequately rectified the situation that gave rise to the breach it will promptly give notice to the Contractor to resume the Services.

13. ASSET REGISTER

13.1 Signature Asset Register

The Contractor acknowledge and agrees:

- (a) it has inspected the Signature Asset Register and performed all due diligence that was reasonable having regard to its opportunities to verify the Signature Asset Register prior to the Signature Date; and
- (b) having performed that due diligence, it is unaware of errors or omissions in the Signature Asset Register which it has not brought to the State's attention prior to the Signature Date.

13.2 Agreeing the Baseline Asset Register

- (a) Within 2 months of the Operations Commencement Date, the Contractor must provide a document to the State identifying any errors in the Signature Asset Register and the amendments the Contractor considers should be made to address those errors.

- (b) In addition to the amendments contemplated in 13.2(a), either Party may propose amendments to the Signature Asset Register to reflect the undertaking of Enabling Works.
- (c) On the conclusion of the period contemplated in clause 13.2(a), the Parties must meet to agree which of the amendments proposed under clauses 13.2(a) and 13.2(b) should be made to the Signature Asset Register. If the Parties are able to agree in respect of all proposed amendments, they will be made and the resultant document will be the Baseline Asset Register.
- (d) If the Parties are not able to reach agreement within 1 month (or such longer period as the Parties may agree), the Parties must appoint an independent asset management specialist who will review the assets in contention and determine what changes, if any, need to be made to the Signature Asset Register. The determination of the independent asset management specialist will be final and binding and the resultant document will be the Baseline Asset Register. In undertaking its assessment the independent expert must have regard to the matters in clause 13.2(f).
- (e) The Parties will each contribute equally to the costs of the independent expert.
- (f) The Contractor is not entitled to propose or make changes to the Signature Asset Register where:
 - (i) the change relates to asset degradation which has occurred subsequent to the Operations Commencement Date; or
 - (ii) the change relates to asset condition which should have been apparent prior to the Signature Date to an Contractor who exercised the due diligence required by clause 13.1.
- (g) If in agreeing the Baseline Asset Register the Parties identify any State Assets:
 - (i) that were present on the Site prior to the Signature Date but which were omitted from the Signature Asset Register; or
 - (ii) that were bought onto the Site between Signature Date and the Operations Commencement Date other than:
 - (A) pursuant to Enabling Works that did not result in an increase in the total quantity of the State Assets the subject of the relevant Enabling Works; or
 - (B) to replace a failed State Asset with a like-for-like replacement,

then if the State requires the Contractor to maintain such State Assets, the State must issue a Direction under clause 19.8 to this effect.

13.3 Baseline Asset Register to serve as baseline for maintenance related obligations

- (a) The Parties acknowledge and agree the Baseline Asset Register will serve as the baseline for assessing the condition of the Prison Infrastructure, Prison Equipment and State Resources in respect of which the Contractor owes maintenance obligations.

- (b) The Contractor must, as well as maintaining the historical Baseline Asset Register, also maintain a Live Asset Register showing the current condition of each item of Prison Infrastructure, Prison Equipment and State Resources in accordance with section 3 of Part B of Schedule 3.

13.4 Removal of State Assets from the Prison

The Contractor must not remove any Prison Infrastructure, Prison Equipment or State Resources from the Prison at any time without the written consent of the State.

14. PRISON ACCESS AND OPERATIONS

14.1 Access to Prison

- (a) The State grants the Contractor, the Contract Workers and any Subcontractors access to the Prison for the purposes of providing the Services and discharging the Contractor's Obligations. The Contractor must not use the Prison or any State Asset for any other purpose without the State's prior consent.
- (b) Except as expressly provided by this Agreement, the Contractor's access to the Prison ceases on the Expiry Date, and the Contractor must not, and must ensure that no Contract Worker or Subcontractor, uses or occupies the Prison for any purpose after that date, except with the State's prior consent.
- (c) The Contractor must, and must ensure that all Contract Workers and Subcontractors in the Prison:
 - (i) comply with those security measures in relation to the Prison as reasonably required by the State;
 - (ii) carry suitable identification while in the Prison;
 - (iii) not examine, copy, remove or otherwise interfere with any thing on or in the Prison except for the purpose of performing the Services; and
 - (iv) comply with Directions given by the State from time to time in relation to its access to the Prison.
- (d) The rights granted to the Contractor under this clause do not:
 - (i) create any proprietary interest in the Prison; or
 - (ii) confer any exclusive occupation of the Prison.
- (e) The Contractor must not:
 - (i) create, or permit to be created, any Encumbrance over the Prison or any State Asset; or
 - (ii) permit any person other than Contract Workers and Subcontractors, to use or occupy the Prison without the State's prior consent or except as otherwise specified in this Agreement.
- (f) The Contractor must not store any property (other than the Contractor's Resources), or permit any Contract Worker or Subcontractor, to store any property, at the Prison.

- (g) The Contractor acknowledges that the access rights under this clause are subject to the State's and the State's Associates' unfettered 24 hour access to enter onto the Site and to access any part of the Prison subject to compliance with the Contractor's security procedures applying to movement of persons within the Prison, including for the purposes of:
 - (i) inspecting the state of repair and condition of the Prison; and
 - (ii) carrying out works to the Prison, subject to clause 14.13.

14.2 Contractor to provide space and facilities

- (a) The Contractor must provide the State with access to and use of such working areas and facilities at the Prison as the State may reasonably require to perform its functions, including:
 - (i) a secure office area with sufficient working space for five employees or agents of the State in locations nominated by the State;
 - (ii) power, air-conditioning, desks, chairs, telephones and lockable storage facilities in office areas contemplated under subclause (i) and access to staff meal areas, toilets and meeting facilities;
 - (iii) reasonable use of office equipment at the Prison, including reasonable use of facsimile machines, printers and photocopiers;
 - (iv) meals at no cost for employees and agents of the State while at the Prison; and
 - (v) for the State only, five computers which permit the access to electronic Records contemplated at clause 16.11(d).

14.3 Utility Services

The Contractor must:

- (a) arrange the provision of each Utility Service to the Prison; and
- (b) pay all costs in respect of each Utility Service to the person or entity which provides the Utility Service including consumption costs, connection costs, rentals and minimum charges.

14.4 Cell Condition

- (a) The Contractor must not accommodate Prisoners in any Cell at the Prison which is not Fit for Purpose. In order for a Cell to be Fit for Purpose it must satisfy the following requirements:
 - (i) the cell alarm, which has an integrated cell call intercom system to allow for emergency communication during lock down periods, must be fully operational;
 - (ii) the fire and smoke detection system must be fully operational;
 - (iii) the officer lock on the cell door must be fully operational and the inspection window on the cell door must be enclosed with hardened transparent material;

- (iv) the window and frame must be secure and in good condition;
 - (v) the toilet, shower and handbasin must be fully operational;
 - (vi) the Cell must have access to a supply of potable water;
 - (vii) the cell inspection lights must be fully operational;
 - (viii) all power and light fittings must be safe;
 - (ix) if the Cell is used for a special purpose such as punishment, observation or crisis care, it must be free of any hanging points and CCTV (if installed) must be operational;
 - (x) the furniture and fittings must be in serviceable condition; and
 - (xi) the Cell must be free of health and safety hazards.
- (b) The Contractor acknowledges that all Cells in the Prison are Fit for Purpose as at the Operations Commencement Date, subject to any issues identified by a review of Cell condition to be completed jointly by the Contractor and the State prior to the Operations Commencement Date.
 - (c) The Contractor must notify the State as soon as practicable, but in any event within 24 hours, if any Cell ceases to be Fit for Purpose and of the reasons why the Cell has ceased to be Fit for Purpose.
 - (d) If any Cell ceases to be Fit for Purpose, the Contractor must make the Cell Fit for Purpose within the time frames set out in Schedule 3, or if no time frame is specified in Schedule 3, within a reasonable time notified by the State. The Contractor must notify the State as soon as practicable after it becomes aware that the Cell is Fit for Purpose again.

14.5 Nuisance, injurious conduct and misuse

The Contractor must not, and must not permit any other person to:

- (a) do any act or thing or use any plant or machinery in the Prison that, through noise, odours, vibration or otherwise, is a nuisance, offensive or causes damage or disturbance to any person in or in the vicinity of the Prison;
- (b) use any plant, equipment or machinery in a way that is dangerous or likely to cause harm to any person in or in the vicinity of the Prison;
- (c) misuse or abuse Prison Infrastructure, Prison Equipment, State Resources, Contractor Resources or any amenities in the Prison;
- (d) use Prison Infrastructure, Prison Equipment, State Resources, Contractor Resources or any amenities in the Prison for any purpose other than the purpose for which they were constructed or installed or for any purpose which is prohibited by any Legislative Requirement; or
- (e) place in any Prison Infrastructure, Prison Equipment, State Resources, Contractor Resources or any amenity in the Prison, any sweepings, rubbish, rags or other things that may cause damage, harm, or blockage.

14.6 No alterations or damage

- (a) Unless required for the proper provision of the Services, the Contractor must not, and must not permit any other person to, alter or otherwise interfere with, or damage:
 - (i) the Prison, any Prison Equipment, any State Resources or any amenity at the Prison; or
 - (ii) any of the Contractor Resources.
- (b) The Contractor must take all reasonable steps to protect and preserve the property referred to in subclause (a) from loss, damage or destruction of any kind.

14.7 Not to pollute

The Contractor must not, and must not permit anyone else to, cause pollution in, or Contamination of, the Prison or the Site by garbage, waste matter, oil or other pollutants or Hazardous Material, whether by storm water or other run off, or arising from the use of the Prison or the Site.

14.8 Removal of garbage

The Contractor must promptly collect and dispose of all garbage, waste matter, oil and other pollutants from the Prison and the Site in accordance with section 4 of Part C of Schedule 3 or as otherwise required or approved by the State and every Government Agency having control over the disposal of waste matter or the protection of the Environment.

14.9 Inflammable substances

The Contractor must not, and must not permit any other person to use within, or store in, the Prison or on the Site any chemicals, acetylene, petrol, alcohol or any solid, liquid or gas of any flammable, volatile or explosive nature for any purpose except:

- (a) to the extent that item is necessary for the provision of the Services; or
- (b) if the State has given the State's prior approval for the Contractor to use or store the item at the Prison or on the Site.

14.10 Compliance with Environmental Law

- (a) The Contractor must, and must ensure that all persons at the Prison other than the State's Associates comply with Environmental Law applicable to:
 - (i) the discharge of the Contractor's Obligations;
 - (ii) the provision of the Services; and
 - (iii) the Prison.
- (b) The Contractor must:
 - (i) maintain adequate procedures to monitor the Contractor's, each Contract Worker's and each Subcontractor's compliance with Environmental Law in relation to the provision of the Services; and

- (ii) immediately notify the State if the Contractor, any Contract Worker or any Subcontractor, fails to comply with Environmental Law.

14.11 Removal of Contamination

- (a) If any Contamination or Hazardous Materials are discovered at the Prison or on the Site, the Contractor must immediately notify the State and:
 - (i) remove the Contamination or Hazardous Materials from the Site, including the cause of that Contamination or Hazardous Materials; and
 - (ii) comply in all respects with any Laws in relation to any Contamination or Hazardous Materials.
- (b) If the Contractor does not remove the Contamination or Hazardous Materials within 10 Business Days of discovery, the State may remove the Contamination or Hazardous Materials and the Contractor must reimburse the State for the cost of that removal on demand from the State.
- (c) Clause 14.11(a)(i) does not apply to Hazardous Materials which are kept at the Prison or on the Site for operational reasons and which, if used with care and in compliance with all Laws, do not pose a risk to person, property or the Environment.

14.12 Expansion of the Prison

The Contractor acknowledges that the State may at any time carry out works to expand the Prison Infrastructure and the facilities at the Prison. The Contractor must co-operate with the State, the State's Associates and their respective contractors and employees in relation to any expansion works. The State must use reasonable endeavours to minimise disruption at the Prison during any expansion works. The State will bear the costs of any prison escorts, and utility usage charges, required to carry out the expansion works.

14.13 Access to Prison for the State and third party contractors

- (a) The Contractor acknowledges and agrees that the State, the State's Associates and third party contractors engaged by the State may require access to the Site or the Prison from time to time.
- (b) The Contractor must provide reasonable access to the persons named in 14.13(a), and must not unduly interfere or obstruct such persons, provided that the Contractor is entitled to require such persons to comply with reasonable security requirements.
- (c) The State must use reasonable endeavours to ensure the persons named in clause 14.13(a) do not unduly obstruct or interfere with the operations of the Contractor.
- (d) The Contract Manager and the Contractors Representative must meet as required to negotiate the time of access of persons named in clause 14.13(a). The State must give as much notice as practical of proposed access times, and the Contractor acknowledges that on occasion access at short notice may be required, and agrees to facilitate such access where possible.
- (e) The provision by the Contractor of reasonable access to the Prison for the persons named in clause 14.13(a) will not comprise a Variation.

14.14 Waste Water Treatment Plant

- (a) The Contractor acknowledges and agrees that the third party contractors referred to at clause 14.13 include the WWTP Contractor.
- (b) As at the Signature Date, Factor UTB is contracted as the WWTP Contractor until 2024.
- (c) The Contractor acknowledges that upon or in the lead-up to termination or expiry of the contract between Factor UTB and the State, the State may do any of the following:
 - (i) extend the term of the contract between Factor UTB and the State without running a procurement process;
 - (ii) run a competitive procurement process (in respect of which the Contractor may or may not be invited to participate), and engage Factor UTB, another third party, or the Contractor as the WWTP Contractor; or
 - (iii) directly negotiate with the Contractor to provide the wastewater treatment plant services itself (whether through the Variation mechanism or otherwise) in which case the Contractor must negotiate in good faith in respect of such obligations.

15. CONTRACTOR RESOURCES

15.1 Provision of Contractor Resources

- (a) The Contractor is responsible for providing all:
 - (i) Consumables;
 - (ii) Canteen Goods;
 - (iii) goods, articles, vehicles, plant, and equipment;
 - (iv) computers and computer based systems, software, hardware, and programmes; and
 - (v) other property,

which are required to properly perform the Services and the Contractor's Obligations (**Contractor Resources**), but having regard to the Contractor's rights to access and use the Prison Equipment and, where agreed with the State, the State Resources.
- (b) The Contractor must ensure that the Contractor Resources are at all times fit and suitable for performing the Services and discharging the Contractor's Obligations by:
 - (i) arranging for all necessary repairs and replacement of parts and components; and
 - (ii) replacing any Contractor Resources,

as may be necessary from time to time or as Directed by the State (acting reasonably) and otherwise to meet the requirements of Best Industry Practice.

- (c) The Contractor acknowledges that the State may, at its discretion:
 - (i) allow the Contractor to access and use the State Resources on terms acceptable to the State;
 - (ii) provide any additional State Resources for access and use by the Contractor; and
 - (iii) withdraw from access or use by the Contractor, any State Resources provided by the State, for any period.
- (d) The Contractor must not make any alterations or additions to any State Resources without the prior consent of the State.
- (e) The Contractor must acquire and hold Contractor Resources in a manner that will enable it to comply with clause 29 at the end of the Operation Period.

15.2 Materials

Where the Contractor uses any materials, parts or components in relation to the Contractor Resources, or otherwise in performing the Services, the Contractor must use suitable new materials, parts or components unless the State agrees otherwise.

15.3 Warranties

The Contractor must obtain, for the benefit of the Contractor and the State, all manufacturers' and other warranties available for the maximum periods that they are available in relation to the Contractor Resources.

15.4 Contractor Resources Register

- (a) The Contractor must maintain an up to date and accurate register of Contractor Resources (**Contractor Resources Register**) listing and identifying each item of the Contractor Resources (save for Consumables and Canteen Goods) used in the performance of the Services. Each item of the Contractor Resources must be marked with its unique identifying number, which must also be shown in the Contractor Resources Register.
- (b) The State is entitled to inspect any Contractor Resources and review the Contractor Resources Register at any time without prior notification to the Contractor.

16. REPORTING AND RECORDS

16.1 Reporting of Incidents

The Contractor must report Incidents in accordance with applicable Departmental Policies, Legislative Requirements and other reasonable requirements notified by the State from time to time.

16.2 Notification of defective performance

The Contractor must promptly notify the State in writing of:

- (a) any defective or sub-standard performance of any of the Services; and
- (b) any:

- (i) notice from a Government Agency;
- (ii) Court order; or
- (iii) notice or demand in writing from any third party,

received by the Contractor relating to the Prison or the Services. The Contractor's notice must attach a copy of that notice, demand or order.

16.3 Monthly reporting by Contractor

- (a) The Contractor must monitor the performance of the Services, and by no later than 10 Business Days after the end of each Operation Month and prior to the monthly meeting contemplated at clause 16.4, provide the State with a Monthly Report including:
 - (i) a description of the performance of the Services (other than in relation to the Facility Management Services which is addressed under clause 16.3(a)(iii)) in the relevant Operation Month, by reference to the Contractor's Obligations, including any events and Incidents which are the subject of the Performance Measures;
 - (ii) particulars of any substantial innovation identified or implemented by the contractor during the relevant Operation Month;
 - (iii) a description of the performance and delivery of the Facility Management Services in the relevant Operation Month, including service delivery statistics and asset performance statistics, as against the relevant Performance Measures, the Maintenance Services Plan and the Soft Facility Management Plan and a summary of failure events and actions taken under section 7 of Part B of Schedule 3;
 - (iv) particulars of any other matters arising under this Agreement during the relevant Operation Month which affected or may affect the nature, quality, function or performance of the Services or the Contractor's Obligations or which may diminish the respect or confidence of the public in, or otherwise impact on the reputation of, the Prison or the State;
 - (v) any actions taken or proposed to be taken by the Contractor to address the matters identified in respect of the Operation Month;
 - (vi) the actual numbers of Custodial Officers and Unit Managers staffing the Prison for each Day Shift and Night Shift during the relevant Operation Month as against the number of Custodial Officers and Unit Managers required to attend Day Shifts or Night Shifts at the Prison in accordance with the Minimum Staffing Requirements with supporting evidence available to the State upon request; and
 - (vii) any other content the State may reasonably require from time to time.
- (b) The Monthly Report submitted under clause 16.3(a) must be:
 - (i) prepared in accordance with the policies and content and format requirements as the State (acting reasonably) may notify to the Contractor from time to time; and

- (ii) accompanied by any working papers and supporting documents which may assist interpretation or analysis of the Monthly Report.
- (c) The State may at any time request, and the Contractor must provide to the State or the State's Associates within a reasonable period, any other information in relation to any specific event or generally in relation to the performance of the Services or the Contractor's Obligations.

16.4 Monthly meetings

- (a) The Contract Manager must meet each month with the Contractor Representative, the Contractor Superintendent or both (as determined by the Contractor) to discuss the Contractor's performance in providing the Services and discharging the Contractor's Obligations during the preceding month and any other matters relating to the operation of the Prison.
- (b) At each monthly meeting the Contractor's representatives at that meeting and the Contract Manager must:
 - (i) discuss the contents of the Monthly Report; and
 - (ii) endeavour to agree:
 - (A) whether any events occurring during the Operation Month to which the Monthly Report relates (whether or not such events were reported in the Monthly Report), are the subject of the Performance Measures; and
 - (B) any actions to be taken to address any performance or other matters identified in respect of the Operation Month.
- (c) The Contract Manager is responsible for convening monthly meetings and may do so by giving not less than 5 Business Days' notice to the Contractor. The Contract Manager may invite any other person to attend and participate in all or part of any monthly meetings.

16.5 Quarterly reporting by Contractor

By no later than one month after the end of each Operation Quarter, and prior to the meeting of the Joint Management Board pursuant to clause 6.6, the Contractor must provide a Quarterly Report, which:

- (a) aggregates and summarises, in a manner suitable for provision to senior executives, the content of the Monthly Reports relating to the relevant Operating Quarter;
- (b) contains analysis of the above information as is reasonably required by the State;
- (c) contains an up to date version of the Live Asset Register; and
- (d) contains any further content reasonably required by the State.

16.6 Annual reporting by Contractor

By no later than one month after the end of each Operation Year, the Contractor must provide an Annual Report, which:

- (a) aggregates and summarises, in a manner suitable for provision to senior executives, the content of the Monthly Reports relating to the relevant Operation Year;
- (b) contains detailed analysis of the above information as is reasonably required by the State (potentially including comparison to other Operation Years); and
- (c) contains any further content reasonably required by the State.

16.7 Annual performance reviews

- (a) The Contractor acknowledges that the State may conduct an annual performance review of the Contractor's performance during the preceding 12 months, which will include consideration of:
 - (i) the Monthly Reports and Quarterly Reports relating to the current Operation Year;
 - (ii) the Annual Report relating to the preceding Operation Year;
 - (iii) the continuing appropriateness of the Performance Measures, the Progressive Targets and the Fixed Percentages; and
 - (iv) areas for improvement of the Services.
- (b) The annual performance review must be undertaken on or around 30 March of each year, such that any outcomes from the annual performance review can be put in place before the commencement of the following Operation Year.
- (c) The Contractor must co-operate with, and provide any assistance reasonably requested by, the State in the conduct of the annual performance review contemplated by this clause. As soon as reasonably practicable after each annual performance review is completed, the State will provide to the Contractor a report in relation to the matters addressed by the annual performance review, including:
 - (i) the continuing appropriateness of the Performance Measures, the Progressive Targets and the Fixed Percentages; and
 - (ii) areas for improvement of the Services for the next Operation Year.
- (d) The Contract Manager and the Contractor Representative must meet within 10 Business Days after the Contractor receives a copy of the report specified in clause 16.7(c):
 - (i) to discuss the report; and
 - (ii) agree any changes to the Performance Measures, the Progressive Targets and the Fixed Percentages.
- (e) Subject to clauses 16.7(f) and 16.7(g), the Contractor must implement the State's recommendations contained in the report.
- (f) The State must give a Variation Notice in accordance with clause 19.2 if:

- (i) the State's recommendations in the report involve a Variation to the Services; and
 - (ii) the State considers it appropriate that they be implemented.
- (g) If the Contract Manager and the Contractor Representative cannot agree changes to the Performance Measures, the Progressive Targets and the Fixed Percentages, then, within 10 Business Days after either Party gives notice to the other of such failure to agree, the Department's Director, Operational Policy, Compliance and Contracts (or a person occupying an equivalent position within the State) and a senior executive of the Contractor must meet and must negotiate in good faith, to agree such changes. If these senior executives cannot agree such changes within 10 Business Days, the matter will be referred for consideration at the next meeting of the Joint Management Board.

16.8 Annual Prisons Act reporting by CEO

The Contractor:

- (a) acknowledges the requirement of section 15G of the Prisons Act for the CEO to prepare and deliver to the Minister by 30 September each year an annual report on each contractor who provided prison services under a contract in the preceding 12 months; and
- (b) without limiting any of the provisions of this Agreement, agrees to provide such information in relation to the discharge of the Contractor's Obligations and the provision of the Services, and to provide reasonable assistance to the CEO and Contract Manager as the CEO may require, to meet the requirements of section 15G of the Prisons Act in relation to the Contractor.

16.9 Reporting future disruption to Services

- (a) Whenever a Party becomes aware of any thing that will, or is likely to, disrupt the performances of the Services that Party must promptly notify the other Party of:
 - (i) the cause of the disruption;
 - (ii) the anticipated extent of the disruption; and
 - (iii) whether that thing is a Force Majeure Event or not.
- (b) Whenever the performance of the Services is, or will be, disrupted the State may (without affecting its other rights under this Agreement) give a Direction to the Contractor to:
 - (i) defer the performance of those Services; or
 - (ii) omit that part of the Services.

16.10 Contractor to keep Records

- (a) The Contractor must maintain, for the Relevant Period, accurate, up to date, and complete Records.
- (b) The Records must be maintained in accordance with:

- (i) the *State Records Act 2000* (WA) and all other applicable Legislative Requirements;
- (ii) good record keeping practice; and
- (iii) the requirements of Schedule 2.

16.11 Ongoing access to records and information

- (a) The Contractor must, for the Relevant Period:
 - (i) give the State and any persons authorised by the State, full and free access to the Records, whether held at the Prison or elsewhere,
 - (ii) permit the State or such other authorised persons to:
 - (A) remove, use or make copies of the Records; and
 - (B) disclose the Records, or copies of the Records to any person or Government Agency for the purposes of complying with obligations at Law, or for any other legitimate public purpose;
 - (iii) provide the State and persons authorised by the State with reasonable assistance in accessing the Records;
 - (iv) give the State all information required by the State to assess the Contractor's performance of the Services and the discharge of the Contractor's Obligations.
- (b) The persons authorised by the State for the purposes of this clause 16.11 include:
 - (i) the Contract Manager;
 - (ii) a person entitled to access the Records pursuant to Part IIIA of the Prisons Act;
 - (iii) the Auditor General through its officers or nominees; and
 - (iv) any person or Government Agency authorised by the State from time to time.
- (c) Where any Records are stored in electronic format, the Contractor must, for the Relevant Period, give the State and persons authorised by the State the use of any computer facilities needed to access any of those Records.
- (d) The Contractor must, for the Relevant Period, provide the State, the State's Associates and their authorised representatives with remote, online 24 hour access to such of the Records as are stored in electronic format. The Records must be logically organised, and the electronic access must be configured, such that:
 - (i) the State can locate relevant Records;
 - (ii) the State cannot inadvertently modify or delete any Record stored on the Contractor's systems, or otherwise inadvertently damage or disrupt the Contractor's Record keeping systems; and

- (iii) the State can print out Records, and store copies of Records on the Departmental System.
- (e) The State will not be liable for any loss of Records, or damage to the Contractor's electronic Record keeping system arising in relation to the State's access to such Records under clause 16.11(d) unless such loss, damage or disruption involves wilful or reckless misconduct by the State.
- (f) No knowledge will be attributed to the State or to any State's Associate by reason of:
 - (i) the State having the ability to access Records (whether in hard copy or electronic format) containing the relevant information;
 - (ii) a Record containing the relevant information having been accessed by the State or a State's Associate; or
 - (iii) a Record containing the relevant information having been transferred to the State.
- (g) The Contractor must continually, as appropriate, upgrade the software and systems on the Contractor Computer.
- (h) When the Contractor undertakes an upgrade in accordance with clause 16.11(g), the Contractor must as soon as practicable
 - (i) notify the State in writing; and
 - (ii) undertake the work and provide the facilities to ensure that it continues to comply with its obligations under this clause 16.

16.12 Open book basis of Agreement

- (a) The State has the right to request that the Contractor make available to the State any information or any Records in whatever form which relate to this Agreement, the Prison or the Services on an open book basis.
- (b) For the purposes of this clause 16.12, 'open book basis' includes the Contractor providing to the State any information or Records in a timely, clear and transparent manner which allows the State to properly understand the information or Records and making available appropriately qualified personnel to explain the information or Records and answer any questions the State may have in respect of the information or Records.

16.13 Legible reproductions

If any information or thing referred to in this clause 16 is stored or recorded in:

- (a) a medium other than paper; or
- (b) the Contractor Computer,

the Contractor must, as soon as practicable after the State's request, make available to the State a full, accurate and legible reproduction of that information or thing.

16.14 Electronic Prisoner information

- (a) From the Operations Commencement Date, the Contractor must, with the State's prior approval, operate and maintain a system relating to electronic management of prisoner information which has the following functionality:
 - (i) processing of orders and payment for purchases of Canteen Goods;
 - (ii) access to the Canteen List;
 - (iii) access to the External Prisoner Purchase List;
 - (iv) access to the Vending Machine List
 - (v) access to Departmental Policies and Legislative Requirements relevant to the performance of the Services and the discharge of the Contractor's Obligations,
 - (vi) the storage of personal information in respect of each Prisoner and access by each Prisoner to his personal information including:
 - (A) Prisoner Trust Account details; and
 - (B) booked visits, including medical appointments; and
 - (C) monitoring of Prisoners' movements around the Prison;
 - (vii) provide the ability for Prisoners to send emails; and
 - (viii) provide Prisoners with the ability to access the Contractor's reintegration service providers in accordance with section 3.6(h) of Schedule 2.
- (b) The Contractor must obtain the prior approval of the State to any replacement of, or material change to, the system contemplated at clause 16.14(a)

16.15 Retention of CCTV and telephone communications recordings

The Contractor must:

- (a) retain all CCTV recordings made within the Prison, in whatever media such recordings are made, for a period of 30 days and, at the State's request, promptly deliver any CCTV recordings to the State; and
- (b) promptly deliver all recordings of PTS communications, in whatever media such recordings are made, to the State.

16.16 Inquiries under the Prisons Act

The Contractor:

- (a) acknowledges:
 - (i) the CEO's power under the Prisons Act to establish an inquiry into, and report on any matter, incident or occurrence concerning the security or good order of the Prison, or concerning any Prisoner; and

- (ii) the role of the Department's professional standards division to conduct an investigation into any matter arising from, or that impacts on, the Prison; and
- (iii) the right of the Minister, the CEO and any person authorised by the CEO (accompanied by any assistants, prison dogs and equipment considered necessary) to free and unfettered access to:
 - (A) the Prison;
 - (B) any Prisoner;
 - (C) Subcontractors;
 - (D) Contract Workers;
 - (E) any vehicle used by a Contract Worker to provide the Services;
 - (F) any Contract Worker whose work is concerned with such a vehicle; and
 - (G) all documents in the possession of the Contractor or any Subcontractor in relation to any of the Services,
 for the purpose of ensuring:
 - (H) compliance with the Prisons Act;
 - (I) compliance with this Agreement; and
 - (J) that the Services are being properly provided; and
- (b) agrees to, and agrees to ensure that the Subcontractors and Contract Workers, cooperate fully, as may be required, with any inquiries or investigations referred to in this clause 16.16 and any other inquiries carried out by the Crime Corruption Commission, the West Australian Police Force and other law enforcement agencies of the State or the Commonwealth in respect of any matter in relation to the Prison.

16.17 Periodic testing

The State may conduct periodic testing of any aspect of the Services or the Prison to verify that the Contractor has complied with the Contractor's Obligations, and the Contractor must fully co-operate in allowing those tests to be undertaken.

16.18 Access to Contract Workers

The Contractor must allow the State and the State's Associates to have unrestricted access to each Contract Worker and the Contractor will use the Contractor's reasonable endeavours to ensure that the Contract Worker:

- (a) is available for interview by;
- (b) provides information as is required by; and
- (c) otherwise co-operates with,

the State and the State's Associates in undertaking any matter under, or for, the purposes of this Agreement.

17. INTELLECTUAL PROPERTY

17.1 Intellectual Property Rights warranties by Contractor

The Contractor represents and warrants to the State that:

- (a) in performing the Services, the Contractor will not infringe or contravene any third party rights, including any third party Intellectual Property Right or any Legislative Requirements; and
- (b) use of any Contractor Resources or Intellectual Property by the Contractor will not infringe or contravene any third party rights, including any third party Intellectual Property Rights or any Legislative Requirements.

17.2 Intellectual Property Rights of State

- (a) All Intellectual Property Rights vested in the State, whether before or after the Signature Date, remain vested in and the property of the State, provided that the State grants to the Contractor a non-exclusive, royalty-free licence to use those Intellectual Property Rights of the State as may be required for the purposes of performing the Services during the Operation Period, subject at all times to the Contractor complying with its obligations under clause 35 in respect of the Confidential Information.
- (b) With the exception of clause 17.2(a), the Contractor has no other entitlement or interest, and no right to acquire an entitlement or interest, in the Intellectual Property Rights referred to in clause 17.2(a).
- (c) To the extent permitted by Law, and subject to clause 17.2(d), the Contractor irrevocably grants to the State all its right, title and interest in all Intellectual Property Rights in the Intellectual Property which has been invented, created or authorised by or on behalf of the Contractor or a Subcontractor, specifically for use at, or in the course of operating, or providing the Services or discharging the Contractor's Obligations at, the Prison, including:
 - (i) all data and statistics recorded or collected in relation to the operation of the Prison, the provision of the Services and compliance with the Contractor's Obligations;
 - (ii) all software used or developed for the recording or collecting of the data and statistics referred to in 17.2(c)(i); and
 - (iii) professional management, detention, case and medical files in relation to Prisoners.
- (d) Clause 17.2(c) does not apply to any Intellectual Property Rights which the State has agreed in writing are to remain vested in the Contractor.

17.3 Licence by Contractor to pre-existing Intellectual Property Rights

- (a) All Intellectual Property Rights:
 - (i) vested in the Contractor prior to the Signature Date;

(ii) vested in the Contractor during the period commencing on the Signature Date and ending on the Expiry Date, excluding those Intellectual Property Rights granted to the State pursuant to subclause 17.2(c); or

(iii) to which subclause 17.2(d) applies,

remain vested in and the property of the Contractor or the third party owner, but the Contractor grants to the State a non-exclusive, royalty free and irrevocable licence (with a right to sub-license) to utilise those Intellectual Property Rights for any purpose in connection with the operation or maintenance of the Prison.

(b) The licence granted under subclause (a) will continue in force for a period of 12 months commencing on the Expiry Date.

17.4 Licence by Subcontractors

The Contractor must ensure that any Subcontract is entered into on the same terms as apply to the Contractor under this clause 17, provided that where a Subcontractor is the owner of any Intellectual Property Rights that exist in the Intellectual Property used in connection with the performance of the Services or the Contractor's Obligations the Contractor must procure the Subcontractor to grant to the State a non-exclusive, royalty-free, perpetual and irrevocable licence to exercise any and all Intellectual Property Rights that exist in the Intellectual Property that is owned by the Subcontractor.

17.5 Sublicensing by State

(a) The State may sub-licence its rights under clauses 17.3 and 17.4.

(b) The licences referred to in clauses 17.3 and 17.4 are separate, severable and independent with respect to each distinct item of Intellectual Property Rights and each distinct item of Intellectual Property.

17.6 Moral Rights

(a) To the extent permitted by Law:

(i) the Contractor must, and must ensure that the Subcontractors and the Contract Workers, unconditionally and irrevocably consent to any use, reproduction and modification of, and any and all acts in relation to, all Intellectual Property Rights that are the subject of the licences referred to in this Agreement and this consent is to apply even if the conduct referred to constitutes an infringement of any Moral Rights of the Contractor, a Subcontractor or any Contractor Worker; and

(ii) the conduct referred to in subclause (a), and which is consented to, includes the omitting of any attribution of the author.

(b) The consents referred to in subclause (a) are granted to the State, the State's Associates and any Successor Operator.

17.7 No right to compensation

For the avoidance of doubt:

- (a) the State is not obliged to make any payment or other compensation to the Contractor or any Subcontractor in relation to the rights, licences or consents granted to the State, the State's Associates and the Successor Operator under this clause; and
- (b) the Contractor is not obliged to make any payment or other compensation to the State in relation to the rights, licences or consents granted to the Contractor under this clause.

17.8 Contractor's assistance

The Contractor must provide to the State all reasonable facilities and assistance to enable the State to fully exercise its rights under this clause.

17.9 Intellectual Property Rights indemnity

The Contractor must, at all times, indemnify and keep the State and State's Associates indemnified from and against every Claim and Loss arising from:

- (a) any infringement by the Contractor, any Subcontractor or any Contract Worker of the State's Intellectual Property Rights; and
- (b) the use by the State, the State's Associates or any Successor Operator of any Intellectual Property Rights in a manner contemplated by this clause.

17.10 Survival of this clause

This clause 17 survives termination of this Agreement.

18. PAYMENTS

18.1 Payment to the Contractor

- (a) Subject to this clause 18, from the Operations Commencement Date the State must pay to the Contractor the Monthly Services Payment:
 - (i) calculated in accordance with Schedule 4 of this Agreement; and
 - (ii) in arrears.
- (b) Nothing in this Agreement obliges the State to pay the Contractor the Monthly Services Payment before the Operations Commencement Date.

18.2 Payment Claim

Within 5 Business Days of the end of each Operation Month, the Contractor must submit to the State a Payment Claim:

- (a) that is in a form required by the State from time to time;
- (b) which clearly sets out the following information:
 - (i) the amount of the Monthly Service Payment being claimed for the preceding Operation Month.
 - (ii) a detailed breakdown, clearly demonstrating how the amount claimed in 18.2(b)(i) has been built up, including by reference to the subcomponents of the Monthly Service Payment documented in section 2 of Schedule 4;

- (iii) details of how the Indexation Factor, CPI Adjustment or WPI Adjustment being claimed for the preceding Operation Month have been calculated;
 - (iv) if applicable, any Insurance Adjustment being claimed for the preceding Operation Month in accordance with section 5 of Schedule 4;
 - (v) if applicable, evidence to demonstrate any Relevant Asset Maintenance Fees, Asset Replacement Fees, Minor Works Fees, Additional Preventative Maintenance Costs and Corrective Maintenance Costs being claimed for the preceding Operation Month as required in accordance with:
 - (A) this Agreement; and
 - (B) the terms of an agreement to undertake Relevant Asset Maintenance, Asset Replacement Works or Minor Works for which a fee is being claimed in the preceding Operation Month;
 - (vi) evidence to support each Prisoner Escort Fee which forms part of the Prisoner Escort Payment being claimed for the preceding Operation Month as required in accordance with section 7 of Schedule 4;
 - (vii) evidence to substantiate the calculation of total income collected by the Contractor from Prisoners for PTS calls at the Prison for the preceding Operation Month in accordance with section 8 of Schedule 4;
 - (viii) a summary of each notice provided by the State to the Contractor under section 9(a) of Schedule 4 advising of the occurrence of a Specified Event during the preceding Operation Month for which an Abatement Amount will be deducted from the Monthly Service Payment;
 - (ix) if applicable, details of the Performance Linked Fee or Correction Payment determined by the State in accordance with Schedule 5;
 - (x) any further information reasonably requested by the State from time to time to substantiate an amount claimed as part of the Monthly Services Payment.
- (c) In addition to the information required at clause 18.2(b), each Payment Claim must include a signed statement from an authorised officer on behalf of the Contractor declaring that:
- (i) the Payment Claim does not contain any amount for costs under this Agreement which are expressly referred to as being at the Contractor's own cost;
 - (ii) all Subcontractors and Contract Workers have, at the date of the Payment Claim, been paid all moneys due and payable to them in connection with the provision of the Services (and incorporating a statutory declaration to that effect, in a form reasonably required by the State, and from an authorised officer who is in a position to know the facts);

- (iii) all Specified Events occurring in the preceding Operation Month have been reflected in the Payment Claim, and all appropriate Abatement Amounts deducted from the Payment Claim;
- (iv) all costs under this Agreement which are required to be charged exclusive of mark-ups, profit, margins, overheads or administration, management or other fees have been so claimed; and
- (v) the Contractor has complied with its insurance obligations under the Agreement.

18.3 Payment Certificate

- (a) Within 10 Business Days of receipt of a Payment Claim under clause 18.2 which satisfies the criteria set out in clause 18.2, the State must, by notice to the Contractor:
 - (i) advise that the State intends to make the payment set out in the Payment Claim and deliver a Payment Certificate to the Contractor for the amount of the Payment Claim; or
 - (ii) advise that the State does not intend to make all or part of the payment set out in the Payment Claim, in which case:
 - (A) the State must provide the reasons for its decision (which may include that the State considers that the Contractor's Obligations or Services the subject of the Payment Claim have not been properly performed); and
 - (B) the State must deliver a Payment Certificate to the Contractor for any amounts to which the State advises that the Contractor is entitled.
- (b) The amount set out by the State in a Payment Certificate under clause 18.3(a) will be adjusted by:
 - (i) any amounts which the State is owed or entitled to deduct or has deducted under this Agreement or set off under 18.7; and
 - (ii) any correction or modification to previous Payment Certificates issued under clause 18.3.
- (c) The State may for any reason, including as a result of any audit under this Agreement, in any Payment Certificate:
 - (i) correct any error in any previous Payment Certificate; or
 - (ii) modify any previous Payment Certificate, previously issued by the State.

18.4 Payment

- (a) On receipt of a Payment Certificate from the State, the Contractor must provide the State with a Tax Invoice, which must be consistent with the Payment Certificate and the requirements of clause 18.8.
- (b) Within 10 Business Days of receiving a Tax Invoice meeting the requirements of clause 18.4(a), the State must make payment to the Contractor.
- (c) Any Payment Certificate or payment of money under this clause 18.4 is not:
 - (i) evidence the Services have been satisfactorily performed in accordance with this Agreement;

- (ii) an admission of liability; or
 - (iii) approval by the State of the Contractor's performance or compliance with this Agreement,
- but is only to be taken as payment on account.

18.5 Direct payments to Subcontractors and Contract Workers

- (a) Where the Contractor informs the State, or the State becomes aware, that the Contractor has failed to pay an amount that is due and payable to a Subcontractor or a Contract Worker, the State may make that payment directly to the Subcontractor or Contract Worker.
- (b) If the State makes a payment to any Subcontractor or Contract Worker as contemplated in clause 18.5(a) or in compliance with any Act or requirement of a Government Agency, the State may deduct or set off that amount from or against any money payable by the State to the Contractor.

18.6 Overpayments and underpayments

- (a) Irrespective of whether this Agreement terminated or expired, if on completion of any inspection and audit performed under this Agreement or otherwise it is discovered that the total payments made to the Contractor are shown or known to be:
 - (i) greater than the Contractor's entitlement to payment under this Agreement, then at the State's option, the State may:
 - (A) deduct an amount equal to the excess from moneys due or becoming due to the Contractor whether under this Agreement or otherwise; or
 - (B) require the Contractor to reimburse the excess to the State; or
 - (ii) less than the Contractor's entitlement to payment under this Agreement, then at the Contractor's option, the Contractor may require the State to pay any shortfall to the Contractor.
- (b) Where the State or the Contractor is required to make a payment under this clause 18.6, the State or the Contractor (as the case may be) must make that payment within 1 month after receipt of a Tax Invoice from the other Party.
- (c) The State or the Contractor (as the case may be) may commence proceedings to recover any amount payable to them under this clause 18.6 not paid on time.

18.7 Right of set off

- (a) Without limiting the State's rights under this Agreement and notwithstanding the provision of, or the issue of a Payment Certificate under clause 18.3, the State may deduct from any moneys otherwise due to the Contractor under this Agreement:
 - (i) any debt or other moneys due, or genuinely and reasonably alleged or claimed to be due, from the Contractor to the State, whether under this Agreement or otherwise at Law arising in connection with this Agreement; or
 - (ii) any genuinely held and reasonable Claim to money which the State may have against the Contractor, whether the right to payment arises by way of damages (including liquidated damages), debt restitution or otherwise, whether under this

Agreement or otherwise at Law arising in connection with this Agreement.

- (b) If the State intends to exercise its rights under clause 18.7(a) in relation to:
 - (i) any moneys that are genuinely and reasonably alleged or claimed to be due from the Contractor to the State pursuant to clause 18.7(a)(i); or
 - (ii) a genuinely held and reasonable Claim to money which the State may have against the Contractor pursuant to clause 18.7(a)(ii),the State must provide not less than 5 Business Days' prior notice to the Contractor which notice must specify:
 - (iii) the basis of the State's claim; and
 - (iv) the amount that the State intends to deduct.
- (c) For the avoidance of doubt, nothing in this clause 18.7 limits the Contractor's right to issue a Dispute Notice in accordance with clause 37.2 in relation to the exercise by the State of its rights under this clause 18.7.

18.8 GST

- (a) If GST is payable on a Taxable Supply made by a party (**Supplier**) under, by reference to or in connection with this Agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.
- (b) No payment of any amount pursuant to clause 18.8(a) and no payment of the GST Amount where the Consideration for a Taxable Supply is expressly agreed to be GST inclusive, is required until the Supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- (c) Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability. A party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.
- (d) If an Adjustment Event occurs in relation to a Taxable Supply made under or in connection with this Agreement, then the Consideration payable in respect of the supply shall also be adjusted as follows:
 - (i) If the Adjustment Event gives rise to an increase in the GST payable by the Supplier in relation to the supply, a payment equal to that increase will be made by the Recipient to the Supplier; and
 - (ii) If the Adjustment Event gives rise to a decrease in the GST payable by the Supplier in relation to the supply, a payment equal to that decrease will be made by the Supplier to the Recipient.
- (e) A payment that is required under clause 18.8(d) must be made within 20 Business Days of the issuing of an Adjustment Note or amended Tax Invoice, as the case may be, by the Supplier. If the Adjustment Event gives rise to an Adjustment, the Supplier must issue an Adjustment Note to the Recipient as soon as it becomes aware of the Adjustment Event..

18.9 Interest on overdue payments

- (a) If either Party fails to pay any amount due to the other Party under this Agreement within 20 Business Days after the due date for payment, that party must pay interest to the other Party at the Default Rate.
- (b) The provisions of clause 18.9(a):
 - (i) do not affect any other right of a Party under this Agreement; and
 - (ii) are in addition to any other right of a Party under this Agreement.
- (c) Interest will accrue daily, and will be calculated from the due date of payment until the date of payment in full.
- (d) The amount calculated in accordance with clause 18.9(a) will be the Contractor's sole entitlement to interest for a failure to pay an amount set out in a Payment Certificate, including damages for loss of use of, or the cost of borrowing money.
- (e) Clause 18.9(a) does not apply to amounts:
 - (i) for which the Contractor has not provided a Tax Invoice, if required, under clause 18.8;
 - (ii) for which the Contractor has not given a Payment Claim that complies with the requirements of clause 18.2; or
 - (iii) that are in Dispute, irrespective of whether or not a Dispute Notice has been given in relation to those amounts.

19. VARIATIONS

19.1 Contractor Proposal

- (a) The Contractor may, by giving notice in writing to the State at any time during the Operation Period request the State to vary the Services by expanding or reducing the scope or volume of the Services (or any part of them) or by the inclusion of a new or improved service (provided that the new or improved service is not in breach of applicable Legislative Requirements).
- (b) The State may, in its absolute discretion, issue a Variation Notice in response to a proposal made under clause 19.1(a) (in which case the remainder of this clause 19 will apply to the Variation Notice).
- (c) If the State does not issue a Variation Notice in relation to a proposal made under clause 19.1(a), the proposal will lapse and be of no further effect.

19.2 Variations by the State

The State may, by giving notice in writing to the Contractor at any time during the Operation Period, require the Contractor to vary the Services by expanding or reducing the scope or volume of the Services (or any part of them), by the inclusion of a new service (provided that new service is in the nature of the services contemplated by the Prisons Act or this Agreement), by imposing higher or stricter standards or measures for performance of the Services or by requiring the Contractor to change how it performs the Services (**Variation Notice**).

19.3 Effect of Variation Notice

- (a) Subject to clause 19.3(b) a Variation Notice will have no effect until such time as a Variation Order is issued pursuant to clause 19.5(e).
- (b) If a Variation Notice specifies that the Variation Notice is to have immediate effect, the Contractor must immediately comply with the Variation Notice.

19.4 Variation Quotation

- (a) The Contractor must provide a Variation Quotation within 10 Business Days of receipt of a Variation Notice, or such later time as agreed by the State (acting reasonably). The Variation Quotation must include:
 - (i) subject to clause 19.4(b), the proposed adjustment to the Monthly Service Payment (which may be an increase or a decrease) and any other financial consequences that the Contractor considers would result from the proposed Variation;
 - (ii) any non-financial consequences that the Contractor considers would result from the proposed Variation, including any effect of the proposed Variation on the Contractor's ability to deliver the Services or discharge the Contractor's Obligations in accordance with the requirements of the Agreement and any contractual relief sought in respect of those consequences;
 - (iii) supporting calculations, information and (to the extent reasonably available) evidence demonstrating the derivation of the payment adjustments and other relief claimed in the Variation Quotation; and
 - (iv) any other information requested by the State, including as requested in the Variation Notice.
- (b) The Contractor must not propose a payment adjustment under clause 19.4(a)(i) unless the proposed Variation will have a Material Cost Impact.

19.5 State response to Variation Quotation

- (a) After receipt of a Variation Quotation, the State may, by notice make an election to:
 - (i) require that the Parties meet to negotiate the Variation Quotation, including discussing alternate methods of implementing the proposed Variation which do not result in additional costs or other consequences;
 - (ii) accept the Variation Quotation and issue a Variation Order; or
 - (iii) reject the Variation Quotation and withdraw the Variation Notice, in which case neither the Variation Notice nor Variation Quotation will have any further contractual effect.
- (b) If the State delivers a notice under clause 19.5(a)(i), the Parties must meet within 5 Business Days of the delivery of the notice, or at such later time as notified by the State (acting reasonably).
- (c) After the Parties have met under clause 19.5(b), the State may, by notice:
 - (i) accept the original Variation Quotation;

- (ii) accept a negotiated Variation Quotation containing changes from the original Variation Quotation as negotiated by the Parties; or
 - (iii) withdraw the Variation Notice, in which case neither the Variation Notice nor Variation Quotation will have any further contractual effect.
- (d) If the State does not give notice of its election under clause 19.5(c) within 10 Business Days of the meeting under clause 19.5(b) (or such longer period as the Parties may agree), the Variation Quotation will be deemed to have been withdrawn.
- (e) If the State accepts a Variation Quotation under clause 19.5(a)(ii) or 19.5(c)(i) or a negotiated Variation Quotation under clause 19.5(c)(ii), the State must issue a Variation Order. The Variation Order must clearly document the Variation, and the agreed consequences (both financial and non-financial) of the Variation.
- (f) If the State issues a Variation Order, the Contractor must perform the Variation in accordance with that Variation Order. The financial and non-financial consequences documented in the Variation Order will be applicable.
- (g) If a Variation Notice:
 - (i) is specified as having immediate effect under clause 19.3(b);
 - (ii) is withdrawn or deemed to be withdrawn; and
 - (iii) results in the Contractor being exposed to a Material Cost Impact in the interval between the Variation Notice being issued and being withdrawn or deemed to be withdrawn,

the State must make a reasonable payment to the Contractor to cover the Contractor's increased cost exposure while the Variation Notice was applicable.

19.6 Material Cost Impact

For the purposes of this clause 19, the following comprise a Material Cost Impact:

- (a) a Variation results in a one-off cost increase or decrease of greater than \$25,000 (Indexed) in any Operation Year;
- (b) a Variation results in a recurrent cost increase or decrease of greater than \$10,000 (Indexed) per Operation Year; and
- (c) Variations occurring in the same Operation Year which individually do not trigger paragraph (a) or (b), when aggregated result in:
 - (i) one-off cost increases or decreases in excess of \$100,000 (Indexed) in an one Operation Year; or
 - (ii) recurrent cost increases or decreases in excess of \$50,000 (Indexed) per Operation Year,

provided that:

- (iii) any single Variation can only comprise or contribute to a single Material Cost Impact; and
- (iv) the netting effect of cost increases and decreases resulting from different Variations in the same Operation Year will be taken into account.

19.7 Expansion or modification of Prison

- (a) An expansion in the volume of the Services as a result of an extension or modification of the Prison by the State as contemplated in clause 14.12 or an increase in Prisoner numbers at the Prison, does not constitute a Variation for the purposes of this clause 19 where overall Prisoner numbers remain within the bands contemplated in Table 10 of Schedule 4.
- (b) To the extent the Prison is expanded in a manner that results in an increase in Prisoner numbers beyond the numbers contemplated in Table 10 of Schedule 4, such expansion will comprise a Variation for the purposes of this clause 19

19.8 Directions

- (a) The State may give Directions to the Contractor and the Contractor must comply with all Directions given to it by the State promptly and in accordance with any time period specified.
- (b) If the Contractor considers that any Direction given by the State is or would constitute a Variation, the Contractor must, within 3 Business Days after receiving the Direction, give notice to the State of the reasons why the Contractor considers the Direction is or would constitute a Variation having that material effect.
- (c) Upon receipt of the notification from the Contractor under 19.8(b), the State may within 10 Business Days:
 - (i) retract the Direction;
 - (ii) confirm the Direction as a Variation in which case clauses 19.2 to 19.6 will apply;
 - (iii) reject the Direction as a Variation in which case the Contractor may refer the Dispute for resolution under clause 37; or
 - (iv) request further information as to why the Contractor believes the Direction constitutes a Variation and after consideration of such further information do any of (i), (ii) or (iii).

20. ENABLING WORKS AND MINOR WORKS

20.1 Enabling Works

- (a) Each Enabling Work will, as documented in Schedule 11:
 - (i) be performed by a third party arranged by the State (which may be an Incumbent Provider) prior to the Operations Commencement Date; or
 - (ii) be performed by the Contractor as a Minor Work after the Operations Commencement Date.
- (b) If the Contractor considers an Enabling Work delivered pursuant to clause 20.1(a)(i) is defective, the Contractor must notify the State within 1 month of the Operations Commencement Date. If the State agrees the Enabling Work is defective, the State will arrange for rectification of the relevant defects. The Contractor must provide reasonable access for defect

rectification and the State must minimise the impact of defect rectification activities on the Contractor's delivery of the Services.

20.2 Minor Works

- (a) The State may notify the Contractor of any Minor Works required to be performed by way of a notice describing the Minor Works to be performed (**Minor Works Notice**).
- (b) As soon as possible but in any event no later than 15 Business Days (or such longer period as the State may specify) of receipt by the Contractor of a Minor Works Notice, the Contractor must prepare and submit for the approval of the State a Minor Works Quotation which sets out:
 - (i) the Minor Works Price calculated on an open book basis with the breakdown of goods, services, labour, equipment, materials and subcontract costs clearly set out and available for review by the State;
 - (ii) an estimate of the time to complete the proposed Minor Works;
 - (iii) details of any subcontractors proposed to be engaged to implement the Minor Works;
 - (iv) details of the impact, if any, of the Minor Works on:
 - (A) the provision by the Contractor of the Services; or
 - (B) the Contractor's ability to comply with this Agreement;
 - (v) the recurrent impact (if any) of the Minor Works on the Monthly Service Payment; and
 - (vi) any other particulars reasonably requested by the State.
- (c) Unless otherwise agreed with the State, the Minor Works Price must be a fixed lump sum.
- (d) After receipt of a Minor Works Quotation, the State may by notice make an election to:
 - (i) require that the Parties meet to negotiate the Minor Works Quotation;
 - (ii) accept the Minor Works Quotation and issue a Minor Works Order; or
 - (iii) reject the Minor Works Quotation and withdraw the Minor Works Notice, in which case, subject to clause 20.2(n), neither the Minor Works Notice nor Minor Works Quotation will have any further contractual effect.
- (e) If the State delivers a notice under clause 20.2(d)(i), the Parties must meet within 5 Business Days of the delivery of the notice, or at such later time as notified by the State (acting reasonably).
- (f) After the Parties have met under clause 20.2(d)(i), the State may, by notice:
 - (i) accept the original Minor Works Quotation;

- (ii) accept a negotiated Minor Works Quotation containing changes from the original Minor Works Quotation as negotiated by the Parties; or
 - (iii) withdraw the Minor Works Notice, in which case, subject to clause 20.2(n), neither the Minor Works Notice nor Minor Works Quotation will have any further contractual effect.
- (g) If the State does not give notice of its election under clause 20.2(f) within 10 Business Days of the meeting under clause 20.2(d)(i) (or such longer period as the Parties may agree), the Minor Works Quotation will be deemed to have been withdrawn.
- (h) If the State accepts a Minor Works Quotation under clause 20.2(d)(ii) or 20.2(f)(i) or a negotiated Minor Works Quotation under clause 20.2(f)(ii), the State must issue a Minor Works Order. The Minor Works Order must clearly document the Minor Works and the agreed consequences (both financial and non-financial) of the Minor Works proceeding.
- (i) The Contractor must perform the Minor Works in accordance with the Minor Works Order. The financial and non-financial consequences documented in the Minor Works Order will be applicable.
- (j) The Contractor must not commence any work or incur any cost and will not have any entitlement to make any Claim in connection with any proposed Minor Works unless a Minor Works Order has been issued in accordance with clause 20.2(h).
- (k) The Contractor must notify the State upon completion of the Minor Works, and invite the State to inspect the Minor Works. The State (acting reasonably) may Direct the Contractor to procure the rectification of any defects in the Minor Works.
- (l) On completion of Minor Works:
 - (i) the Minor Works which are fixtures will form part of the Prison Equipment or Prison Infrastructure (as the case may be);
 - (ii) the Minor Works which are chattels will form part of the State Resources;
 - (iii) the Contractor must maintain the Minor Works in accordance with Schedule 3; and
 - (iv) in consideration for doing so, payments to the Contractor under this Agreement will be increased by the amount (if any) agreed in the approved Minor Works Quotation.
- (m) The Contractor acknowledges that it is not entitled to any increase to payments under this Agreement as a result of performing any Minor Works other than as set out in the Minor Works Order.
- (n) If the State withdraws a Minor Works Notice pursuant to clause 20.2(d)(iii) or 20.2(f)(iii), the State may proceed to implement the works itself or engage a third party to carry out the required works, in which case the works will not be Minor Works. The Contractor must:
 - (i) provide the State or any third party contractor engaged by the State with reasonable Site access in accordance with clause 14.13 for the purposes of undertaking those works; and

- (ii) negotiate in good faith with the State in respect of any contractual consequences resulting from the undertaking of the works.

21. CHANGE IN LAW

21.1 Change in Law Quotation

- (a) If a Change in Law occurs and the Contractor intends to claim relief in respect of the Change in Law, the Contractor must provide the State with a Change in Law Quotation meeting the requirements of clause 21.2 as soon as it becomes aware of the Change in Law and in any event within 60 Business Days of the relevant legislation or Departmental Policy coming into effect or relevant decision being handed down.
- (b) The Contractor is not entitled to Change in Law relief:
 - (i) where the Contractor has failed to submit a Change in Law Quotation in accordance with the timing and content requirements imposed by this clause 21; or
 - (ii) where the Contractor or any Related Party has, by any act or omission (other than an act or omission authorised or permitted under this Agreement) directly or indirectly caused the relevant Change in Law.

21.2 Change in Law Quotation

- (a) The Change in Law Quotation must include:
 - (i) a clear description of the relevant Change in Law;
 - (ii) subject to clause 21.2(b) and clause 21.2(c), the proposed adjustment to the Monthly Service Payment (which may be an increase or a decrease) and any other financial consequences that the Contractor considers result from the Change in Law;
 - (iii) any non-financial consequences that the Contractor considers result from the Change in Law, including any effect of the Change in Law on the Contractor's ability to deliver the Services or discharge the Contractor's Obligations in accordance with the requirements of the Agreement, and any contractual relief sought in respect of those consequences;
 - (iv) supporting calculations, information and (to the extent reasonably available) evidence demonstrating the derivation of the payment adjustments and other relief claimed in the Change in Law Quotation; and
 - (v) any other information requested by the State.
- (b) The Contractor must not propose a payment adjustment under clause 21.2(a)(ii) unless the Change in Law will have a Material Cost Impact.
- (c) To the extent the Contractor proposes a payment adjustment under clause 21.2(a)(ii) such payment adjustment must be calculated by reference to the Contractor's additional (or reduced) costs as a result of the Change in Law and must not include any allowance for profit or margin.

21.3 State response to Change in Law Quotation

- (a) After receipt of a Change in Law Quotation, the State may, by notice to the Contractor, do any of the following:
 - (i) reject the Change in Law Quotation on the basis a Change in Law has not arisen;
 - (ii) accept a Change in Law has arisen and accept the Change in Law Quotation;
 - (iii) accept a Change in Law has arisen but require that the Parties meet to negotiate the Change in Law Quotation; or
 - (iv) where the Change in Law relates to a change in Departmental Policies, release the Contractor from the obligation to comply with the Change in Law, in which case the Contractor must continue to comply with the Departmental Policies as they existed immediately prior to the Change in Law and the Contractor is not entitled to further relief.
- (b) If the State delivers a notice under clause 21.3(a)(iii), the Parties must meet within 5 Business Days of the delivery of the notice or at such later time as notified by the State (acting reasonably).
- (c) After the Parties have met under clause 21.3(a)(iii), the State may, by notice:
 - (i) accept the original Change in Law Quotation;
 - (ii) accept a negotiated Change in Law Quotation containing changes from the original Change in Law Quotation as negotiated by the Parties;
 - (iii) where the Change in Law relates to a change in Departmental Policies, release the Contractor from the obligation to comply with the Change in Law, in which case the Contractor must continue to comply with the Departmental Policies as they existed immediately prior to the Change in Law and the Contractor is not entitled to further relief; or
 - (iv) if the Parties are unable to agree the consequences of the Change in Law, issue a Change in Law Order clearly documenting the Change in Law and the consequences (both financial and non-financial) that the State asserts arise from the Change in Law.
- (d) If the State accepts a Change in Law Quotation under clause 21.3(a)(ii) or 21.3(c)(i) or a negotiated Change in Law Quotation under clause 21.3(c)(ii), the State must issue a Change in Law Order. The Change in Law Order must clearly document the Change in Law and the agreed consequences (both financial and non-financial) of the Change in Law.
- (e) The financial and non-financial consequences documented in the Change in Law Order will apply from the time of the Change in Law Order irrespective of whether such Change in Law Order is issued under clause 21.3(c)(iv) or clause 21.3(d).
- (f) The Contractor may initiate a Dispute in respect of:
 - (i) the State's rejection of a Change in Law Quotation under clause 21.3(a)(i); or
 - (ii) a Change in Law Order issued pursuant to clause 21.3(c)(iv),

provided that such Dispute is initiated within 20 Business Days of receipt of the relevant notice.

21.4 Material Cost Impact

For the purposes of clause 21.2(b), the following comprise a Material Cost Impact:

- (a) the Change in Law results in a one-off cost increase or decrease of greater than \$25,000 (Indexed) in any Operation Year;
- (b) the Change in Law results in a recurrent cost increase or decrease of greater than \$10,000 (Indexed) per Operation Year; or
- (c) Changes in Law occurring in the same Operation Year which individually do not trigger paragraph (a) or (b) when aggregated result in:
 - (i) one-off cost increases or decreases in excess of \$100,000 (Indexed) in an one Operation Year; or
 - (ii) recurrent cost increases or decreases in excess of \$50,000 (Indexed) per Operation Year,

provided that:

- (iii) any single Change in Law can only comprise or contribute to a single Material Cost Impact; and
- (iv) the netting effect of cost increases and decreases resulting from different Changes in Law in the same Operation Year will be taken into account.

21.5 State initiated Change in Law Quotations

If the State considers that a Change in Law has occurred and the Contractor has not submitted a Change in Law Quotation in accordance with this clause 21, the State may Direct the Contractor to submit a Change in Law Quotation. The Contractor must promptly submit a Change in Law Quotation that complies with the requirements of this clause 21 following receipt of such a Direction.

22. PERFORMANCE IMPROVEMENT NOTICES

22.1 Performance Improvement Notices

- (a) Without limiting the State's rights under this Agreement, if:
 - (i) the State determines that the Contractor has failed to comply with any obligation under the Agreement including failing to perform any element of the Services to the standards required by this Agreement; or
 - (ii) the Contractor's performance against any Progressive Target (as defined in Schedule 5) is such that the Contractor achieves a Performance Based Percentage of 0% (as contemplated in the tables in Schedule 5),

the State may issue a Performance Improvement Notice (PIN) to the Contractor.

- (b) Each PIN issued by the State must specify:
 - (i) the Contractor's breach or failure;

- (ii) which of the requirements at clause 22.1(c) below the Contractor must perform in response to the PIN; and
- (iii) the required time frame for the Contractor to complete the requirements of the PIN (including where applicable, the date by which the Rectification Plan must be submitted) provided that the Contractor must be given:
 - (A) a reasonable time (which will generally not be more than 24 hours) where the breach or failure relates to the provision of the Essential Services; or
 - (B) at least 7 Business Days where the breach or failure does not relate to the provision of the Essential Services.
- (c) A PIN may, in the State's discretion (acting reasonably), require any one or more of the following:
 - (i) the Contractor to remedy the relevant breach or failure without developing a Rectification Plan (where the breach or failure is capable of remedy);
 - (ii) the Contractor to develop a Rectification Plan addressing how the Contractor proposes remedying the relevant breach or failure (where the breach or failure is capable of remedy);
 - (iii) the Contractor to develop a Rectification Plan containing full details of all steps or changes to service delivery methodology which the Contractor proposes taking in order to improve the delivery of the Services so as to prevent a recurrence of the event(s) leading to the issue of the PIN; and
 - (iv) the Contractor's Rectification Plan to address specified matters, steps or changes to service delivery methodology specified by the State.
- (d) The Contractor may Dispute any matter within the PIN by notice in writing to the State within 5 Business Days of receipt of the PIN. If the Contractor Disputes any matter within the PIN, the State may:
 - (i) withdraw the PIN and neither Party has any liability to the other in respect of the PIN;
 - (ii) amend and re-issue the PIN; or
 - (iii) refer the matter to Dispute resolution in accordance with clause 37, which Dispute must be limited to whether the State's requirements, as specified in the PIN, are reasonable.
- (e) If the Contractor does not Dispute the PIN, the Contractor must, within the time specified in the PIN, perform the requirements specified within the PIN.

22.2 State approval of Rectification Plan

- (a) If the State considers that the Rectification Plan submitted in response to a PIN is incomplete, insufficient or for any reason does not adequately respond to the PIN, the State may reject the Rectification Plan and provide its reasons for rejection to the Contractor.

- (b) Upon receipt of the State's notice under clause 22.2(a), the Contractor must either:
 - (i) resubmit the Rectification Plan, addressing the reasons given by the State for its rejection; or
 - (ii) refer the matter for Dispute resolution in accordance with clause 37, which Dispute must be limited to the reasonableness and appropriateness of the State's rejection of the Rectification Plan,

within 5 Business Days of receipt of the State's reasons.

22.3 Failure to comply with a Performance Improvement Notice

If the Contractor:

- (a) fails to submit or resubmit a Rectification Plan when required to do so in accordance with the requirements of clause 22.1(c) or 22.2;
- (b) submits a Rectification Plan which the State rejects after such Rectification Plan has been resubmitted under 22.2;
- (c) fails to implement and comply with the actions or achieve the outcomes set out in the PIN;
- (d) fails to comply with the requirements of a Rectification Plan which have been agreed with the State; or
- (e) otherwise fails to remedy the breach or failure within the time specified in the PIN or the Rectification Plan, whichever is the later,

then the State, at its election, may:

- (f) treat the failure as a Specified Event; or
- (g) issue a Default Notice under clause 23.1.

23. DEFAULT

23.1 Default Notice

If there is a Default by either Party then the other Party may give the defaulting Party a Default Notice which must:

- (a) clearly specify that it is a Default Notice given under this clause 23;
- (b) identify the relevant Default;
- (c) specify whether the Default is capable of being remedied; and
- (d) specify whether the Default relates to the provision of an Essential Service.

23.2 Interaction between PIN regime and Default regime

- (a) Where a Default occurs, the State may, but is not obliged to, issue a PIN under clause 22 before issuing a Default Notice under this clause 23.

- (b) If the State issues a PIN in respect of a Default, the State is only entitled to issue a Default Notice in respect of the same Default in the circumstances contemplated in clause 22.3.
- (c) If the State issues a Default Notice in the circumstances contemplated in clause 22.3, a Default that is not remedied will be deemed to have arisen and clause 23.3(b) will apply.

23.3 Remedy of Default

- (a) On receipt of a Default Notice in respect of a Default that is capable of being remedied, the defaulting Party must at its own cost:
 - (i) in the case of a Default with respect to the payment of money, remedy that Default within 5 Business Days from the date of receipt of the Default Notice or within such longer period as may be specified in the Default Notice;
 - (ii) in the case of a Default by the Contractor in relation to the provision of an Essential Service, remedy that Default as soon as the Default may be remedied, and in any event, within 24 hours from the time of receipt of the Default Notice or within such longer period as may be specified in the Default Notice; and
 - (iii) in any other case, remedy the Default within 10 Business Days from the date of receipt of the Default Notice or within such longer period as may be specified in the Default Notice.
- (b) Where the Contractor commits a Default that is not capable of being remedied because of the nature of the Default or the passing of the time or date for performance of the relevant Contractor's Obligation or the Default is in respect of the Contractor's failure to comply with a PIN, the State may, at its discretion, after giving a Default Notice to the Contractor, Direct the Contractor to rectify the Default by:
 - (i) performing that Contractor's Obligation despite the time for performance having elapsed;
 - (ii) paying compensation to the State in respect of that Default; or
 - (iii) taking such measures as may be necessary (and which may include the provision of additional Contractor Resources or Contract Workers) to prevent a recurrence of the Default.

If the State gives a Direction under this clause 23.3(b), the Contractor must comply with the Direction within the timeframes specified in the Direction. If the State does not give a Direction under this clause 23.3(b), then clause 23.4 applies.

- (c) If a defaulting Party determines that it requires the benefit of an extended remedy period under clause 23.3(a) it must, as soon as reasonably practicable after receiving the Default Notice (but not later than the expiration of the then current remedy period as specified in the Default Notice), give notice to the non-defaulting Party that the applicable remedy period is insufficient to rectify the Default, giving a reasonable explanation as to why it is insufficient and requesting that the remedy period be extended by the further period referred to in the defaulting Party's notice and the non-defaulting Party may, at its discretion, agree to extend the remedy period by either:

- (i) the further period requested; or
- (ii) an alternative further period determined by the non-defaulting Party.
- (d) If, during the period referred to in clause 23.3(a) (as may be extended by clause 23.3(c)) the remedy of the Default is not, or is no longer being, diligently pursued, the remedy period in respect of that Default will be deemed to have expired.

23.4 Defaults that are not remedied

If:

- (a) the Contractor fails to remedy a Default referred to in clause 23.3(a) within the remedy period specified in respect of the Default (as may be extended by clause 23.3(c));
- (b) the Contractor fails to comply with a Direction by the State under clause 23.3(b) in respect of a Default that is not capable of being remedied; or
- (c) clause 23.3(b) applies and the State elects not to issue a Direction under clause 23.3(b) in respect of that Default,

then the State may, at its election, exercise rights under:

- (d) clause 23.5;
- (e) clause 23.6;
- (f) Part IIIA Division 5 of the Prisons Act and clause 24;
- (g) clause 25; or
- (h) clause 26.

23.5 State may remedy Default

The State may, at its discretion, remedy or rectify the Default and take such measures as are necessary to prevent its recurrence and the Contractor must immediately, on written demand by the State, pay compensation to the State in respect of the Default and reimburse the State for all costs, charges and expenses incurred by the State in taking appropriate measures to prevent its recurrence

23.6 Suspension of payments

If the Contractor commits a Default by failing to provide any of the Services or by providing Services which do not meet the requirements or standards set out in this Agreement the State may:

- (a) deduct and retain amounts from any money otherwise owing to the Contractor under this Agreement; or
- (b) suspend payment of the whole or part of the Monthly Service Payments to the Contractor,

to such extent as the State considers commensurate with the reduction in the quantum or quality of the Services provided by the Contractor.

24. EXERCISE OF STATUTORY RIGHTS

24.1 Definitions in this clause

In this clause:

- (a) 'administrator' means a person appointed or engaged under section 15Y or 15Z of the Prisons Act; and
- (b) 'intervene' has the meaning given in the Prisons Act.

24.2 Operation of Prisons Act

- (a) The Parties acknowledge:
 - (i) that nothing in this Agreement limits the operation of Division 5 of Part IIIA of the Prisons Act in respect of intervention in, suspension or termination of, this Agreement in certain prescribed situations or the appointment of an administrator for those purposes;
 - (ii) that the State's rights under clauses 22, 23, 25, 26 and 27 are contractual rights existing under this Agreement and, to the extent permitted by Law, are in addition to and do not limit in any way, any rights or remedies available to the State or the State's Associates including any Statutory Powers granted under Division 5 of Part IIIA of the Prisons Act;
 - (iii) the State may exercise statutory rights under the Prisons Act after following the processes in clause 23 but following those processes is not a precondition to the State's exercise of statutory rights under the Prisons Act; and
 - (iv) the requirements of section 15C(g) of the Prisons Act for this Agreement to specify the financial and other consequences of:
 - (A) intervening in this Agreement under section 15W;
 - (B) terminating or suspending this Agreement under section 15X; and
 - (C) requisitioning property under section 15ZC.

24.3 Intervention in Agreement under section 15W

- (a) The Contractor acknowledges that the Statutory Powers granted under the Prisons Act in respect of intervention in this Agreement authorise:
 - (i) the CEO to intervene in this Agreement in the circumstances prescribed in section 15W of the Prisons Act and:
 - (A) give directions as to the manner in which the Services are to be provided; and
 - (B) provide any Services;
 - (ii) the CEO, to appoint an administrator to do any of the things specified in subclauses 24.3(a)(i)(A) and 24.3(a)(i)(B) for an initial period not exceeding 1 year; and

- (iii) the CEO and the administrator (with the CEO's approval) to requisition any property used in relation to the provision of the Services and use that property for the ongoing provision of the Services for a period not longer than 12 months,

in accordance with Division 5 of Part IIIA of the Prisons Act.

- (b) The Contractor acknowledges its obligations to comply with, and to ensure that each Contract Worker complies with, the lawful directions of the CEO or an administrator appointed pursuant to section 15Y of the Prisons Act.

24.4 Consequences of intervention

- (a) If the CEO intervenes in this Agreement under section 15W of the Prisons Act:
 - (i) the State may reduce or suspend the Monthly Service Payment and other payments under this Agreement in accordance with clause 24.9; and
 - (ii) except to the extent required under clause 24.10, neither the State, nor the State's Associates, nor any other person is liable to pay any compensation or make any other payment to the Contractor, a Subcontractor, Contract Worker or other person under this Agreement or in connection with the intervention.
- (b) The Contractor must pay to the State the reasonable costs of the CEO intervening in this Agreement under section 15W of the Prisons Act, without prejudice to any of the State's other rights.

24.5 Suspension or termination under section 15X

- (a) The Contractor acknowledges that the Statutory Powers granted under Division 5 of Part IIIA of the Prisons Act in respect of the termination or suspension of prison services contracts authorise:
 - (i) the CEO to:
 - (A) with the Minister's approval, terminate or suspend (wholly or partially) this Agreement in the circumstances prescribed in section 15X of the Prisons Act; and
 - (B) provide, or appoint an administrator for an initial period not exceeding 1 year to provide, any Services after the termination or during the suspension, (as the case may be) of this Agreement; and
 - (ii) the CEO and the administrator (acting with the CEO's approval), to requisition any property used in relation to the provision of the Services and use that property for the ongoing provision of the Services for a period not longer than 12 months,

in accordance with the requirements of Division 5 of Part IIIA of the Prisons Act.

24.6 Consequences of termination or suspension

- (a) If the CEO terminates this Agreement pursuant to section 15X(2)(a), (b), (c) or (d) of the Prisons Act the consequences in clause 26.2 apply.

- (b) If the CEO terminates this Agreement pursuant to section 15X(2)(e) of the Prisons Act, the consequences in clause 27.3 apply.
- (c) If the CEO suspends this Agreement pursuant to section 15X(2)(a), (b), (c) or (d) of the Prisons Act, the consequences in clause 24.7 apply.
- (d) If the CEO suspends this Agreement pursuant to section 15X(2)(e) of the Prisons Act, the consequences in clause 24.8 apply.

24.7 Consequences of suspension for Contractor default

- (a) If the CEO suspends this Agreement under section 15X(2)(a), (b), (c) or (d) of the Prisons Act:
 - (i) the State may reduce or suspend the Monthly Service Payment and other payments under this Agreement in accordance with clause 24.9; and
 - (ii) except to the extent required under clause 24.10, neither the State, nor the State's Associates, nor any other person, is liable to pay to the Contractor or any Subcontractor, Contract Worker or other person, any compensation in respect of the suspension.
- (b) The Contractor waives any other rights it might have to pursue a Claim of any kind, including a Claim of unjust enrichment, as a result of suspension of this Agreement under section 15X(2)(a), (b), (c) or (d) of the Prisons Act.
- (c) Without prejudice to any of the State's other rights, the Contractor must pay to the State the reasonable costs of the CEO arising in connection with the termination of this Agreement under section 15X(2)(a), (b), (c) or (d) of the Prisons Act, including any costs arising in connection with the appointment or engagement of the administrator.

24.8 Consequences of suspension under section 15X(2)(e) of the Prisons Act

- (a) If the CEO suspends this Agreement solely on the ground set out in section 15X(2)(e) of the Prisons Act, the State:
 - (i) must, subject to 24.8(b), indemnify the Contractor against any Loss reasonably and properly incurred by the Contractor as a consequence of the suspension of this Agreement (netted off against any costs avoided by the Contractor by reason of the suspension); and
 - (ii) is not required to pay to the Contractor any amount by way of indemnity under 24.8(a)(i) in excess of an amount equal to 100 percent of the aggregate Monthly Service Payments for the 12 Operation Months immediately preceding the date of suspension.
- (b) The Contractor must do, and must ensure that each Contract Worker does, everything possible to mitigate the Contractor's losses, liability or expenses arising in consequence of suspension of this Agreement under the Prisons Act.

24.9 Intervention in and termination or suspension of part of Services

- (a) If the CEO intervenes in, or suspends, this Agreement with the effect that the Contractor will no longer be providing any Services or performing any of the Contractor's Obligations for the period of the intervention or suspension, the State may suspend payment of all Monthly Service Payments and other

payments under this Agreement for the period of that suspension or intervention.

- (b) If the CEO intervenes in or suspends this Agreement with the effect that the scope or volume of the Services required to be provided by the Contractor under this Agreement is reduced, the State may reduce the amount of, or suspend, payment of the Monthly Service Payments and any other payments under this Agreement on the basis that the State considers, acting reasonably, is commensurate with the reduction in the Services.
- (c) Where the State reduces the amount of, or suspends, payments under this Agreement as contemplated in this clause 24.9 and the Contractor Disputes the entitlement of the State to make that reduction or suspension, the Contractor may seek resolution by the Joint Management Board and, if not resolved, may refer the Dispute to resolution pursuant to clause 37.

24.10 Compensation for requisitioning Contractor Resources

- (a) If any Contractor Resources are requisitioned under Division 5 of Part IIIA of the Prisons Act, the State must pay to the Contractor, as full and final compensation for the loss of the use of the Contractor Resources for the period in which they are requisitioned:
 - (i) an amount agreed by the State and the Contractor; or
 - (ii) if agreement cannot be promptly reached, as determined by the State, acting reasonably; and
 - (iii) if the Contractor Disputes the State's valuation, as determined pursuant to clauses 24.10(b) to 24.10(d).
- (b) If the Contractor Disputes the State's valuation, the Parties will appoint an independent valuer agreed between the Parties. If the Parties are unable to agree the identity of an independent valuer, on the application of either Party, an independent valuer will be appointed by the chairperson of the Resolution Institute or a deputy chairperson acting as the chairperson's delegate.
- (c) The valuer referred to in subclause 24.10(b) will act as an expert not an arbitrator and the valuer's determination will be final and binding on the State and the Contractor.
- (d) The State and the Contractor must each pay half of any costs of the valuer referred to in subclause 24.10(b).

25. TAKE OUT

25.1 Take out of the Contractor's Obligations

- (a) If the circumstances contemplated in clause 23.4 occur, the State may by notice to the Contractor (**Take Out Notice**):
 - (i) take out any part of the Services (**Removed Services**);
 - (ii) determine the adjustment to the Monthly Service Payment acting reasonably; and
 - (iii) specify the date from which the matters in the Take Out Notice take effect.
- (b) The issue of a Take Out Notice does not:

- (i) terminate this Agreement; or
 - (ii) limit any rights the State has under this Agreement or at Law.
- (c) If the Contractor does not agree with the State's determination of the adjustment to the Monthly Service Payment as set out in the Take Out Notice, the Contractor may seek resolution by the Joint Management Board and, if not resolved, may refer the Dispute to resolution pursuant to clause 37.
- (d) In the circumstances set out in clause 25.1(c), the State must pay the Contractor in accordance with the Take Out Notice from the date specified in the Take Out Notice until the Joint Management Board has resolved the matter or the Dispute has been resolved under 37.
- (e) From receipt of a Take Out Notice and throughout the Limited Obligations Period, the Contractor must, at no additional cost to the State, do all things and execute all further documents reasonably required by the State to ensure that the State is able to perform the Removed Services, including:
 - (i) novating all relevant Subcontracts (as required by the State) to the State or its nominee; and
 - (ii) implementing any part of the Handover Plan that the State deems appropriate.
- (f) During the Limited Obligations Period:
 - (i) the Contractor:
 - (A) must continue to perform the Retained Services;
 - (B) agrees that the State is entitled to perform the Removed Services, either itself or through another contractor;
 - (C) must not do, or omit to do, anything to prevent the State from performing, or procuring the performance of, the Removed Services.
 - (ii) the State:
 - (A) or its nominated contractor may, but is not obliged to, perform the Removed Services; and
 - (B) must pay the Contractor the amounts set out in the Take Out Notice at the times and in the manner set out in that notice.

26. TERMINATION FOR CONTRACTOR DEFAULT

26.1 Termination for Contractor Default

- (a) The State may terminate this Agreement by notice to the Contractor if:
 - (i) clause 23.4 applies and the State elects to exercise a right of termination under this clause 26; or
 - (ii) any of the following events occurs:
 - (A) an Insolvency Event occurs in relation to the Contractor;
 - (B) an Insolvency Event occurs in relation to the Parent Guarantor and the Parent Guarantor is not replaced

within 20 Business Days by a party approved by the State;

- (C) without the prior written consent of the State, there is a Change in Control in respect of the Contractor, the Parent Guarantor or a Subcontractor;
 - (D) the Contractor fails to achieve Operational Readiness by the date contemplated in clause 4.3(f)(iii);
 - (E) the circumstances in clause 30.9(d)(v) arise;
 - (F) the Contractor fails to take steps to remedy a Probity Event as agreed pursuant to clause 33.2(b) or required by the State pursuant to clause 33.3;
 - (G) the Contractor breaches clause 33.7 (other than a breach of clause 33.7(b)(ii) which is rectified pursuant to clause 33.7(b)(iii));
 - (H) the Contractor breaches clause 38.1 or 38.2;
 - (I) a representation, warranty or statement by or on behalf of the Contractor in this Agreement or in a document provided under or in connection with this Agreement, including the Contractor's Proposal, is not true in a material respect or is misleading when made or repeated which, if it had been known to the State before signing this Agreement, would have resulted in the State not entering into this Agreement or entering into this Agreement on materially different terms;
 - (J) Abandonment of this Agreement by the Contractor;
 - (K) there are in any Operation Year:
 - (I) 2 or more separate and isolated instances of a death of a Prisoner at the Prison, or outside the Prison, while in the lawful custody, care and control of the Contractor (being a death by other than natural causes);
 - (II) 2 or more separate and isolated events involving an Escape (each event may result in more than one Escape, but will be treated as a single event for the purpose of this subclause); or
 - (III) 2 or more separate and isolated instances of a Loss of Control; or
 - (L) subject to clause 26.1(c), the Contractor's Liability Limit has been reached.
- (b) The State must exercise its right to terminate under this clause 26 or its statutory right of termination under section 15X(2)(a), (b), (c) or (d) of the Prisons Act by way of a Termination Notice setting out the particulars of the termination.

- (c) If the Contractor's Liability Limit has been reached, the State may, in its absolute discretion, request that the Contractor reinstate the Contractor's Liability Limit to its full amount, in which case, if the Contractor:
 - (i) agrees within 5 Business Days of notice from the State to reinstate the Contractor's Liability Limit to its full amount, the State's right to terminate under clause 26.1(a)(ii)(L) does not arise; or
 - (ii) does not agree to reinstate the Contractor's Liability Limit to its full amount or such lesser amount as agreed between the Parties within 5 Business Days of notice from the State to reinstate the Contractor's Liability Limit to its full amount, the State may exercise its right to terminate under this clause 26.
- (d) This Agreement will terminate on receipt of the Termination Notice, or at such later time as may be specified within the Termination Notice.

26.2 Consequences of termination for Contractor Default

- (a) If this Agreement is terminated under this clause 26 or terminated pursuant to section 15X(2)(a), (b), (c) or (d) of the Prisons Act, the following consequences apply:
 - (i) no Performance Linked Fee will be payable to the Contractor in respect of the Operation Year in which the termination occurred;
 - (ii) neither the State, nor the State's Associates, nor any other person, is liable to pay to the Contractor or any Subcontractor, Contract Worker or other person, any compensation in respect of the termination of this Agreement;
 - (iii) the Contractor waives any other rights it might have to pursue a Claim of any kind, including a Claim of unjust enrichment, as a result of termination of this Agreement; and
 - (iv) the Contractor must pay to the State the reasonable costs of the State arising in connection with the termination of this Agreement, including any costs arising in connection with the appointment or engagement of the administrator under the Prisons Act.
- (b) The rights in this clause 26.2 are in addition to any other rights available under this Agreement or at Law.
- (c) The termination of this Agreement under this clause 26 will not affect any rights of a Party against the other Party in respect of any act, omission, matter or thing occurring under this Agreement prior to termination or as a result of any Default by the other Party before the date of termination, nor will it affect the coming into force or the continuance in force of any provision of the Agreement which is expressly or by implication intended to come into, or continue in, force on or after termination.

27. TERMINATION FOR CONVENIENCE AND TERMINATION UNDER SECTION 15X(2)(E) OF THE PRISONS ACT

27.1 Termination for convenience

The State may terminate this Agreement at its convenience at any time pursuant to, and in accordance with, this clause 27.

27.2 Termination Notice

- (a) The State must exercise its right to terminate for convenience under this clause 27, or may exercise its statutory right of termination under section 15X(2)(e) of the Prisons Act, by way of a Termination Notice, which must:
 - (i) clearly state that this Agreement is being terminated for convenience or under section 15X(2)(e) of the Prisons Act (as applicable); and
 - (ii) specify a date for termination which:
 - (A) if this Agreement is being terminated under 27.1, must be no less than 60 Business Days from receipt of the Termination Notice; or
 - (B) if this Agreement is being terminated under section 15X(2)(e) of the Prisons Act, is 3 days after receipt of the Termination Notice, or at such later time as may be specified within the Termination Notice.
- (b) This Agreement will terminate on the date specified in the Termination Notice.
- (c) The Contractor must immediately comply with any directions given in the Termination Notice and must do all that is possible to mitigate its losses arising from the termination of the Agreement.

27.3 Payments for termination for convenience or termination under section 15X(2)(e) of the Prisons Act

- (a) If this Agreement is terminated for convenience pursuant to clause 27.1 or is terminated pursuant to section 15X(2)(e) of the Prisons Act, the State must pay the Contractor within 20 Business Days of the date of termination (without double counting):
 - (i) for Services performed prior to the date of termination, the amount which would have been payable if this Agreement had not been terminated and the Contractor had issued an invoice on the date of termination;
 - (ii) any amount of Performance Adjustment withheld for the Operation Year in which termination occurs;
 - (iii) costs and expenses not recovered under clause 27.3(a)(i) that have been or will be reasonably, necessarily and properly incurred by the Contractor as a direct consequence of the State's termination of this Contract, as follows:
 - (A) the cost of any materials or goods ordered that cannot be cancelled;
 - (B) costs payable under a Subcontract to terminate that Subcontract (to the extent not novated to the State);
 - (C) any expenditure incurred by the Contractor in anticipation of the provision of Services which expenditure has been specifically approved in writing by the State;
 - (D) the costs of demobilisation including the cost of any relocation of equipment used or personnel engaged in connection with the Services; and

- (E) redundancy payments for employees that the Contractor is legally liable to pay under the *Fair Work Act 2009* (Cth) including under any Industrial Award, Agreement or Order (expressly excluding any bonus, golden handshake or similar arrangements),

provided that:

- (F) the costs and expenses are incurred under arrangements that are consistent with terms that have been entered into in the ordinary course of business, in compliance with this Agreement and on reasonable commercial terms;
 - (G) the Contractor has taken all reasonable steps to mitigate and minimise these costs and expenses including obtaining the prior approval of the State to incur any costs after receiving the notice terminating this Agreement;
 - (H) where any materials or goods are ordered that cannot be cancelled, the Contractor ensures that the State receives title to those materials or goods; and
 - (I) the Contractor has not discouraged any of its employees from accepting alternative offers of employment with the State.
- (b) The State will determine (acting reasonably) the amount payable by it under clause 27.3(a) and the Contractor must provide the State with whatever reasonable documentation the State may require in order for the State to perform the calculation.

27.4 Other rights

- (a) The Contractor's rights under this clause 27 are the Contractor's sole remedy in respect of any termination of this Agreement for convenience pursuant to clause 27.1 or pursuant to section 15X(2)(e) of the Prisons Act
- (b) Except for a breach of this clause 27 by the State or a Dispute in respect in respect of the amount paid under this clause 27, the Contractor is absolutely barred from making any Claim against the State, and the State may plead this clause in bar to any Claim by the Contractor against the State, in respect of any termination of this Agreement for convenience pursuant to clause 27.1 or pursuant to section 15X(2)(e) of the Prisons Act.
- (c) The termination of this Agreement under this clause 27 will not affect any rights of a Party against the other Party in respect of any act, omission, matter or thing occurring under this Agreement prior to termination or as a result of any Default by the other Party before the date of termination, nor will it affect the coming into force or the continuance in force of any provision of the Agreement which is expressly or by implication intended to come into, or continue in, force on or after termination.

28. TERMINATION BY AGREEMENT

This Agreement may be terminated by the agreement in writing of the State and the Contractor.

29. SERVICE HANDOVER AND RETENDERING OF SERVICES

29.1 Handover Plan

- (a) The Contractor must:

- (i) prepare, in consultation with the State, a plan providing for Service Handover in accordance with this clause 29 (**Handover Plan**);
 - (ii) submit the first draft of the Handover Plan for State review in accordance with the Review Procedures within 3 months of the Operations Commencement Date; and
 - (iii) review the Handover Plan every 12 months after its approval and submit, within 20 Business Days of the date for review, any amendments to that Handover Plan for approval by the State.
- (b) The Handover Plan must contain or address the following:
- (i) a proposed program for achieving Service Handover in a scenario where this Agreement expires;
 - (ii) a proposed expedited program for achieving Service Handover in a scenario where this Agreement is terminated;
 - (iii) management of Prisoners, including any transitional arrangements during the Handover Period;
 - (iv) management, care and identification of State Resources and Prison Equipment;
 - (v) management, care, identification and transfer of Contractor Resources;
 - (vi) delivery of documentation, materials, Records and other information;
 - (vii) novation of relevant contracts and Subcontracts;
 - (viii) management and transfer of Contract Workers, including any transitional arrangements during the Handover Period;
 - (ix) management and transfer of the Contractor Computer;
 - (x) continuity of the Services and operation of the Prison;
 - (xi) transfer of Prisoner Property to a Successor Operator;
 - (xii) transfer of funds within the Prisoner Welfare Trust and Prison Trust Account to a Successor Operator; and
 - (xiii) any other matters that the State requires to be addressed.

29.2 Handover Condition

In order to satisfy the Handover Condition, each relevant State Asset must be:

- (a) Fit for Purpose, such that the relevant State Asset can be used by a Successor Operator to provide the Services from the termination of this Agreement without having to perform any immediate maintenance or repair work; and
- (b) in the condition the State Asset would be in had all the Facility Management Services contemplated or required pursuant to Schedule 3, the Maintenance Services Plan and the Soft Facility Management Plan been

properly performed on the relevant State Asset, and having regard to the following considerations:

- (i) the condition of the relevant State Asset at the Operations Commencement Date as specified in the Baseline Asset Register;
- (ii) fair wear and tear in respect of the relevant State Asset; and
- (iii) any upgrades or replacements undertaken in relation to the relevant State Asset pursuant to Schedule 3.

29.3 Handover Inspections

- (a) As soon as practicable after a Handover Trigger arises, the Contractor and the State must carry out a joint inspection of the Prison to determine whether the State Assets meet the Handover Condition (**Handover Inspection**).
- (b) Further Handover Inspections must be held at such other times as reasonably required by the State.

29.4 Facility Handover Reports

- (a) Following each Handover Inspection, the Contractor must give to the State a written report (**Handover Report**) specifying:
 - (i) whether each State Asset satisfies the Handover Condition; and
 - (ii) the works to be undertaken or services to be performed to enable each State Asset to meet the Handover Condition on the Expiry Date (**Handover Works**) and a program for undertaking such works (**Handover Works Program**).
- (b) If the State does not agree with any aspect of the Handover Report (including the scope of the Handover Works or any aspect of Handover Works Program):
 - (i) the State may give details of such objections to the Contractor; and
 - (ii) the Parties will negotiate in good faith on the matters of disagreement.
- (c) If the Parties cannot reach agreement on the relevant aspects of the Handover Report within 10 Business Days of the date on which the objections are provided in accordance with clause 29.4(b), the matters may be referred by either Party for resolution in accordance with clause 37 as modified by clause 29.4(d).
- (d) Unless the Parties otherwise agree in writing, the standard Dispute resolution process will be modified as follows in relation to Disputes arising under this clause 29.4:
 - (i) senior representatives must meet to attempt to resolve the Dispute within 5 Business Days of the Dispute being referred for resolution; and
 - (ii) if senior representatives cannot resolve the Dispute within 5 Business Days of the meeting contemplated above, the Dispute will be referred for expert determination under clause 37.4.

29.5 Handover Works

The Contractor must carry out the Handover Works in accordance with the Handover Works Program and to a standard that restores the relevant State Asset to the Handover Condition.

29.6 Failure to undertake Handover Works

- (a) If the Contractor fails to carry out the Handover Works in accordance with 29.5, the State may:
 - (i) undertake and complete those Handover Works itself, either during the remainder of the Operation Period or following the Expiry Date; or
 - (ii) elect not to undertake or procure the undertaking of the Handover Works.
- (b) If the State exercises a right under clause 29.6(a), then the Contractor must pay the State:
 - (i) all reasonable costs incurred by the State in undertaking the Handover Works; or
 - (ii) the diminution in value of the relevant State Asset as a result of the Handover Works not being undertaken in accordance with clause 29.5; and
 - (iii) any other costs or losses incurred by the State as a result of the Handover Works not being undertaken by the Contractor in accordance with the Handover Works Program.

29.7 Retendering of prison services

The State may, at its discretion and irrespective of whether a Handover Trigger has arisen, invite any person (including the Contractor) to tender for the operation of all or any part of the Services for the period commencing after the end of the Operation Period (**Service Retender**).

29.8 Preparation for Service Retender

- (a) The Contractor must, if requested by the State, provide the State and the State's Associates with reasonable access to the Contract Workers, Records and other material kept by or on behalf of the Contractor in connection with the Prison, the Services and this Agreement, for the purpose of the State and the State's Associates preparing reports or other documents in connection with a Service Retender.
- (b) The Contractor must use reasonable endeavours to assist the State in the preparation for, and the conduct of, a fair and competitive Service Retender process. In particular, the Contractor must make available to the State and the State's Associates any information, assist in the verification of any information (including the provision of answers to verification questions) and make premises and activities undertaken at the Prison reasonably available for inspection by prospective Successor Operators, as the State may reasonably require in connection with the Service Retender process. The Contractor's obligations under this subclause do not require the Contractor to undertake activities which will unduly interfere with the operation of the Prison and provision of the Services but the Contractor acknowledges that

compliance with this subclause may cause some disruption or interference with the operation of the Prison and provision of the Services.

- (c) The Contractor warrants to the State that, to the best of its belief, all information it provides under clause 29.8(b) will be, at the time it is provided, true and correct in all material respects and will not be misleading, by omission or otherwise.

29.9 Obligation to co-operate

- (a) The Contractor must assist and fully co-operate with the State, the State's Associates and any Successor Operator for the purposes of:
 - (i) achieving an efficient transition of the operation of the Prison and performance of the Services to a Successor Operator; and
 - (ii) facilitating the continuity of the operation of the Prison and the seamless delivery of the Services, both within the Handover Period, and in the 20 Business Day period immediately following the Expiry Date.

(Service Handover).
- (b) Without limiting clause 29.9(a), the Contractor must comply with:
 - (i) the Handover Plan;
 - (ii) the requirements of this clause 29; and
 - (iii) any reasonable requests by the State for assistance, both within the Handover Period, and in the 20 Business Day period immediately following the Expiry Date.
- (c) The Contractor must comply with reasonable requests of the State to supply information concerning the operation of the Prison including:
 - (i) job description forms and rostering details for Contract Workers;
 - (ii) operational working documents such as workbooks, run sheets, procedures, and work instructions; and
 - (iii) training manuals for Contract Workers.
- (d) In circumstances where the Successor Entity is a competitor of the Contractor, the Contractor is not required to provide information pursuant to clause 29.9(c) to the extent such information comprises a trade secret of the Contractor.
- (e) The Contractor must not do anything which directly or indirectly prevents, materially prejudices or frustrates the Service Handover.

29.10 Option to purchase Canteen Goods and Consumables

- (a) The Contractor must conduct a stocktake of all Canteen Goods and Consumables and provide a copy of that stocktake to the State at a time reasonably required by the State.

- (b) On conclusion of the stocktake, the State and the Contractor must agree on a stocktake list of Canteen Goods and Consumables and agree the Stock Price.
- (c) The Canteen Goods and Consumables (other than stale or obsolete Canteen Goods or Consumables, which will have a nil value) will be valued:
 - (i) for unused Canteen Goods or Consumables, at cost; or
 - (ii) otherwise at market value, as determined by the State (acting reasonably)
 (the **Stock Price**)
- (d) The State may, at its election, purchase from the Contractor, or require the Contractor to sell to a Successor Operator, the Canteen Goods and the Consumables (or any part thereof) at the Stock Price.
- (e) If reasonably requested by the State, the Contractor must do all things reasonably necessary to ensure that there is a supply of various Canteen Goods and Consumables within the Prison as required by the State sufficient to provide Services from the Prison for a period of not less than 3 months after the Expiry Date (or a lesser period in the case of Canteen Goods or Consumables having a usable lifespan of less than 3 months).
- (f) The Contractor must keep detailed Records of all sales or consumption of Canteen Goods and Consumables from the time of the stocktake and the Expiry Date, such that the volume of Canteen Goods and Consumables transferred to a Successor Operator can be accurately determined.
- (g) On payment of the Stock Price to the Contractor, title to and risk in the purchased Canteen Goods and Consumables will pass to the State or Successor Operator (as applicable) free of Encumbrances and claims of third parties.

29.11 Option to purchase other Contractor Resources

- (a) The State may, at its election, purchase from the Contractor, or require the Contractor to sell to a Successor Operator, any Contractor Resources which are not the subject of an equipment lease at market value.
- (b) If any Contractor Resources are the subject of any equipment lease the State may, at its election, require the Contractor to procure the novation of the equipment lease to the State or a Successor Operator, and if the State so requires, the Contractor must, at its cost and prior to the Expiry Date, procure the novation or termination of such equipment lease.
- (c) On payment of the purchase price to the Contractor, title to and risk in the purchased Contractor Resources will pass to the State or Successor Operator (as applicable) free of Encumbrances and claims of third parties (except insofar as those assets are the subject of a novated equipment lease).

29.12 Determination of Market Value

- (a) Market value for the purposes of clause 29.11(a) will be determined:
 - (i) as agreed between the Contractor and the State;

- (ii) if agreement cannot be promptly reached, as determined by the State, acting reasonably; and
 - (iii) if the Contractor disputes the State's valuation, as determined pursuant to clause 29.12(b).
- (b) If the Contractor disputes the State's valuation, the Parties will appoint an independent valuer agreed between the Parties. If the Parties are unable to agree the identity of an independent valuer, on the application of either Party, an independent valuer will be appointed by the chairperson of the Resolution Institute, or a deputy chairperson acting as the chairperson's delegate.
- (c) The independent valuer will act as an expert not an arbitrator and the independent valuer's determination will be final and binding on the State and the Contractor.
- (d) The State and the Contractor must each pay half of any costs of the independent valuer.

29.13 Continued access to electronic systems

The Contractor must, if required by the State, engage in good faith negotiations to facilitate a Successor Operator continuing to utilise any software or electronic systems owned by, licensed to, or provided by the Contractor and deployed at the Prison (including the electronic Prisoner information system contemplated at clause 16.14).

29.14 Removal of Contractor Resources

- (a) The Contractor must not move any Contractor Resources from the Prison within the Handover Period unless:
 - (i) the Contractor Resource is an Unwanted Contractor Resource;
 - (ii) the State gives written approval to such removal; or
 - (iii) the removal occurs as a result of the routine use and consumption of Consumables or Canteen Goods.
- (b) If the State notifies the Contractor that no Successor Operator intends to purchase a Contractor Resource under this clause 29, that item will become an Unwanted Contractor Resource.
- (c) Where time permits within the Handover Period, the State must give the Contractor sufficient notice of the Unwanted Contractor Resources to allow for the orderly removal of the Unwanted Contractor Resources in accordance with this clause 29.
- (d) The Contractor must remove all Unwanted Contractor Resources and any items belonging to the Contractor or its Associates which are not Contractor Resources, prior to the Expiry Date.
- (e) The Contractor must make good to the State's satisfaction all damage to the Prison caused by the Contractor removing the items contemplated in clause 29.14(d)
- (f) If the Contractor fails to comply with its obligations under clause 29.14(d) by the Expiry Date, then such items be treated as abandoned by the

Contractor and unencumbered title to such items will automatically vest in the State.

- (g) In respect of items contemplated in clause 29.14(f), the State may:
 - (i) retain the abandoned items;
 - (ii) sell the abandoned items and retain any proceeds of such sale; or
 - (iii) dispose the abandoned items, in which case the costs of removing and dealing with any such items will be a debt due and owing from the Contractor to the State.

29.15 Contract Workers

The Contractor must:

- (a) use reasonable endeavours to ensure that the State or Successor Operator has access to the Contract Workers during the Handover Period for the purpose of:
 - (i) receiving information in respect of the Prison and the Services; and
 - (ii) preparations by the State or Successor Operator for the Service Handover,

but only to the extent that any of the above does not unduly interfere with the operation of the Prison or the provision of the Services;

- (b) ensure that an appropriate number of Contract Workers having sufficient skills, qualifications and experience (having regard to the number, skills, qualifications and experience of employees required by the Contractor to operate the Prison and provide the Services), are available to be employed by and/or seconded to the Successor Operator (at the Successor Operator's election) following the Expiry Date to enable the Successor Operator to operate the Prison and provide the Services. The Contractor must assist the Successor Operator for that purpose:
 - (i) by releasing, subject to the Contractor being lawfully able to do so, those of the Contract Workers as the State may nominate, from any contract with the Contractor, so that the Successor Operator may engage those persons if those persons are willing to be so engaged;
 - (ii) by the preparation of job specifications, advertising and the interviewing of persons for recruitment;
 - (iii) by providing to the State and the Successor Operator the contact details and employment Records of those Contract Workers currently engaged by the Contractor in the provision of Services; and
 - (iv) by adhering to communications protocols reasonably required by the State (after consultation with the Contractor) concerning the transition of Contract Workers to a Successor Operator; and
- (c) provide training to any Successor Operator and those of its staff to be engaged in the performance of prison services at the Prison.

29.16 Amendment of Terms and Conditions of Employment in Handover Period

The Contractor must not, without the prior written consent of the State, amend, or purport or promise to amend, the terms or conditions of employment (including superannuation entitlements) of any Contract Worker employed by the Contractor where:

- (a) the amendment takes effect in the Handover Period, unless it is an amendment imposed by a determination or order of Fair Work Australia;
- (b) all or part of the amendment first takes effect after the end of the Operation Period;
- (c) the amendment results in the employment being for a fixed term, the expiry of which is more than 6 months after the end of the Operation Period;
- (d) the amendment relates to a payment or the provision of a benefit triggered by termination of employment (other than the employee's entitlements at Law);
- (e) the amendment relates to the provision of a benefit (but excluding base salary and the employee's legal entitlements) which the employee will, or may have, a contractual right to receive after the end of the Operation Period; or
- (f) the amendment prevents, restricts or hinders the employee from working for a Successor Operator or from performing the duties the employee performed for the Contractor.

29.17 Third party contracts and the supply of goods and services

The Contractor must, where reasonably required by the State:

- (a) use reasonable endeavours to procure the novation to any Successor Operator of any contract of the Contractor with third parties relating to the Services, including Subcontracts and any leases or other agreements under which Contractor Resources are held or used; and
- (b) otherwise provide reasonable assistance to any Successor Operator in securing the supply to the Successor Operator of goods and/or services to the extent that such supply is necessary for the operation of all or any part of the Prison or provision of the Services.

29.18 Return of Information

- (a) The Contractor must, within 10 Business Days following the Expiry Date, deliver to the State:
 - (i) subject to clause 29.18(c), all originals and all copies of all Records maintained by the Contractor in hard copy format under this Agreement; and
 - (ii) an electronic copy, in any format or formats reasonably required by the State (which might be a different format to that in which the Records are maintained), of all Records maintained by the Contractor in electronic format under this Agreement.
- (b) Subject to clause 29.18(c), the Contractor must destroy all electronic copies of Records after delivery to the State of that information.

- (c) The Contractor may:
 - (i) retain copies of training manuals and policy and procedure manuals developed by the Contractor; and
 - (ii) retain copies or originals of Records which the Contractor is required at Law or pursuant to the requirements of a Government Agency to retain, provided that the Contractor:
 - (A) notifies the State in writing of the Records retained;
 - (B) in the case of originals retained, delivers copies to the State; and
 - (C) in the case of copies retained, delivers the originals to the State.

29.19 Prisoner Property and Prisoner Welfare Trust and Prison Trust Account

Prior to the Expiry Date, the Contractor must transfer Prisoner Property, funds in the Prisoner Welfare Trust Fund and funds in the Prisoner Trust Account, to the State or a Successor Operator.

29.20 Facility Handover

Upon the Expiry Date the Contractor must:

- (a) vacate and leave the Prison in a clean and tidy condition;
- (b) hand over all Prison Infrastructure, Prison Equipment and State Resources free from any Encumbrances and in a condition which complies with the Handover Condition;
- (c) deliver to the State all keys, security access cards and other devices associated with security and movement throughout the Prison;
- (d) transfer to the State or its nominee the benefit of any warranties held by the Contractor in respect of any Prison Infrastructure, Prison Equipment, State Resources and any Contractor Resources the State elects to acquire under this clause 29; and
- (e) deliver to the State or its nominee all manuals, records, plans and other information under the control of the Contractor which are relevant to the design, construction, commissioning, operation, maintenance or repair of the Prison (as applicable).

30. INSURANCES

30.1 General Insurance Requirements

- (a) The Contractor must effect and maintain, or cause to be effected and maintained, each of the Insurances:
 - (i) specified in Schedule 6 on the terms set out in this clause 30; and
 - (ii) as a prudent contractor would obtain and maintain for the operation and maintenance of facilities of a similar nature to the Prison and Site and when performing services of a similar nature to the Services in accordance with Best Industry Practice.

- (b) The Contractor must:
- (i) **(Reputable Insurers)**: ensure that all Insurances are effected and maintained with Reputable Insurers;
 - (ii) **(deductibles)**: pay all deductibles payable in connection with any of the Insurances including if the claim is made by the State or any entity referred to in clause 30.1(b)(xi) insured under the insurance, except to the extent that the insured risk for which the deductible is to be paid has occurred as a consequence of any breach of this Agreement by the State or any negligent act or omission by the State or the relevant entity referred to in clause 30.1(b)(xi), in which case the responsible party must pay the amount of the deductible;
 - (iii) **(premiums)**: punctually pay all premiums and other amounts payable in connection with the Insurances effected by it and give the State copies of receipts for payment of premiums if and when requested by the State;
 - (iv) **(no alteration)**: other than in relation to renewal of Insurances (in which case the Contractor must comply with clause 30.5) or endorsements not related to the Services, not alter, extend or discontinue or cancel any of the Insurances, or allow any of the Insurances to lapse, without the prior approval of the State;
 - (v) **(do not prejudice)**: not do or permit, or omit to do, anything which prejudices any of the Insurances;
 - (vi) **(rectify)**: promptly rectify anything which might, if not rectified, prejudice any of the Insurances;
 - (vii) **(fully disclose)**: fully and promptly disclose all material information to all relevant insurers (and any persons acting on their behalf) relating to the Insurances (whether held solely or jointly with others) in all respects;
 - (viii) **(comply)**: comply at all times with the terms of each of the Insurances;
 - (ix) **(do everything to enable State recovery)**: do everything reasonably required by the State or any entity referred to in clause 30.1(b)(xi) in whose name an insurance policy is effected and maintained to enable the relevant entity (as applicable) to claim and to collect or recover, money due in accordance with or in connection with any insurance policy;
 - (x) **(notify of any occurrence)**: promptly notify the State of any occurrence that may give rise to a claim, or any claim made, under any of the Insurances;
 - (xi) **(references to State)**: if the State is insured, or cover is extended to the State ensure that the insurance policy (other than a workers' compensation insurance policy) expressly names the State of Western Australia, and any entity, department, Government Agency or instrumentality of the State of Western Australia, and any Minister, whether body corporate or otherwise, and their respective employees, officers agents contractors and consultants; and

- (xii) **(reinstatement)**: promptly reinstate any insurance required by this Agreement if it lapses or if cover is exhausted.

30.2 Terms of Insurances

The Contractor must ensure that each of the Insurances it is responsible for effecting and maintaining, or causing to be effected and maintained, in accordance with this Agreement (other than compulsory third party motor vehicle and workers' compensation insurances):

- (a) contains terms, if relevant and to the extent permitted by Legislative Requirements, to the effect that:
 - (i) the insurer will not impute to any insured party any knowledge or intention or a state of mind possessed or allegedly possessed by any other insured party;
 - (ii) in the case of Insurances in accordance with which the State is also entitled to cover, any breach of the conditions of the Insurances by an insured other than the State, must not in any way prejudice or diminish any rights which the State has under the Insurances;
 - (iii) in the case of Insurances in accordance with which the State is also entitled to cover, the relevant Insurance is primary with respect to the interest of the State, and any other insurance or self-insurance arrangements maintained by the State is excess to, and not contributory with, that Insurance;
 - (iv) in the case of Insurances in accordance with which the State is also entitled to cover, a notice of claim given to the insurer by an insured other than the State, will be accepted by the insurer as notice of claim given also by the State;
 - (v) in the case of Insurances in accordance with which the State is also entitled to cover, the insurer waives any rights of subrogation which it may have against any insured party;
 - (vi) in the case of liability insurances, the insurer agrees to treat each insured as a separate insured party as though a separate contract of insurance had been entered into with each of the insured parties, without increasing the deductibles or increasing the overall limit of indemnity;
 - (vii) the insurer agrees that no reduction in limits or coverage affecting the Prison 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 30 days' prior notification to the State;
 - (viii) coverage for innocent non-disclosure is not excluded;
 - (ix) for policies written on an occurrence basis, provide that the deductible is payable once for each occurrence regardless of whether a claim or claims are brought against one or more insureds; and
 - (x) the Insurances are governed by the Laws of Western Australia and shall be construed according to the Laws of Western Australia

and must include a provision under which each party to that policy agrees to:

- (A) submit to the exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising in connection with the Insurances; and
 - (B) waive any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum; and
- (b) take proper account of the nature and objectives of the Prison, the responsibilities and entitlements of the various insureds in connection with this Agreement and are on terms otherwise acceptable to the State (whose acceptance will not unreasonably be withheld).

30.3 Additional Insurance

- (a) If the State at any time reasonably requires the Contractor to:
 - (i) arrange insurance against a risk not specifically provided for or contemplated in accordance with Schedule 6 ; or
 - (ii) vary or increase the coverage or change the terms of, an existing Insurance from that set out in this clause 30 or Schedule 6 ,it may notify the Contractor and require that the Contractor give effect to its requirements.
- (b) The Contractor must promptly inform the State of any change to the amount of insurance premiums payable in giving effect to the requirements of the State in accordance with clause 30.3(a) before it implements the requirement.
- (c) If, after receiving the information under clause 30.3(b), the State requires the Contractor to give effect to its requirements notified under clause 30.3(a), the change to the insurance premiums associated with the additional or varied insurances (if any) will be assessed in accordance with section 5 of Schedule 4.

30.4 Insurances Primary

- (a) The Insurances are primary and not secondary to the indemnities referred to in this Agreement.
- (b) The State is not obliged to make a claim or institute proceedings against any insurer under the Insurances before enforcing any of its rights or remedies under the indemnities referred to in this Agreement or generally.
- (c) The Contractor is not relieved from, and remains fully responsible for, its obligations in accordance with this Agreement regardless of whether the Insurances respond or fail to respond to any claim and regardless of the reason why any of the Insurances respond or fail to respond.

30.5 Evidence of Insurance

- (a) In relation to the workers' compensation insurance required under Table 1 of Part A of Schedule 6 and motor vehicle insurance required under Table

2 of Part A of Schedule 6 (other than compulsory third party motor vehicle insurance), the Contractor must give the State copies of all policies, certificates of currency, renewal certificates and endorsement slips evidencing the insurances are effected and maintained:

- (i) as soon as it receives them from the insurer of the relevant Insurance; and
 - (ii) whenever reasonably requested by the State.
- (b) In relation to the public and products liability insurance required under Table 3 of Part A of Schedule 6 and the professional indemnity policy required under Table 4 of Part A of Schedule 6, the Contractor must, prior to the Commencement Date and whenever reasonably requested by the State, provide
 - (i) certificates of currency evidencing the insurances are effected and maintained; and
 - (ii) a written advice to the State from a reputable British or Australian law firm acceptable to the State stating:
 - (A) the names and underwriting percentages of the insurers; and
 - (B) confirmation that the public and products liability insurance required under Table 3 of Part A of Schedule 6 and the professional indemnity policy required under Table 4 of Part A of Schedule 6 comply with the requirements of clauses 30.1(b)(i), 30.1(b)(xi), 30.2 and 32.13(e) and Table 3 or Table 4 of Part A of Schedule 6 (as applicable), or provides details of non-compliance,which written advice will be relied upon by the State.
- (c) In relation to the insurances required under Part B of Schedule 6, the Contractor must, prior to the Planned Operations Commencement Date and whenever reasonably requested by the State, provide
 - (i) certificates of currency evidencing the insurances are effected and maintained; and
 - (ii) a written advice to the State from a reputable British or Australian law firm acceptable to the State stating:
 - (A) the names and underwriting percentages of the insurers; and
 - (B) confirmation that the insurances required under Part B of Schedule 6 comply with the requirements of clauses 30.1(b)(i), 30.1(b)(xi), 30.2, and 32.13(e) and Table 1 or Table 2 of Part B of Schedule 6 (as applicable), or provides details of non-compliance,which written advice will be relied upon by the State.
- (d) In respect of all renewals of the public and products liability insurance required under Table 3 of Part A of Schedule 6, the professional indemnity policy required under Table 4 of Part A of Schedule 6 and the insurances

required under Part B of Schedule 6, the Contractor must, within 20 Business Days' of renewal provide:

- (i) all applicable certificates of currency in relation to the insurance policies; and
- (ii) unqualified written advice to the State from a reputable national insurance broker acceptable to the State or a reputable British or Australian law firm acceptable to the State, advising that the new policies do not differ in any material way from the previous policies, which written advice will be relied upon by the State.

30.6 Failure to produce proof of Insurance Terms

- (a) If, after being requested in writing by the State to do so, the Contractor fails to produce evidence of compliance with its insurance obligations in accordance with clause 30.5 to the satisfaction and approval of the State, the State may:
 - (i) effect and maintain the Insurances and pay the premiums;
 - (ii) exercise its rights under clause 23;
 - (iii) suspend the whole or part of the Services until evidence of Insurances required by this Agreement is produced to the State, and the Contractor must bear any cost it incurs as a result of the suspension; or
 - (iv) refuse payment of any moneys due to the Contractor until evidence of Insurances required by clause 30.5 is produced to the State.
- (b) The costs incurred by the State in connection with taking any action in accordance with clause 30.6(a) will be recoverable from the Contractor as a debt due and payable on demand from the Contractor to the State and the Monthly Service Payment will be reduced accordingly.
- (c) The rights given to the State by this clause 30.6 are in addition to any other rights the State may have.

30.7 Insurance claim

- (a) If, and to the extent that, the Contractor may be insured against loss that it suffers or incurs in respect of an event, occurrence or circumstance, the Contractor must (unless the State assumes joint or sole responsibility in making the claim) promptly make and pursue a claim against the relevant insurer in respect of that event, occurrence or circumstance, except in circumstances where the value of the claim would not exceed the deductible payable for making the claim.
- (b) The insurance claim must be properly prepared by the Contractor in the manner and time required by the relevant insurer and Insurance.

30.8 Subcontractor Insurance

- (a) If the Contractor subcontracts any part of the Services, then the Contractor must ensure that its Subcontractors are insured as required by this Agreement, as appropriate (including as to amounts of insurance and type of insurance) given the nature of work or services to be performed by them, as if they were the Contractor.

- (b) When determining whether its Subcontractors have appropriate Insurances in accordance with clause 30.8(a), the Contractor must have regard to the insurance cover its Subcontractors have under the insurance described in Schedule 6.
- (c) If the Contractor fails to ensure that its Subcontractors effect and maintain all the Insurances required by this Agreement, the State may:
 - (i) exercise its rights under clause 23;
 - (ii) suspend the whole or part of the Services until evidence of Insurances required by this Agreement is produced to the State, the Contractor must bear any cost it incurs as a result of the suspension; or
 - (iii) refuse payment of any moneys due to the Contractor until evidence of insurances required by this clause 30.8 is produced to the State.
- (d) The State is entitled to, but has no obligation to, satisfy itself as to the Contractor's compliance with this clause 30.8.

30.9 Uninsurable Risk

- (a) If a risk is an Uninsurable Risk then:
 - (i) the Contractor must notify the State within 5 Business Days of becoming aware that a risk has become an Uninsurable Risk, including providing details of;
 - (A) the reasons why a risk has become an Uninsurable Risk;
 - (B) the steps the Contractor has taken to obtain insurance in relation to an Uninsurable Risk; and
 - (C) the steps the Contractor has taken to manage or mitigate the risk while it remains an Uninsurable Risk; and
 - (ii) the State must meet with the Contractor within 5 Business Days after receipt of the Contractor's notice to discuss the risk, including whether the risk is in fact an Uninsurable Risk.
- (b) If both Parties agree (or if not, it is determined in accordance with clause 37), that a risk is an Uninsurable Risk:
 - (i) the Contractor is not required to procure insurance against that risk for so long as that risk is, and remains, an Uninsurable Risk; and
 - (ii) the Monthly Service Payment will be adjusted to deduct an amount equal to the premium that was payable by the Contractor to insure such risk immediately prior to the risk becoming an Uninsurable Risk, which adjustment will be calculated in accordance with section 5 of Schedule 4.
- (c) If both Parties agree (or if not, it is determined in accordance with clause 37), that a risk is an Uninsurable Risk, the Parties must meet promptly

following their agreement or determination in accordance with clause 37, to discuss how the risk should be managed, including:

- (i) consideration of self-insurance by either Party;
 - (ii) assigning some other allocation of responsibility to the risk; or
 - (iii) varying the Services to overcome the risk.
- (d) If a risk is agreed or determined under clause 30.9(c) to be an Uninsurable Risk and the requirements of clause 30.9(c) are otherwise satisfied, but the Parties cannot agree on how to manage the Uninsurable Risk, then the State must (at the State's option) either:
- (i) if, though an Uninsurable Risk, it is still possible to insure the risk by paying higher premiums, require the Contractor to take out that insurance cover, and the Monthly Service Payment will be adjusted to pass the premium charges through to the State from the date that the insurance cover is taken out, which adjustment will be calculated in accordance with section 5 of Schedule 4;
 - (ii) indemnify the Contractor against any Claim or Loss incurred in connection with the Uninsurable Risk, up to an amount equal to the insurance proceeds that would have been payable had the relevant insurance continued to be available on the previous terms of that insurance;
 - (iii) determine that the Contractor must self-insure in relation to the Uninsurable Risk;
 - (iv) issue a Variation Notice to remove that part of the Services which is affected by the Uninsurable Risk, such that following the implementation of the variation, the Contractor is in the same position compared to if the risk had not become an Uninsurable Risk; or
 - (v) terminate this Agreement by notice to the Contractor in accordance with clause 26.

30.10 Review of Uninsurable Risks

- (a) The Contractor must be vigilant in reviewing the insurance market generally, to ascertain whether an Uninsurable Risk has become insurable, and in any event must require its insurance brokers to test the market and determine whether, and if so what, insurance terms as to both premium and coverage are available in connection with that risk, from Reputable Insurers, at intervals of not more than 6 months and must provide evidence to the State of the steps taken by the Contractor in accordance with this clause 30.10(a) when requested by the State.
- (b) If upon such review it is found that the relevant Uninsurable Risk is insurable, then the Contractor will promptly procure the insurance in connection with that risk in accordance with this clause 30 and each Monthly Service Payment will be increased by a proportionate amount of the premium that was payable by the Contractor for insurance of such a risk immediately prior to such risk becoming an Uninsurable Risk from the date that the Uninsurable Risk is no longer uninsurable, which adjustment will be calculated in accordance with section 5 of Schedule 4.

31. SECURITY

31.1 Parent Guarantee

The Contractor must, on or before the Commencement Date:

- (a) procure each Parent Guarantor to sign and deliver to the State a Parent Guarantee in the form of Schedule 8; and
- (b) if the Parent Guarantor is registered in a foreign jurisdiction, provide to the State a legal opinion:
 - (i) in a form satisfactory to the State;
 - (ii) on which the State is entitled to rely; and
 - (iii) given by a foreign qualified legal practitioner satisfactory to the State,

confirming that the execution of the Parent Guarantee by the Parent Guarantor is binding upon the Parent Guarantor in accordance with its terms and that the Parent Guarantee is enforceable in the foreign jurisdiction.

31.2 Provision of Handover Bank Guarantee

- (a) The Contractor must provide the State with a Handover Bank Guarantee meeting the requirements of this clause 31.2:
 - (i) by the date which is 3 months prior to the Expiry Date (where a Handover Trigger precedes the anticipated Expiry Date by greater than 3 months); or
 - (ii) within 5 Business Days of a Handover Trigger (where the Handover Trigger precedes the anticipated Expiry Date by less than 3 months).
- (b) The Handover Bank Guarantee must:
 - (i) have face value equal to the Guarantee Amount;
 - (ii) be issued by a bank approved by the State;
 - (iii) have an expiry date no earlier than 12 months after the Expiry Date (**Guarantee Expiry Date**);
 - (iv) be payable at an office of the issuer in Perth; and
 - (v) be substantially in the form set out in Schedule 7.

31.3 Failure to provide Handover Bank Guarantee

If the Contractor fails to provide a Handover Bank Guarantee in accordance with clause 31.2 the State may set off the Guarantee Amount from payments due to the Contractor under this Agreement and hold the funds in lieu of the Handover Bank Guarantee. The State must release such funds (or any remaining portion thereof) to the Contractor:

- (a) when a Handover Bank Guarantee is provided; or

- (b) when the conditions in clause 31.9 are satisfied.

31.4 Demands under Handover Bank Guarantee

- (a) The State may make a demand under the Handover Bank Guarantee in respect of any amount which the State considers:
 - (i) is payable (but which has not been paid) by the Contractor to the State under, or as a result of a breach of, this Agreement (irrespective of whether such breach relates to the breach of a Service Handover related obligation); or
 - (ii) the Contractor may become liable to pay to the State under, or as a result of a breach of, this Agreement if a contingency occurs and that contingency is unlikely to occur until after the date the State is obliged to return the Handover Bank Guarantee.
- (b) The State may make a demand in respect of an amount referred to in this clause 31.4 irrespective of whether the amount is, or the circumstances relating to the amount are:
 - (i) the subject of a Dispute;
 - (ii) subject to dispute resolution procedures under clause 37; or
 - (iii) subject to any court or other proceedings.

31.5 No right to enjoin by injunction or otherwise

Even where the Contractor disputes the State's right to payment (including where Dispute resolution proceedings have been commenced under clause 37) the Contractor covenants with the State that the Contractor will not institute any proceedings, or exercise any right or take any steps to enjoin by injunction or otherwise restrain:

- (a) the financial institution that issued a Handover Bank Guarantee from paying the State pursuant to the Handover Bank Guarantee;
- (b) the State from taking any steps for the purpose of making a demand under the Handover Bank Guarantee or receiving payment under the Handover Bank Guarantee, or otherwise exercising its rights under the Handover Bank Guarantee; or
- (c) the State using money received under the Handover Bank Guarantee.

31.6 Repayment by the State

If a payment is made to the State as a result of a demand made under the Handover Bank Guarantee and all or part of the amount in respect of which demand was made was not actually payable by the Contractor to the State, then State must pay to the Contractor:

- (a) all or, as the case may be, that part of the amount (**Relevant Amount**) which was not actually payable by the Contractor to the State or for which the Contractor did not in fact become liable to pay the State; and
- (b) interest at the Interest Rate on the Relevant Amount on a daily basis from (and including) the date the payment under the Bank Guarantee is made in respect of the Relevant Amount to the date the Relevant Amount is paid to

the Contractor, which interest must be paid on the date the Relevant Amount is paid to the Contractor.

31.7 Notice of demand under Handover Bank Guarantee

The State must, as soon as practicable after it has made a demand under the Handover Bank Guarantee, give notice to the Contractor specifying the amount of the demand and the State's reasons for making the demand.

31.8 Guarantee to be kept in force

The Contractor must ensure that the Handover Bank Guarantee required under this clause 31 is kept in full force and effect until the Guarantee Expiry Date.

31.9 Return of Handover Bank Guarantee

The State will return the Handover Bank Guarantee or the balance of the Handover Bank Guarantee to the Contractor on the earlier of:

- (a) the Guarantee Expiry Date; and
- (b) when the State is satisfied that there are no amounts which are or may become payable as contemplated by clause 31.4.

32. RISK, INDEMNITIES AND LIMITATION OF LIABILITY

32.1 Assumption of risk by Contractor

Except as otherwise provided in this Agreement, the Contractor operates and occupies the Prison, and provides the Services, at its own risk.

32.2 Indemnity

- (a) The Contractor indemnifies and must keep indemnified the State and the State's Associates from and against all Losses and Claims suffered or incurred by the State or the State's Associates arising out of or in connection with, whether directly or indirectly, the performance or the non-performance of the Services or the Contractor's Obligations, or any act or omission by the Contractor, any Contract Worker or any Subcontractor by reason of any:
 - (i) tort, including negligence or breach of statutory duty by the Contractor, any Contract Worker or any Subcontractor;
 - (ii) breach by the Contractor, any Contract Worker or any Subcontractor of a provision of this Agreement or of the Contractor's Obligations;
 - (iii) breach by the Contractor, any Contract Worker or any Subcontractor of any Legislative Requirement (including any OSH Law);
 - (iv) event or occurrence entitling the State to terminate this Agreement under clause 26;
 - (v) event or occurrence entitling the CEO to suspend or terminate this Agreement pursuant to section 15X(2)(a), (b), (c) or (d) of the Prisons Act;

- (vi) event or occurrence entitling the CEO to intervene in this Agreement unless such intervention arises by reason of an emergency the occurrence of which is outside the reasonable control of the Contractor;
 - (vii) infringement by the Contractor, any Contract Worker or any Subcontractor of any Intellectual Property Rights;
 - (viii) loss of or damage to third party property or injury to, disease or death of a person;
 - (ix) loss of or damage to any of the State Resources; or
 - (x) third party claim against the State or the State's Associates.
- (b) This indemnity will not apply to the extent that the Loss or Claim is caused or contributed to by fraud, wilful default or a negligent act or negligent omission of the State or the State's Associates.
- (c) For the avoidance of doubt, the Losses which must be indemnified under this clause 32.2 include:
- (i) the costs, charges and expenses of any administrator, agent, attorney or nominee appointed by the State to operate any or all of the Prison, or provide all or any part of the Services, on or after an occurrence of the Default of the Contractor or termination of this Agreement following such Default;
 - (ii) the costs, charges and expenses incurred by the State and the State's Associates in engaging a Successor Operator, including any retender and transaction costs and the costs of any consultants and advisers engaged in connection with the appointment of the Successor Operator; and
 - (iii) the amount of operation payments or other payments payable to any Successor Operator for operation of any or all of the Prison or provision of all or any part of the Services, for the remainder of the unexpired portion of the Operation Period (including Further Periods), to the extent those payments exceed the payments payable under this Agreement.

32.3 Duration of Indemnities

All indemnities in this Agreement, including the indemnities in this clause 32, survive the expiry or termination of this Agreement.

32.4 Time for Enforcement

It is not necessary for a Party to incur any expense or make any payment before enforcing a right of indemnity in accordance with this Agreement.

32.5 Contractor's Liability Limit

- (a) Subject to clauses 32.5(b) and 32.5(c), the total liability of the Contractor to the State arising out of or in connection with this Agreement (including whether for breach of contract, under statute, in equity, for tort including negligence, or on any legal basis including by way of warranty, indemnity, guarantee or contribution) will not exceed an amount equal to \$80 million AUD (Indexed) in the aggregate (**Contractor's Liability Limit**).

- (b) The Contractor's Liability Limit does not apply to limit or restrict in any way the liability of the Contractor to the State for Claims or Losses suffered or incurred by the State:
 - (i) arising out of criminal acts or omissions of, or fraudulent misrepresentation by the Contractor, any Contract Worker or any Subcontractor;
 - (ii) arising out of wilful default by the Contractor, any Contract Worker or any Subcontractor;
 - (iii) arising out of any loss of or damage to third party property;
 - (iv) arising out of any injury to, disease or death of a person;
 - (v) arising out of matters which, by Law, the Parties cannot limit or exclude;
 - (vi) in relation to exemplary and punitive damages;
 - (vii) for any Abatement Amount calculated in accordance with Schedule 4;
 - (viii) arising out of a breach of clause 35 or clause 17;
 - (ix) arising out of any statutory fine arising from any breach of a Legislative Requirement or Government Authorisation; or
 - (x) arising out of Abandonment of this Agreement by the Contractor.
- (c) The Contractor's Liability Limit does not limit the Contractor's liability for any liability:
 - (i) to the extent that the Contractor recovers or is entitled to recover under any Insurances; or
 - (ii) which would have been recoverable under Insurances but for the Contractor's breach of the Insurances or this Agreement, in that case, unless clause 32.5(b) applies, the limit of the Contractor's liability is the greater of the Contractor's Liability Limit and the amount recovered, or entitled to be recovered, or which should have been recovered (but for the Contractor's breach of the Insurances or this Agreement) under the Insurances.
- (d) For the purposes of clause 32.5(c), in determining the amount that has been recovered or would have been recoverable, no deduction must be made for a deductible or excess paid to the insurer by the Contractor.

32.6 State's Liability Limit

- (a) Subject to clause 32.6(b), the total liability of the State to the Contractor arising out of or in connection with this Agreement (including whether for breach of contract, under statute, in equity, for tort including negligence, or on any legal basis including by way of warranty, indemnity, guarantee or contribution) will not exceed an amount equal to \$80 million AUD (Indexed) in the aggregate (**State's Liability Limit**).
- (b) The State's Liability Limit does not apply to limit or restrict in any way the liability of the State to the Contractor for:

- (i) Claims or Losses suffered or incurred by the Contractor:
 - (A) arising out of criminal acts or omissions of, or fraudulent misrepresentation by the State;
 - (B) arising out of wilful default by the State;
 - (C) arising out of any loss of or damage to third party property;
 - (D) arising out of any injury to, disease or death of a person;
 - (E) arising out of matters which, by Law, the Parties cannot limit or exclude;
 - (F) in relation to exemplary and punitive damages;
 - (G) arising out of a breach of clause 35 (Confidential Information) or clause 17 (Intellectual Property);
 - (H) arising out of any statutory fine arising from any breach of a Legislative Requirement or Government Authorisation; or
 - (ii) any payment of the Monthly Service Payment.
- (c) In this clause 32.6, “**State**” means all of the entities and persons included in the definition of “**State's Associates**”.

32.7 Review of the Contractor's Liability Limit

If the State elects to extend this Agreement for a Further Period in accordance with clause 5.2 then if required by the State, the quantum of the Contractor's Liability Limit may be increased, proportionate to any increase in Monthly Service Payments, as determined by the State (acting reasonably).

32.8 Contractor Release

The Contractor releases to the full extent permitted by Law the State and the State's Associates from all Losses, damages, liabilities, actions, suits, Claims, demands, costs and expenses of every kind which arise from:

- (a) the Contractor's operation of the Prison or the provision of the Services or the discharge of the Contractor's Obligations; or
- (b) any act, omission, accident, loss of life, injury, damage, malfunction or other event in the Prison,

except to the extent caused or contributed to by the State or the State's Associates.

32.9 Indirect or Consequential Loss

- (a) Despite any provision of this Agreement, neither the State nor any State's Associate has any liability to the Contractor, any Contractor's Associate, any Contract Worker or Subcontractor, nor is the Contractor, any Contractor's Associate, any Contract Worker or Subcontractor entitled to make any Claim against the State or any State's Associate, in respect of Indirect or Consequential Loss suffered, incurred or sustained by the Contractor, any Contractor's Associate, any Contract Worker or any

Subcontractor, arising out of or in connection with this Agreement. The exclusion of liability for any Indirect or Consequential Loss in this clause 32.9(a) does not apply to exclude liability for:

- (i) criminal acts or fraudulent acts or omissions of, or fraudulent misrepresentation by, the State or a State's Associate;
- (ii) wilful default under this Agreement by the State or a State's Associate;
- (iii) matters which, by Law, the Parties cannot limit or exclude; or
- (iv) any moneys expressly payable by the State to the Contractor under this Agreement.

- (b) Despite any other provision of this Agreement, except clause 32.9(c) and clause 32.9(d) which continue to apply, neither the Contractor nor any Contractor's Associate, any Contract Worker or any Subcontractor has any liability to the State or any State's Associate, nor is the State or any State's Associate entitled to make any Claim against Contractor, any Contractor's Associate, any Contract Worker or any Subcontractor, in respect of any Indirect or Consequential Loss suffered, incurred or sustained by the State or any State's Associate arising out of or in connection with this Agreement. The exclusion of liability for any Indirect or Consequential Loss in this clause 32.9(b) does not apply to exclude liability for:

- (i) criminal acts or fraudulent acts or omissions of, or fraudulent misrepresentation by, the Contractor, any Contractor's Associate, any Contract Worker or any Subcontractor;
- (ii) wilful default under this Agreement by the Contractor, any Contractor's Associate, any Contract Worker or any Subcontractor;
- (iii) any loss of or damage to third party property;
- (iv) any injury to, disease or death of a person;
- (v) matters which, by Law, the Parties cannot limit or exclude;
- (vi) any Abatement Amount calculated in accordance with Schedule 4;
- (vii) a breach of clause 35 or clause 17;
- (viii) any moneys expressly payable by the Contractor to the State under this Agreement.
- (ix) any statutory fine arising from any breach of a Legislative Requirement or Government Authorisation by the Contractor or a Contractor's Associate; or
- (x) Abandonment of this Agreement by the Contractor.

- (c) Nothing in clause 32.9(b) prevents the State or the State's Associates from applying to join the Contractor, a Contractor's Associate, any Contract Worker or any Subcontractor to any Claim made against the State or the State's Associates by a third party. The Contractor is barred from raising anything in clause 32.9(b) as a defence to being joined to such a Claim and

must ensure that the Contractor's Associates, any Contract Worker or any Subcontractor similarly do not raise clause 32.9(b) in defence to being joined to such a Claim.

- (d) The exclusion of the Contractor's, any Contractor's Associate's, any Contract Worker's or any Subcontractor's liability for Indirect or Consequential Loss in clause 32.9(b) does not apply to the extent that the Contractor:
 - (i) recovers or is entitled to recover the Indirect or Consequential Loss under any Insurances; or
 - (ii) would have recovered the Indirect or Consequential Loss but for the Contractor's breach of the Insurances or this Agreement.

32.10 Lost property

If the Contractor loses or destroys or is otherwise not able to locate any property belonging to any Prisoner which is held by the Contractor on behalf of a Prisoner, the Contractor must pay compensation to that Prisoner for the value of the lost or destroyed property and the indemnity in clause 32.2 will apply to:

- (a) any Loss or Claim incurred by the State or the State's Associates as a result of the lost or destroyed property; and
- (b) any Loss or Claim incurred by and in respect of that lost property.

32.11 Liability of officers, employees and agents

Every:

- (a) exemption from, and limitation of, liability;
- (b) defence; and
- (c) immunity,

of whatever nature that applies to the State, or to which the State is entitled, will also be available and extend to protect every one of the State's Associates.

32.12 State holds benefit of indemnities on trust

- (a) The State declares that it holds on trust for each of the State's Associates the benefit of each indemnity and release given by the Contractor under this Agreement, in favour of each of the State's Associates.
- (b) The Contractor acknowledges the existence of such trusts and consents to:
 - (i) the State exercising rights in relation to, or otherwise enforcing, such indemnities and releases on behalf of the State's Associates; and
 - (ii) the State's Associates exercising rights in relation to, or otherwise enforcing, the indemnities and releases.
- (c) The State and the Contractor agree that the consent of the State's Associates will not be required for any amendment to, or waiver of, rights in accordance with this Agreement.

32.13 Application of Civil Liability Act

- (a) In this clause 32.13 only, '**Legislation**' means Part 1F of the *Civil Liability Act 2002* (WA) and any equivalent statutory provision in any other state or territory.
- (b) The operation of the Legislation is excluded in relation to all and any rights, obligations and liabilities arising out of or in connection with this Agreement (including delivering the Services) whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or Claim in tort (including negligence), in equity or otherwise at Law.
- (c) Without limiting the generality of 32.13(b) it is further agreed that the rights, obligations and liabilities of the Parties (including those relating to proportionate liability) are as stated in this Agreement and not otherwise, whether such rights, obligations and liabilities are sought to be enforced as a breach of contract or Claim in tort (including negligence), in equity or otherwise at Law.
- (d) The Contractor must:
 - (i) include a term in each Subcontract that excludes the application of the Legislation in relation to all and any rights, obligations or liabilities of either party in accordance with each Subcontract, whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a Claim in tort (including negligence), in equity or otherwise at Law; and
 - (ii) require each Subcontractor to include, in any further contract that it enters into with a third party for the performance of the Services a term that excludes the application of the Legislation in relation to all and any rights, obligations or liabilities of either party in accordance with each further contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a Claim in tort (including negligence), in equity or otherwise at Law.
- (e) The Contractor must ensure that all Insurances required by this Agreement which cover third party liability (other than compulsory third party motor vehicle and workers' compensation insurances):
 - (i) cover the Contractor for potential liability to the State assumed by reason of the exclusion of the Legislation; and
 - (ii) to the extent available at a commercially reasonable premium, do not exclude cover for any potential liability the Contractor may have to the State in accordance with, or by reason of, this Agreement.

33. PROBITY AND PROTECTION OF THE INTERESTS OF STATE AND STATE'S ASSOCIATES

33.1 Notice of Probity Event

The Contractor must give notice to the State immediately upon becoming aware that a Probity Event has occurred or is likely to occur.

33.2 Meeting

Upon receipt of a notice in accordance under clause 33.1 or otherwise upon the occurrence of a Probity Event:

- (a) the State and the Contractor must meet within 10 Business Days to agree to a course of action that will remedy the Probity Event (which may include conducting or facilitating a Probity Investigation); and
- (b) the Contractor must take all necessary steps in accordance with any agreement in accordance with clause 33.2(a) to remedy the Probity Event.

33.3 Failure to agree

If the State and the Contractor fail to meet or agree to a course of action in accordance with clause 33.2, the Contractor must take any action required by the State to remedy the Probity Event (which may include conducting or facilitating a Probity Investigation).

33.4 Consents required for Probity Investigation

The Contractor must procure all relevant consents from any persons in connection with which the State requires Probity Investigations to be conducted.

33.5 Costs of Probity Investigation

The Contractor must bear the costs reasonably incurred by the State in carrying out the Probity Investigation.

33.6 No appointment without consent

The Contractor must not appoint any Contract Worker, Contractor's Associate or Subcontractor to a role in connection with the Services if the State forms the view, acting reasonably, that such an appointment will lead to a Probity Event.

33.7 Corrupt Gifts and Payments of Commission

- (a) The Contractor must not:
 - (i) give, or offer or agree to give, to any State's Associate any gift, benefit, incentive or consideration of any kind as an inducement or reward for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the State; and
 - (ii) enter into this Agreement or any other contract with the State or any Government Agency if:
 - (A) the Contractor has paid or agreed to a commission (or other similar payment), or
 - (B) another person has paid a commission on the Contractor's behalf, or the Contractor is otherwise aware that such a commission has been paid,

unless before the contract is made, the Contractor has disclosed in writing to the State the particulars of the commission and the terms and conditions of any agreement for its payment. The Contractor must ensure that each Contract Worker complies with

this clause as if references to the Contractor were references to the Contract Worker.

- (b) Without limiting clause 33.7(a):
 - (i) the Contractor acknowledges that the State has informed it that persons who are employed in the Department are bound by the Department's 'Code of Conduct';
 - (ii) the Contractor agrees that it will not, and will ensure that Contract Workers do not provide any hospitality, gift or benefit to any employee of the Department unless that employee has advised the Contractor that the employee has approval from the CEO to accept such hospitality, gift or benefit; and
 - (iii) the Parties agree that, if a breach of clause 33.7(b)(ii) occurs, the Contractor must as soon as possible after it becomes aware of the breach notify the State of the nature and circumstances of the breach and, upon request by the State, make available a senior executive of the Contractor to meet with the CEO or such other officer nominated by the State to discuss the breach.
- (c) The Parties agree that, provided the Contractor complies with clause 33.7(b)(iii) in relation to a breach of clause 33.7(b)(ii), that breach of clause 33.7(b)(ii) will not be a Default or entitle the State to issue a Performance Improvement Notice.

33.8 Reputation

The Contractor must take all reasonable action to protect the State's and the State's Associates' name, image, reputation and interests.

33.9 Conflict of interest

The Contractor must not engage in any activity that would in any way adversely affect:

- (a) the Contractor's ability to provide the Services independently and in the manner required under this Agreement; or
- (b) the interests of the State or any of the State's Associates.

33.10 Good faith

The Contractor must exercise a duty of good faith to the State and the State's Associates in the performance of the Services and the discharge of the Contractor's Obligations.

34. FORCE MAJEURE EVENTS

34.1 Notice by Force Majeure Party

- (a) If a Force Majeure Party considers that it is prevented, by reason of a Force Majeure Event, from performing any obligation imposed by this Agreement, it must promptly notify the other Party.
- (b) The notice seeking Force Majeure relief must contain:
 - (a) the particulars of the Force Majeure Event;

- (b) the extent to which the Force Majeure Party is unable to perform or will be delayed in performing an obligation under this Agreement; and
- (c) the estimated duration of such inability or delay.

34.2 Effect of Force Majeure Events

Subject to giving notice under clause 34.1, and complying clauses 34.3 and 34.4, if a Force Majeure Party is prevented, by reason of Force Majeure Event from performing any obligation imposed by this Agreement (the **Affected Obligations**), the Affected Obligations will be suspended during, and the time for undertaking the Affected Obligations under this Agreement will be extended by, the period:

- (a) from the later of:
 - (i) the Affected Obligations being affected by the Force Majeure Event; and
 - (ii) the provision of notice under clause 34.1; and
- (b) until the effects of the Force Majeure Event on the Affected Obligations cease.

34.3 Force Majeure Party to mitigate

A Force Majeure Party must implement all reasonable procedures to mitigate, remedy, or remove the Force Majeure Event or the effects of the Force Majeure Event, as soon as practicable.

34.4 Force Majeure Party to keep other Party advised of developments

Where a Force Majeure Party gives a notice under clause 34.1, the Force Majeure Party must, during the continuance of the Force Majeure Event, at least every 3 Business Days (and at such other times as reasonably required by the other Party), give further notice to the other Party of any significant changes in relation to the Force Majeure Event since the Force Majeure Party gave its last notice to the other Party.

34.5 Reduction in Monthly Service Payment

- (a) If the Force Majeure Event results in a reduction of Services provided under this Agreement, the Monthly Service Payment will be reduced by agreement between the Parties to reflect the reduction in the Services.
- (b) The principles to be applied in agreeing a reduction in Monthly Service Payments are that:
 - (i) where the Force Majeure Event results in a reduction of Services provided under this Agreement, the Contractor must take all reasonable steps to reduce its costs in providing the Services during the period of the Force Majeure Event; and
 - (ii) the Monthly Service Payment is to be reduced to reflect the costs the Contractor will no longer incur as a result of the reduction in Services, or ought reasonably to have avoided by the undertaking of appropriate cost mitigation activities.

35. CONFIDENTIAL INFORMATION AND PUBLICITY

35.1 Contractor's obligations of Confidentiality

Subject to clause 35.3, the Contractor must keep the Confidential Information confidential, and must not without the State's prior written consent:

- (a) disclose the Confidential Information to any person, other than those Contract Workers requiring the Confidential Information for the purposes of:
 - (i) provision of the Services or the discharge of the Contractor's Obligations; or
 - (ii) complying with any Act or the requirements of any Government Agency; and
- (b) use or permit any Contract Worker to use any of the Confidential Information for any purpose other than the purposes specified in clause 35.1(a).

35.2 Departmental System

The Parties agree that:

- (a) the information stored on the Departmental System forms part of the Confidential Information; and
- (b) the requirements of this clause 35 apply to all information stored on the Departmental System.

35.3 Permitted disclosure

The Contractor may disclose Confidential Information:

- (a) which is at the time lawfully in the possession of the proposed recipient of the information through sources other than the Contractor or a Related Party;
- (b) in enforcing this Agreement or in a proceeding arising out of or in connection with this Agreement;
- (c) in order to comply with any applicable Legislative Requirements or the applicable rules of any stock exchange on which the Contractor's or Parent Guarantor's shares may be listed;
- (d) as required or permitted by this Agreement;
- (e) to its legal advisers for the purposes of this Agreement or for the purposes of advising the Contractor in relation to this Agreement; or
- (f) with the prior written consent of the State.

35.4 Third parties

The Contractor undertakes and warrants that any person to whom Confidential Information is made available, communicated or disclosed as permitted under this clause, will be subject to, and maintain, the obligations of confidentiality contained in this clause 35.

35.5 Compulsory disclosure

- (a) If the Contractor, or any person to whom the Contractor discloses the Confidential Information, becomes legally compelled to disclose the Confidential Information, the Contractor must immediately notify the State so that the State may seek a protective order or other appropriate relief.
- (b) The Contractor must only disclose that part of the Confidential Information which is legally required to be disclosed and will take all reasonable steps to obtain a protective order or other assurances that the confidentiality of the Confidential Information will be maintained.

35.6 Contractor's Confidential Information

- (a) Without limiting clause 35.6(b), the State must keep the Contractor's Confidential Information confidential. The State must not use or disclose to any person the Contractor's Confidential Information except:
 - (i) to the extent necessary for the purpose of performing the State's obligations under this Agreement;
 - (ii) as authorised in writing by the Contractor;
 - (iii) when required (and only to the extent required) by the State's professional advisers, and the State must ensure those professional advisers are bound by the confidentiality obligations imposed on the State under this clause 35;
 - (iv) to any Minister of the government of the State;
 - (v) to any other Government Agency;
 - (vi) to the Auditor General for the purpose of satisfying its statutory duties;
 - (vii) to satisfy the requirements of any Government Agency, administrative or judicial body or tribunal;
 - (viii) to comply with any policies of the State;
 - (ix) to the extent the State believes it is necessary to disclose the information to publicly demonstrate the financial benefit and value of the Services or this Agreement;
 - (x) to complete any annual reports to any Government Agency;
 - (xi) to meet disclosure obligations the State may have:
 - (A) under any current or future Law;
 - (B) to satisfy the requirements of parliamentary accountability or any other reporting or recognised public obligations of the House of the Parliament of the Commonwealth of Australia or any State or Territory or any Parliamentary committee;
 - (C) under reporting obligations of the State; or
 - (D) to satisfy any other recognised public requirement,

provided that at all times the State must disclose only such Contractor's Confidential Information as the State, acting reasonably, believes is necessary to meet the disclosure obligations of the State, as set out in this clause 35.6.

- (b) Nothing in clause 35.6(a) prevents any disclosure of the Contractor's Confidential Information made by a Minister of the State or the director general or any chief executive of the Department:
 - (i) in responding to questions, making a public statement, or releasing information in relation to a matter of public interest; or
 - (ii) otherwise in the performance of their functions or the discharge of their duties.

35.7 Media releases

The Contractor must:

- (a) obtain the State's prior written consent to:
 - (i) issue any information, document or article in respect of the Services, the Prison or this Agreement for publication in any media; or
 - (ii) nominate the Prison or the Services for any award;
- (b) give due recognition to the State where the State consents to a matter specified in clause 35.7(a);
- (c) refer all enquiries from any media concerning the Prison, the Services or this Agreement to the State, and thereafter, promptly provide to the State details of all enquiries, and any material or information released by the Contractor following the State's consent; and
- (d) not facilitate media releases by third parties relating to the Prison without obtaining the prior written consent of the State.

35.8 No association

The Contractor must not, and must ensure Subcontractors do not:

- (a) use the name of the State or any State's Associate, or attempt in any way to obtain a benefit from the image or reputation of the State or any State's Associate; or
- (b) hold out to any third party that the Contractor has an association or connection with the State or any of the State's Associates other than the Contractor's engagement under this Agreement,

without obtaining the State's prior written consent.

35.9 Public Documents

- (a) The Contractor acknowledges that the State is obliged under the Prisons Act to lay before each House of Parliament:
 - (i) certain reports concerning the operations of the Contractor, the Services, the Prison and this Agreement; and
 - (ii) this Agreement and any amendments to this Agreement.
- (b) Nothing in this Agreement prevents or restricts the State from complying fully with its obligations under the Prisons Act.

- (c) The Contractor further acknowledges that this Agreement and any amendment to this Agreement will become public documents.
- (d) The State may publish this Agreement on a publicly accessible website.

35.10 Continuing Obligation

This clause 35 will survive the termination of this Agreement.

36. Review Procedures

36.1 Application of Review Procedures

- (a) Except where this Agreement expressly provides otherwise, or where context does not permit, the Review Procedures apply to the submission by the Contractor to the State of all any plans, manuals (including the Prison Operating Manual), lists, Training Programs, registers or other documents the subject of State review or approval under this Agreement (each a **Submitted Document**).
- (b) The Review Procedures do not apply to documents which must be maintained by the Contractor but are not required to be submitted to the State for review, including the:
 - (i) Live Asset Register; and
 - (ii) Contractor Resources Register.

36.2 Submitted Documents

- (a) Unless this Agreement provides otherwise, Submitted Documents must:
 - (i) be clearly drafted;
 - (ii) impose clear, precise and unambiguous obligations on the Contractor;
 - (iii) not seek to impose obligations on the State or any State's Associate;
 - (iv) be consistent with this Agreement and achieve the purpose for the relevant Submitted Documents contemplated in or implicit from this Agreement, and
 - (v) be reflective of Best Industry Practice.
- (b) With each Submitted Document, the Contractor must provide:
 - (i) details of the Submitted Document, its nature and the relevant clause or Schedule of this Agreement under which it is submitted for review; and
 - (ii) any other information required under this Agreement or otherwise necessary for the review of the Submitted Document in accordance with these Review Procedures.
- (c) Except where this Agreement expressly provides otherwise, the Contractor must provide the following copies of the Submitted Documents to the State for review in accordance with these Review Procedures:

- (i) one paper copy original; and
- (ii) one electronic version in .pdf format.
- (d) Where the Agreement expressly sets out a format for a Submitted Document, the State may agree to a different format.

36.3 Further information

The Contractor must promptly upon request by the State:

- (a) submit any further information, data or documents; and
- (b) make available appropriately qualified personnel,

that the State reasonably requires in order to review or procure the review of a Submitted Document in accordance with these Review Procedures.

36.4 Time for State review

- (a) Subject to remainder of this clause, the State must review Submitted Documents within 20 Business Days (or such longer period as the Parties may agree) of receipt.
- (b) The State must review the initial draft of the Prison Operating Manual within 30 Business Days of receipt.
- (c) If a Submitted Document is not reviewed within the time period for State review contemplated in this clause 36.4, the Contractor must send a notice to the State requiring State review of the Submitted Document within 5 Business Days of the notice.
- (d) If the State fails to respond to a Submitted Document within the further 5 Business Day period:
 - (i) the document will be deemed rejected and the previously approved version of that document (if any) will continue to apply; and
 - (ii) the Contractor may issue a Default Notice under clause 23.1, provided that the Default will be capable of remedy by State review of the Submitted Document.

36.5 State review

- (a) The State must approve or reject any Submitted Document.
- (b) If the State rejects any Submitted Document, the State must provide comments on why the document was rejected. The State may, in its discretion, also provide detailed comments as to the changes to the Submitted Document that if made, might render the Submitted Document suitable for acceptance. Such comments may include additional matters the Submitted Document must address, or additional content the Submitted Document must contain.
- (c) The State may approve or reject Submitted Documents, and provide comments on Submitted Documents in its discretion. Unless this Agreement otherwise provides, the State must act reasonably in exercising its discretion.

36.6 Resubmission

- (a) If the State rejects a Submitted Document, the Contractor must, within 10 Business Days of receiving the State's comments (or such longer period as the State may specify in its comments) amend the Submitted Document to address the State's comments, and resubmit that document for State approval in accordance 36.2.
- (b) Subject to clause 36.7 the processes in clauses 36.2 to 36.6 will continue until the Submitted Document is approved by the State.

36.7 Inability to reach agreement

- (a) If:
 - (i) the State does not accept a Submitted Document on the third occasion it is submitted for approval (or any resubmission thereafter);
 - (ii) in the reasonable opinion of the State, the Contractor has not substantively attempted to address the State's comments in any resubmission of a Submitted Document; or
 - (iii) the Contractor does not resubmit a Submitted Document within the time limit contemplated in clause 36.6,

the State may Direct the Contractor to amend the Submitted Document in accordance with the requirements of the Direction, and resubmit the document for State approval, and the Contractor must comply with any such Direction.

- (b) If the Contractor considers a Direction under this clause 36.7 is unreasonable, and wishes to assert that a Variation has arisen, the Contractor must raise the matter in accordance with clause 19.8(b) within the time period set out on that clause.

36.8 Approved Submitted Document

- (a) On approval of a Submitted Document by the State, the Submitted Document will become the Approved Submitted Document.
- (b) Until a Submitted Document is approved by the State, the version of that document most recently approved under this clause 36 will remain the current Approved Submitted Document for the purposes of this Agreement.
- (c) Subject to clause 36.8(d) the Contractor must comply with, deliver the Services in accordance with, or discharge the Contractor's Obligations in accordance with, all current Approved Submitted Documents to the extent relevant.
- (d) No Approved Submitted Document operates to:
 - (i) impose obligations on the State or any Associate of the State;
 - (ii) entitle the Contractor to payment or reimbursement greater than as set out in this Agreement;
 - (iii) alter the nature of the Services as defined in this Agreement;

(iv) reduce or amend the Contractor's Obligations under this Agreement; or

(v) transfer any risk allocated to the Contractor under this Agreement.

36.9 Updates to Approved Submitted Documents

- (a) If this Agreement requires the Contractor to review and update any Approved Submitted Document, the Contractor must review the Approved Submitted Document, and where appropriate, prepare an updated draft.
- (b) At any time during the Operation Period, if the Contractor considers an Approved Submitted Document requires update, the Contractor may prepare an updated draft.
- (c) At any time during the Operating Period the State (acting reasonably) may Direct the Contractor to amend, update or replace an Approved Submitted Document, or part thereof. The State must give written notice to the Contractor clearly identifying the nature of the amendments, updates or replacement sought. Where the State gives a Direction under this clause 36.9(c), the Contractor must promptly prepare an updated draft in accordance with the Direction.
- (d) The Contractor must, in each update to an Approved Submitted Document that is submitted for State review, clearly identify all proposed amendments in track changes against the current version of the relevant document.
- (e) Any updated draft prepared pursuant to this clause 36.9 must be submitted for State approval pursuant to clause 36.2, and clauses 36.2 to 36.8 will apply to that review.
- (f) In respect of Submitted Documents which are subject to an annual review and update cycle, the State, in consultation with the Contractor, may develop an annual program for resubmission which avoids unnecessary peaks and troughs in redrafting and reviewing work. If the State wishes to develop such a program, the Contractor must engage constructively in the development of such a program.

36.10 Effect of State Review

The Contractor acknowledges that neither State approval of a Submitted Document, nor comments made by the State in relation to a Submitted Document:

- (a) operate to release of the Contractor from the Contractor's Obligations or its responsibility to provide the Services in accordance with the standards and any other requirements of this Agreement and the Prisons Act;
- (b) give rise to any assumption by the State of any responsibility or liability as to the adequacy of the Contractor's arrangements to meet the standards and requirements of this Agreement and the Prisons Act;
- (c) limit or affect the provision of the Contractor's warranties or indemnities given under this Agreement; or
- (d) constitute any express or implied representation, election, waiver or acquiescence on the part of the State.

37. DISPUTE RESOLUTION

37.1 Disputes

- (a) The Parties agree that, unless and until a Party has complied with the requirements of this clause 37, a Party may not commence any court proceedings in connection with any Dispute except if that Party seeks urgent interlocutory injunctive or urgent interlocutory declaratory relief.
- (b) Despite the existence of a Dispute or the referral of the Dispute for resolution in accordance with this clause 37, each Party must continue to comply with its obligations in accordance with this Agreement, except for any obligations that cannot be performed because of the Dispute.

37.2 Dispute Notice

- (a) If a Dispute relating to, or arising out of, this Agreement arises then a Party may deliver to the other Party a notice which:
 - (i) states that it is a Dispute Notice under this clause 37; and
 - (ii) sets out the Party's contentions including any relevant legal basis of claim; and
 - (iii) includes or is accompanied by reasonable particulars of the Dispute,

(Dispute Notice).

37.3 Negotiation by senior representatives of the Parties

Within 20 Business Days after the date of the Dispute Notice, the Deputy Commissioner, Operational Support (or a person occupying an equivalent position within the State) and a senior executive of the Contractor must meet and reasonable endeavours to resolve the Dispute.

37.4 Allocation to expert determination or mediation

If the Dispute is not settled under clause 37.3 within 15 Business Days of the meeting contemplated at clause 37.3, the Dispute will be allocated to mediation or expert determination in accordance with the following:

- (a) if a specific provision of this Agreement provides that the Dispute will be resolved by expert determination, the Dispute will be referred for expert determination under clause 37.5;
- (b) if the Parties otherwise agree the Dispute will be resolved by expert determination, the Dispute will be referred for expert determination under clause 37.5; or
- (c) if neither paragraph (a) nor paragraph (b) apply, the Dispute will be referred for mediation pursuant to clause 37.6.

37.5 Expert Determination

If a Dispute is referred for expert determination, the following provisions will apply:

- (a) If a specific provision of this agreement (outside of this clause 37.5) addresses the identity of the independent expert or how an independent expert is appointed, those provisions will apply.
- (b) Subject to clause 37.5(a):
 - (i) the Parties must attempt to choose and appoint an independent expert; and
 - (ii) in the absence of agreement by the Parties as to the independent expert within 5 Business Days, the independent expert will be appointed on the application of any Party by the chairperson of the Resolution Institute, or a deputy chairperson acting as the chairperson's delegate.
- (c) The independent expert must make a determination or finding on the issues in Dispute as soon as practicable and in any event within 15 Business Days of appointment, or such longer period as may be agreed between the Parties.
- (d) The independent expert will act as an expert and not as an arbitrator.
- (e) The independent expert will determine the Dispute in accordance with the expert determination rules published by the Resolution Institute (as updated from time to time), as modified by or unless inconsistent with this clause 37.5.
- (f) The independent expert's decision will be final and binding on the Parties save for fraud or manifest error.
- (g) The costs of the independent expert will be borne by the Parties equally or as the independent expert may otherwise determine and each Party will bear its own costs relating to the independent expert's decision.
- (h) If the independent expert is unwilling or unable to resolve the Dispute, the Dispute (or any unresolved aspects of the Dispute) will be referred for mediation under clause 37.6.

37.6 Mediation

If a Dispute is referred for mediation, the following provisions will apply:

- (a) The Parties will submit the Dispute to mediation in accordance with the mediation rules of the Resolution Institute as applicable at the date of the Dispute.
- (b) Unless the Parties otherwise agree, the mediator will be:
 - (i) a retired judge of the High Court of Australia or the Supreme Court of a State or Territory of Australia; or
 - (ii) a dispute resolution practitioner with legal qualifications and at least 20 years' experience in the legal profession,

and will be appointed on the application of any Party by the chairperson of the Resolution Institute, or a deputy chairperson acting as the chairperson's delegate

- (c) Any mediation meetings and proceedings under this clause 37.6 must be held in Perth, Western Australia.
- (d) The costs of any mediation meetings and proceedings under this clause 37.6 will be shared equally between the Parties.
- (e) If mediation fails to resolve the Dispute (or any aspect thereof) either Party may initiate litigation.

37.7 Parties may agree alternate Dispute resolution pathway

The Parties may, by written mutual agreement and at any time, agree to a Dispute resolution process which is different to that documented in this clause 37.

38. ASSIGNMENT AND OWNERSHIP

38.1 Assignment by the Contractor

Except as expressly permitted in accordance with this Agreement, the Contractor must not assign, mortgage, novate, charge or otherwise Encumber this Agreement, without the prior consent of the State (which the State may grant or withhold in its absolute discretion) and on such terms and conditions as are determined by the State.

38.2 Restrictions on sale, lease and parting with possession

The Contractor must not:

- (a) create or allow to exist any security interest (including a Security Interest) over; or
- (b) lease, license, transfer, sell, dispose of, part with possession of, or otherwise deal with,

the whole or any part of the Prison or the Prison Site, except as expressly permitted in accordance with this Agreement or as otherwise consented to by the State in its absolute discretion.

38.3 Assignment by the State

- (a) Subject to clause 38.3(b) the State must not sell, transfer, assign or otherwise dispose of its interest in this Agreement without the prior consent of the Contractor.
- (b) The consent of the Contractor is not required in accordance with clause 38.3(a) where:
 - (i) the Contractor has been provided with details of the proposed transferee and the terms and conditions of the proposed transfer;
 - (ii) the proposed transferee is a Government Agency which is an agent of, or the obligations of which are supported by, the State of Western Australia; and
 - (iii) the proposed transferee has agreed to be bound by this Agreement.

38.4 Change in Control

- (a) The Contractor must ensure that there is no Change in Control of the Contractor without the prior consent of the State.
- (b) If a Change in Control of the Contractor occurs due to the transfer of shares, units or other interests which are publicly listed on any stock exchange, the Contractor must notify the State as soon as reasonably practicable upon becoming aware of the occurrence of the Change in Control.
- (c) Any request seeking the consent of the State to a Change in Control must include:
 - (i) the identity and address of each proposed Controller;
 - (ii) the extent and nature of the proposed Change in Control; and
 - (iii) all other information necessary for the State to determine:
 - (A) whether to consent to the Change in Control of the Contractor; or
 - (B) the Probity Investigations (if any) the State wants to undertake.
- (d) The State must, within 10 Business Days of receiving a request in accordance with clause 38.4(c), notify the Contractor whether:
 - (i) the State consents to the proposed Change in Control of the Contractor (and if the State does not consent, the reasons for this); or
 - (ii) the State needs to conduct a Probity Investigation in connection with the Change in Control prior to making a determination whether or not to consent to the Change in Control.
- (e) The Contractor must notify the State within 5 Business Days of it becoming aware of any Change in Control of a Subcontractor.

39. SUBCONTRACTING AND THIRD PARTY SERVICES

39.1 Permitted subcontracting

- (a) The Contractor must not subcontract any part of the Services except in accordance with the requirements of this clause 39.
- (b) The Contractor may not subcontract the whole of the Services.

39.2 Prohibition on subcontracting all of the Services

- (a) The Contractor must obtain the State's prior consent to enter into each proposed Subcontract (including a replacement Subcontract following the termination of a Subcontractor).
- (b) The Contractor must not enter into any Subcontract (or seek State consent to do so) unless the proposed Subcontractor is an experienced, creditworthy, reputable and competent party which holds any necessary registrations or licences and which will have sufficient resources to perform the works or the services the subject of the proposed Subcontract.

39.3 Application for consent to Subcontractors

- (a) In seeking State consent to a proposed Subcontract, the Contractor must provide the State with a package containing:
 - (i) a description of the specific components of the Services that the Contractor proposes to Subcontract;
 - (ii) the identity, background and qualifications of the proposed Subcontractor and any other information required for a fit and proper person check;
 - (iii) the terms of the proposed Subcontract; and
 - (iv) if the proposed Subcontract is one in respect of which the State bears actual cost exposure, a description of the competitive process that has been followed in engaging the proposed Subcontractor.
- (b) The State may approve or disapprove any proposed Subcontract in the State's discretion, and may attach conditions of approval.

39.4 Key Subcontracts

- (a) The Contractor must employ or engage the Key Subcontractors listed in Schedule 1 to perform the in the relevant roles and functions stated in Schedule 1.
- (b) A Subcontractor who is specified in Schedule 1 as a Key Subcontractor:
 - (i) will be deemed to meet the requirements of clause 39.2(b); and
 - (ii) the package provided under clause 39.3(a) need not contain the content contemplated at clause 39.3(a)(ii) or clause 39.3(a)(iv),but the processes in this clause 39 will otherwise apply to the engagement of Key Subcontractors.

39.5 Conditions for Subcontractors

Unless the State otherwise approves, all Subcontracts must:

- (a) contain requirements equivalent to those contained at clauses 12, 16.10, 16.11 and 35;
- (b) entitle the Contractor to terminate the Subcontract if the State exercises its rights:
 - (i) to terminate this Agreement pursuant to clauses 26, 27 or 28; or
 - (ii) at clause 39.9 to require the removal of the Subcontractor;
- (c) require, at a minimum, that Subcontractors pay their employees the rates and allowances set out in applicable Industrial Award, Agreement or Order; and
- (d) require Subcontractors to appoint, and use, in performing any of the Services, persons who possess appropriate skill, expertise and qualifications to meet the requirements of this Agreement;

- (e) provide the Minister, the CEO any person authorised by the CEO (accompanied by any assistants, prison dogs and equipment considered necessary) with free and unfettered access to all documents in the possession of the Subcontractor in relation to any of the Services;
- (f) acknowledge, and reserve a right of termination or suspension, to take account of the CEO's Statutory Power to intervene in, terminate or suspend this Agreement under Division 5 of Part IIIA of the Prisons Act; and
- (g) include any other provisions reasonably required by the State from time to time.

39.6 Novation Deeds

- (a) The Contractor must, in respect of each Key Subcontract, and each other Subcontracts required by the State, upon execution of that Subcontract, deliver to the State a deed in favour of the State in the form set out in Schedule 9, executed by the Contractor and the relevant Subcontractor.
- (b) The State may, on:
 - (i) termination of this Agreement (on any basis);
 - (ii) exercise of take out rights pursuant to clause 25;
 - (iii) expiry of this Agreement where the State has not extended this Agreement for a Further Period; or
 - (iv) negotiated early termination of this Agreement,
 and by notice to the Contractor, require the Contractor to novate all rights and obligations under one or more of the Subcontracts from the Contractor to the State on the terms of the deed executed under this clause 39.6.
- (c) A notice under this clause 39.6 must state a date on which the novation is to take effect (being the 'Execution Date' as referred to in the deed). The novation is given effect by the State executing the deed provided under clause 39.6(a) in respect of the relevant Subcontract.

39.7 Information requirements

The Contractor must:

- (a) provide to the State a copy of each Subcontract after it has been executed; and
- (b) keep the State informed in relation any material issues that may arise in relation to the Subcontract and its performance.

39.8 Amendment of Subcontracts

- (a) The Contractor must not:
 - (i) materially amend the terms of a Subcontract; or
 - (ii) subject to clause 39.8(b), terminate a Subcontract,
 without the consent of the State (not to be unreasonably delayed or withheld).

- (b) The Contractor does not require the consent of the State to terminate a Subcontract (other than a Key Subcontract) where the Contractor intends to deliver the relevant Services itself.

39.9 Removal of Subcontractors

- (a) The State may at any time during the Operation Period, Direct the Contractor to terminate a Subcontract (including a Key Subcontract) if:
 - (i) the Subcontractor's performance under the Subcontract is deficient;
 - (ii) material misrepresentations were made to the State by the Contractor or by the Subcontractor in relation to the Subcontract;
 - (iii) there is a Change in Control of the Subcontractor and the State (acting reasonably) considers that the incoming Controller is not an experienced, creditworthy, reputable and competent party;
 - (iv) such termination is reasonably required in order to avoid or manage the occurrence of a Probity Event; or
 - (v) the State has any other reasonable cause for doing so.
- (b) The Contractor must comply with a Direction given under clause 39.9(a).
- (c) The Contractor must bear its own costs arising in connection with the removal of any Subcontractor under this clause 39.9.

39.10 Contractor's liability not affected

If the Contractor enters into a Subcontract, the Contractor:

- (a) is not relieved of any obligation or liability under this Agreement;
- (b) must ensure the full and complete performance of the Services in accordance with this Agreement; and
- (c) must ensure that where any person is engaged or to be engaged as a Contract Worker by a Subcontractor, all provisions of this Agreement dealing with Contract Workers are fully complied with as if that person were engaged directly by the Contractor.

39.11 Liability for Subcontractors

The Contractor will be fully liable to the State for any Claim made against, or Loss suffered or incurred by, the State as a result of any:

- (a) act, default, neglect or omission on the part of; or
- (b) lack of skill or judgment by,

any Subcontractor or any employee, agent or contractor of the Subcontractor, as if that act, default, neglect or omission, or lack of skill or judgment (as the case may be) was the Contractor's.

39.12 No contractual relationship with Subcontractors

Nothing in this Agreement creates any contractual relationship between the State and any Subcontractor or supplier to the Contractor.

40. WARRANTIES AND REPRESENTATIONS

40.1 Representations and warranties

The Contractor represents and warrants to the State that:

- (a) the Contractor has full power and authority to enter into this Agreement, provide the Services and discharge the Contractor's Obligations;
- (b) the Contractor has taken all necessary action to authorise the execution, delivery and performance of this Agreement in accordance with its terms;
- (c) the execution, delivery and performance by the Contractor of this Agreement and will not violate:
 - (i) any Law, Government Authorisation, ruling, consent, judgment, order or decree of any Government Agency;
 - (ii) its constitution or other constituent documents; or
 - (iii) any Encumbrance or document that is binding on the Contractor or any of the Contractor's assets,and does not and will not result in:
 - (iv) the creation or imposition of any Encumbrance, or restriction of any nature, on any of the Contractor's assets; or
 - (v) the acceleration of the date of payment of any obligation existing under any Encumbrance, or document that is binding upon the Contractor;
- (d) the Contractor has in full force and effect every Government Authorisation necessary to enter into this Agreement, provide the Services, perform the Contractor's Obligations and to permit this Agreement to be enforced;
- (e) this Agreement and the Parent Guarantee constitute legal, valid and binding obligations and, subject to any necessary stamping and registration, are enforceable in accordance with their terms, subject to Laws generally affecting creditors' rights, and to principles of equity;
- (f) all statements, representations and information contained in the Contractor's Proposal are true and accurate, and not misleading;
- (g) in entering into this Agreement, the Contractor has relied entirely on its own enquiries, inspections and investigations relating to this Agreement, the Services and the Prison, and the Contractor has:
 - (i) examined all information relevant to the risks, contingencies and other circumstances that could affect the Contractor's Obligations, and that the Contractor could have obtained by making usual and reasonable inquiries;

- (ii) visited and examined the Site and its surroundings and done everything possible to inform itself fully as to any condition or characteristic of the Site affecting or that may affect the Contractor's performance of the Services;
 - (iii) fully considered all actual and potential risks, contingencies and other circumstances which could have an effect on the cost of performing the Services;
 - (iv) informed itself completely of the nature and extent of the work and Contractor Resources necessary to perform the Services;
 - (v) informed itself as to the availability and cost of:
 - (A) labour in respect of Contract Workers, including the cost of complying with obligations imposed by any Industrial Award, Agreement or Order; and
 - (B) any materials or other goods or plant and equipment required as part of the Contractor Resources;
 - (vi) informed itself of the requirements of every applicable Legislative Requirement and Departmental Policy in relation to the Prison and; and
 - (vii) obtained all appropriate professional and technical advice on all matters and circumstances in respect of the matters referred to in this clause, prior to entering into this Agreement;
- (h) the Contractor was not induced to enter into this Agreement by, and has not relied on:
- (i) any statements, representations or warranties, whether orally or in writing, or contained in any brochures, expression of interest, tender or request for proposal documents provided by the State or the State's Associates including any statements, representations, or warranties relating to or in any way connected with this Agreement, the Services or the Prison, or about any financial return or income to be derived from the Services or this Agreement; or
 - (ii) any information or data made available or provided by the State or the State's Associates to the Contractor as to the Prison or the Site (including any documentation contained in or accessible through the data room maintained during the procurement process);
- (i) the Contractor had no knowledge of the price of any other proponent for the Services at the time the Contractor submitted the Contractor's Proposal;
- (j) except as disclosed in the Contractor's Proposal, the Contractor has not entered into any contract, agreement, arrangement or understanding to pay or allow any money, directly or indirectly, to or on behalf of any other proponent, in relation to the Contractor's Proposal or any contract to be entered into consequent thereon, nor paid or allowed any money on that account, nor will the Contractor pay or allow any money on that account;
- (k) the Contractor has not paid or allowed or entered into any contract, agreement, arrangement or understanding to pay or allow any money, directly or indirectly:

- (i) to or on behalf of any other proponent; nor
 - (ii) received any money or allowance from or on behalf of any other proponent in relation to the Contractor's Proposal or any contract entered into consequent thereon, nor will the Contractor pay or allow any person to receive any money on that account; and
- (l) if the Contractor paid or allowed to another proponent any money in breach of these conditions:
 - (i) the Contractor must hold that money on trust for, and immediately pay that money to the State; and
 - (ii) the State may withhold from any payment due to the Contractor on any account an equivalent amount as liquidated damages;
- (m) the Contractor is the beneficial owner of, and has good title to the Contractor Resources;
- (n) any Contractor Resources used, or that will be used, by the Contractor in performing the Services are and will be:
 - (i) of good and merchantable quality; and
 - (ii) fit in all respects for the purposes for which they are to be used;
- (o) the Contractor has no professional or contractual obligations that as at the Signature Date, or during the Operation Period, will conflict with the performance of the Services;
- (p) the Contractor is not entering this Agreement as the trustee of any trust or for and on behalf of any other person.

40.2 State's reliance on Contractor's representations and warranties

The Contractor acknowledges that in entering into this Agreement the State is relying on:

- (a) the Contractor's Proposal;
- (b) the Contractor's advice, skill and judgment in performing the Services; and
- (c) each of the Contractor's representations and warranties contained in this Agreement.

40.3 Continuation, repetition and survival of Contractor's representations and warranties

The Contractor warrants that all representations and warranties given by the Contractor under this Agreement:

- (a) will remain unaffected despite any review, comment, approval or Direction by the State or any of the State's Associates;
- (b) survive the execution of this Agreement and the expiry of the Operation Period;
- (c) are regarded as repeated on each day during the Operation Period with respect to the facts and circumstances then subsisting; and

- (d) are independent, and are not limited by reference to any other warranties in this Agreement.

40.4 State's representations and warranties

The State represents and warrants that:

- (a) the State has full power and authority to enter into and perform the State's Obligations;
- (b) the State has taken all necessary action to authorise the execution, delivery and performance of this Agreement in accordance with its provisions;
- (c) this Agreement constitutes legal, valid and binding obligations and, subject to any necessary stamping and registration, is enforceable in accordance with its provisions, subject to principles of equity; and
- (d) the execution, delivery and performance by the State of this Agreement does not and will not violate any Law, Government Authorisation, ruling, consent, judgment, order or decree of any Government Agency.

40.5 No other representations or warranties by State

The Contractor acknowledges that, except for:

- (a) the express representations and warranties set out in this Agreement; and
- (b) those implied provisions or warranties that are imposed by any Act that are mandatory and cannot be excluded,

the State gives no warranties regarding:

- (c) this Agreement;
- (d) the Services;
- (e) the Site, the Prison, the Prison Infrastructure, the Prison Equipment, the State Resources or any other goods or services, supplied or to be supplied by the State; or
- (f) the accuracy or adequacy of any information provided to the Contractor as to the Prison or the Services, and the State will not be liable to the Contractor, and the Contractor will have no Claim against the State, in respect of any information provided to the Contractor in respect of the Prison or the Services.

41. CONTRACTOR'S RELATIONSHIP WITH THE STATE

41.1 Independent contractor

The Contractor is an independent contractor and must, unless otherwise provided by this Agreement, exercise independent control, management and supervision in the performance of the Services.

41.2 Relationship

The relationship between the State and the Contractor is that of principal and independent contractor, and nothing in this Agreement is to be taken as constituting

the Contractor or any Contract Worker or Subcontractor as an employee or agent of the State or any State's Associate.

41.3 No agency

- (a) The Contractor acknowledges that, except to the extent otherwise expressly provided in this Agreement:
 - (i) the Contractor is not the legal representative, agent, joint venturer or partner of the State, or of any of the State's Associates for any purpose; and
 - (ii) neither the Contractor nor any Contract Worker has any right or authority to assume or create any obligations of any kind, or to make any representations or warranties or behalf of the State, or any of the State's Associates in any respect.
- (b) The State acknowledges that, except to the extent otherwise expressly provided in this Agreement:
 - (i) neither the State nor or any of the State's Associates is, for the purposes of this Agreement, the legal representative, agent, joint venturer or partner of the Contractor for any purpose; and
 - (ii) neither the State nor or any of the State's Associates has any right or authority to assume or create any obligations of any kind, or to make any representations or warranties on behalf of the Contractor or to bind the Contractor in any respect.

41.4 Relationship of the Parties

No duty of good faith is implied on the State in connection with its relationship with the Contractor.

41.5 No employment

Notwithstanding that any person employed by the Contractor may be, or be treated as being under the control or direction of the State or the State's Associates:

- (a) neither the State, nor any of the State's Associates is to be considered the employer of that person; and
- (b) the Contractor is fully responsible for all obligations and liabilities arising out of the employment of that person in connection with any work under this Agreement whether in respect of the death of or injury to that person or anything else relating to that person.

42. NOTICES

42.1 General Notices

- (a) Unless this Agreement otherwise provides, each communication (including each notice, consent, approval, request and demand) in accordance with or in connection with, this Agreement (in this clause 42.1 **'Notices'**):
 - (i) must be in writing; and
 - (ii) must be signed by a person who is authorised to give Notices on that Party's behalf).

- (b) All Notices must be:
- (i) delivered or posted by prepaid post to the address; or
 - (ii) sent by email in the form of a .pdf file of the Notice to the email address,
- set out in Schedule 1 (or as updated from time to time).
- (c) Subject to clause 42.1(d), a Notice is taken to be received by the addressee:
- (i) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
 - (ii) in the case of email, at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the Party sending the email; and
 - (iii) in the case of delivery by hand, on delivery.
- (d) If the communication is received on a day which is not a Business Day or after 5.00pm, it is taken to be received at 9.00am on the next Business Day.
- (e) In connection with communications sent by email:
- (i) the email must be sent with automatic receipt request;
 - (ii) only the Notice in .pdf format attached to the email and any attachments to such Notice which are referred to in the Notice, will form part of the communication in accordance with this clause 42.1. Any text in the body of the email or the subject line will not form part of the communication; and
 - (iii) the Contractor must ensure that, in connection with any communications in accordance with or in connection with this Agreement:
 - (A) its firewall or mail server (or both) (as applicable):
 - (I) allows messages of up to 14 MB to be received;
 - (II) does not trap any messages in the spam filter which have been sent from any State domain; and
 - (III) automatically sends a receipt notification to the sender upon receipt of a message; and
 - (B) its systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.

42.2 Notice of Claims

Except if this Agreement expressly sets out the timeframes for the delivery of Notices, the State will not be liable upon any Claim by the Contractor in connection with this Agreement or the Prison unless the Contractor gives the State:

- (a) a Notice in which the Contractor states that it intends to submit a Claim and the event on which the Claim will be based and which must be given to the State no later than 15 Business Days from the earlier of when the Contractor:
 - (i) first became aware; or
 - (ii) ought reasonably to have become aware,of the events on which the Claim is based; and
- (b) a Claim within 20 Business Days of giving Notice in accordance with clause 42.2(a), which must include:
 - (i) detailed particulars concerning the events on which the Claim is based;
 - (ii) the legal basis for the Claim whether based on a term of this Agreement or otherwise, and if based on a term of this Agreement, 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.

42.3 Continuing events

If the Contractor has submitted a Claim in accordance with clause 42.2(b) and the events upon which the Claim is based or the consequences of the events are continuing, the Contractor must update the information given pursuant to clause 42.2(b) every 20 Business Days, until 21 Business Days after the events or consequences have ceased.

43. PERSONAL PROPERTY SECURITIES ACT

43.1 State's Personal Property

For the purposes of this clause 43,

- (a) **'State Personal Property'** means all personal property the subject of a security interest granted in favour of the State under this Agreement; and
- (b) words and phrases used which have a defined meaning in the PPS Law have the same meaning as in the PPS Law unless the context otherwise requires.

43.2 Further assurance

If the State determines that this Agreement (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Contractor agrees to do anything (including obtaining consents, signing and producing documents,

getting documents completed and signed and supplying information) which the State asks and considers necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective;
- (b) enabling the State to apply for any registration, complete any financing statement or give any notification, in connection with the security interest so that the State has the priority required by it; or
- (c) enabling the State to exercise rights in connection with the security interest.

43.3 No requirement for PPSA notices

The State need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given and cannot be excluded.

43.4 Priority of State's interest

Nothing in this Agreement will be taken or construed as an agreement or consent by the State to:

- (a) subordinate the State's interest in State Personal Property (or any part thereof) to any other Encumbrance or interest affecting State Personal Property at any time; or
- (b) delay the time when a security interest created or provided for under this Agreement attaches to the relevant collateral.

43.5 Notices to be given to the State

The Contractor must notify the State in writing as soon as the Contractor becomes aware of any of the following:

- (a) any personal property which does not form part of State Personal Property becomes an accession to State Personal Property and is subject to a security interest in favour of a third party that has attached at the time it becomes an accession;
- (b) if any State Personal Property is located or situated outside Australia; and
- (c) upon request by the State, of the present location or situation of any State Personal Property.

43.6 Negative undertakings

The Contractor must not:

- (a) create any security interest or lien over any State Personal Property whatsoever (other than security interests granted in favour of the State under the Agreement);
- (b) sell, lease or dispose of its interest in or control or use of any State Personal Property;
- (c) give possession of State Personal Property to another person other than the State or where the State expressly authorises it to do so;

- (d) permit any State Personal Property to become an accession to or commingled with any asset that is not part of the Prison;
- (e) change its name without first notifying the State of the new name not less than 15 Business Days before the change takes effect;
- (f) relocate its principal place of business outside Australia or change its place of registration or incorporation;
- (g) move any State Personal Property outside Australia; or
- (h) allow any other person to acquire control of any personal property forming part of State Personal Property at any time.

43.7 Enforcement

To the extent that Chapter 4 of the PPS Act would otherwise apply to an enforcement by the State of any security interest in State Personal Property, the Contractor and the State agree that the following provisions of the PPSA do not apply, to the extent the PPSA allows them to be excluded:

- (a) **(enforcement methods)** sections 118 (Enforcing security interests in accordance with land law decisions), 125 (Obligation to dispose of or retain collateral), 129(2) and (3) (Disposal by purchase), 134(2) (Proposal of secured party to retain collateral), 136(3) and 136(4) (Retaining collateral free of interests) and 137 (Persons entitled to notice may object to proposal);
- (b) **(notices)** sections 95 (Secured party must give notice of removal of accession), 121(4) (Enforcement of security interests in liquid assets – notice to higher priority parties and grantor), 127 (Seizure by higher priority parties – notice), 130 (Notice and disposal of collateral), 132 (Secured party to give statement of account), and 135 (Notice of retention of collateral) and 136(5) (Retaining collateral free of interests); and
- (c) **(rights to remedy)** sections 142 (Entitled persons may redeem collateral) and 143 (Entitled persons may reinstate security agreement).

43.8 Assistance with registration

- (a) The Contractor must provide all necessary information and take all necessary action and execute all necessary documents as reasonably take or requested by the State to enable the State to perfect, within the time limit specified in the PPSA, any security interest created or provided for by this Agreement in relation to any personal property including any security interest granted temporary perfection under the PPSA at any time.
- (b) The Contractor must promptly provide all necessary information and take all necessary action (including obtaining any consent or agreement or giving any notice) to enable the State to register fully valid and effective financing statements or financing change statements with respect to any security interest held or intended to be held by the State under this Agreement at any time.

43.9 State's interest remains unaffected

The State's interest in State Personal Property is not affected by anything which, but for this provision might have that effect, including any failure to perfect or to continuously perfect (within the meaning of the PPSA) the security interest in relation to any personal property forming part of State Personal Property at any time.

43.10 Costs and expenses relating to PPSA and registration

Each Party agrees that it will pay its own costs in connection with anything either Party is required to do under this clause 43.

43.11 Confidentiality for the purposes of the PPSA

- (a) Notwithstanding clause 35, neither the State nor the Contractor will disclose information of the kind mentioned in section 275(1) of the PPSA in response to a request under Section 275(1) of the PPSA and the Contractor will not authorise, and will ensure that no other Party authorises, the disclosure of such information.
- (b) Clause 43.11(a) does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

44. GENERAL

44.1 Costs

The State and the Contractor must each pay their own legal and other costs in connection with the preparation and signing of this Agreement.

44.2 Stamp duty

The Contractor is solely responsible for, and must indemnify the State against, any stamp duty that is payable on or in relation to:

- (a) this Agreement; and
- (b) any instrument or transaction that this document contemplates.

44.3 Approvals, consents, determinations or waivers

Subject to any express provision of this Agreement, where any approval, consent, determination or waiver is required from or to be made by the State:

- (a) the Contractor must obtain that approval, consent, determination or waiver in writing; and
- (b) the State may:
 - (i) grant or refuse that approval or consent, make that determination or waiver, in the State's absolute discretion, without giving any reason for that grant or refusal or making; and
 - (ii) grant that approval or consent, or make that determination or waiver, subject to any conditions the State may impose.

44.4 Waiver and estoppel

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy under any Law or under this Agreement by the State does not preclude, or operate as a waiver of, or estoppel of any form of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any Law or this Agreement.

- (b) A waiver given by the State under this Agreement is only effective and binding on the State if it is given or confirmed in writing by the State.
- (c) No waiver of a breach of a term of this Agreement operates as a waiver of any other breach of that term or of a breach of any other term of this Agreement.

44.5 Authority to date

The State, and any employee or solicitor acting for the State, may date this Agreement.

44.6 Ensure compliance by others

Where a provision of this Agreement requires the Contractor to do a thing or prohibits the Contractor from doing a thing, or imposes on a Contract Worker any obligation, the Contractor must ensure that the Contract Workers, Subcontractors and others over whom the Contractor exercises control comply with that provision or obligation.

44.7 Entire Agreement

This Agreement constitutes the entire agreement and understanding between the Parties and supersedes any prior agreement (whether in writing or not), negotiations, discussions, understandings and agreements between the Parties in relation to the subject matter of this Agreement.

44.8 State's rights, duties, powers and functions

- (a) **(State's own interests):** Unless this Agreement expressly provides otherwise, nothing in this Agreement 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 performing any of its obligations in accordance with this Agreement.
- (b) **(State's powers, functions or duties):** Notwithstanding anything contained or implied in this Agreement to the contrary, the Parties expressly agree that the State is not obliged to exercise a power, function or duty which is granted to or within the responsibility of any other Government Agency, or to influence, over-ride or direct any Government Agency in the proper exercise and performance of its legal duties and functions.
- (c) **(No fettering):** Nothing contained in this Agreement or contemplated by this Agreement has the effect of constraining the State or placing any fetter on the State's discretion to exercise or not to exercise any of its statutory rights, duties, powers or functions.
- (d) **(No Claim):** Subject to clause 44.8(e), the Contractor will not be entitled to make any Claim against the State or the State of Western Australia under this Agreement for any liability relating to any exercise or failure of the State or the State of Western Australia to exercise its statutory rights or duties.
- (e) **(Liability for breach):** Clauses 44.8(a) to 44.8(d) do not limit any liability of the State which the State would have had to the Contractor in accordance with this Agreement as a result of a breach by the State of a term of this Agreement but for clauses 44.8(a) to 44.8(d).

44.9 Further acts and documents

Each Party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to each Party) required by Law or reasonably requested by another Party to give effect to this Agreement.

44.10 Governing Law

This Agreement is governed by and will be construed according to the Laws of Western Australia and the Parties irrevocably submit to the exclusive jurisdiction of the courts of that State and the courts competent to determine appeals from those courts.

44.11 Prohibition, enforceability and severance

- (a) Any provision of, or the application of any provision of, this Agreement or any power of a Party under this Agreement which is prohibited in any jurisdiction or fetters or affects any statutory power is ineffective only to the extent of that prohibition or to the extent it fetters or affects any statutory power.
- (b) If any part of this Agreement is, or becomes, illegal, void or unenforceable, that part is or will be severed from this Agreement so that all parts that are not, or do not become, illegal, void or unenforceable remain in full force and effect and are unaffected by that severance.

44.12 Clauses to survive termination

- (a) All provisions of this Agreement which expressly or by implication from their nature are intended to survive termination, completion or expiration of this Agreement will survive such termination, completion or expiration, including any provision which is in connection with:
 - (i) the State's rights to set off and to recover money;
 - (ii) finalisation of payment to either Party upon or after the Expiry Date;
 - (iii) confidentiality, privacy, media or publicity;
 - (iv) Intellectual Property Rights;
 - (v) maintenance of or access to Records;
 - (vi) the ability of any person to undertake any statutory inquiry or investigation, or interview or access any places, persons or documents for the purposes of such inquiry or investigation;
 - (vii) any indemnity, parent company guarantee, bank guarantee or other financial security given in accordance with this Agreement;
 - (viii) any handover related obligations that arise on termination or expiry of this Agreement;
 - (ix) any right or obligation arising on termination of this Agreement; and
 - (x) any definitions or other provisions concerning the interpretation of any provision which survives termination or expiry.

- (b) Nothing in this clause 44.12 prevents any other provision of this Agreement, as a matter of interpretation, also surviving the termination of this Agreement.
- (c) No right or obligation of any Party will merge on completion of any transaction in accordance with this Agreement. All rights and obligations in accordance with this Agreement survive the execution and delivery of any transfer or other agreement which implements any transaction in accordance with this Agreement.

44.13 Amendment and waiver

No amendment, modification or waiver of any provision in this Agreement, nor consent to any departure by any Party from any such provision, will be of any effect unless it is in writing and signed by the Parties or (in the case of a waiver) by the Party giving it. Any such amendment, modification, waiver or consent will be effective only to the extent to or for which it may be made or given.

44.14 Counterparts

- (a) This Agreement may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A Party may execute this Agreement by signing any counterpart.

44.15 Attorneys

Each attorney who executes this Agreement acknowledges that, at the time of executing this Agreement, the attorney has received no notice of revocation of the power of attorney under which the attorney executes this Agreement.

44.16 Joint and several liability

If the Contractor consists of more than one person, then the rights and obligations of the Contractor in accordance this Agreement are joint and several as between those persons.

Executed in Perth.

Signed by **Dr Adam Tomison**, Director
General of the Department of Justice, for
and on behalf of **the State of Western
Australia** in the presence of:

Witness Signature

CRAIG MURPHY

Print Name

Signature

Signed by

Serco Australia Pty Limited

ABN 44 003 677 352

in accordance with section 127(1)

of the *Corporations Act 2001* (Cth)

by:

sign
here ►

Director

print
name

sign
here ►

Director/Company Secretary

print
name

Executed in Perth.

Signed by **Dr Adam Tomison**, Director
General of the Department of Justice, for
and on behalf of **the State of Western
Australia** in the presence of:

Witness Signature

Signature

Print Name

Signed by
Serco Australia Pty Limited
ABN 44 003 677 352
in accordance with section 127(1)
of the *Corporations Act 2001* (Cth)
by:

sign
here ► 
Director

print
name PETER HUGO WELLING

sign
here ► 
Director/Company Secretary

print
name Michael Anthony MacMahon

Acacia Prison Services Agreement

Schedule 1 – Contract Details

1. ADDRESS FOR SERVICE OF NOTICES

As set out below or to any other address or authorised representative specified by any Party to the sender by notice

(a) State

Attention	Manager, Acacia Prison Contract
Street address	Department of Justice David Malcolm Justice Centre Level 23 28 Barrack Street Perth WA 6000
Postal address	GPO Box F317 Perth WA 6841
Email	Juliana.DeFreitas@justice.wa.gov.au

(b) Contractor

Attention	The Company Secretary
Address	Serco Australia Pty Ltd Level 23, 60 Margaret Street, Sydney NSW 2000
Email	cosec@serco-ap.com

2. PARENT GUARANTOR

Parent Guarantor	Serco Group plc Company number: 02048608
Address	Serco House 16 Bartley Wood Business Park Bartley Way, Hook Hampshire, RG27 9UY United Kingdom

3. ROLES TO BE PERFORMED BY KEY PERSONNEL

Role	Key Person
Superintendent	Brenton Williams
Deputy Superintendent (Security and Operations)	Craig Moody
Deputy Superintendent (Prison Services)	Michael (Doug) Benson
Health Services Manager	Pansey Stewart
R&R Manager	Alysia Cesario
Facilities Management Services Manager	Ronald Shelley
Integrity Manager	Daniel Etherington

4. KEY SUBCONTRACTORS

As at the Signature Date there are no Key Subcontractors.

SCHEDULE 2 OPERATIONAL SERVICE REQUIREMENTS

Acacia Prison Services Agreement

Schedule 2 – Operational Service Requirements

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Acacia Prison Services Agreement

Schedule 2 – Operational Service Requirements

1. Custody and Containment

1.1 Emergency Management Planning and Procedures – Emergency Response Capability

- (a) The Contractor must establish a qualified response team to respond to disasters and emergencies at the Prison quickly and effectively and in accordance with the Emergency Management Plan developed under this section 1.1.
- (b) The Contractor must develop an Emergency Management Plan consistent with the Department's Corrective Services Emergency Management Framework and to a standard agreed to by the relevant Government Agencies including the Department of Fire and Emergency Services (**DFES**) and the Western Australia Police Force and must provide a copy of the Emergency Management Plan to the State for approval in accordance with the Review Procedures prior to Operations Commencement Date.
- (c) The Contractor must review the Emergency Management Plan on an annual basis as required by the Department's Corrective Services Emergency Management Framework. The updated Emergency Management Plan must be submitted to the State for approval in accordance with the Review Procedures.
- (d) The Emergency Management Plan must cover the Emergencies and the Incidents described in section 1.1(q). For the purposes of this Schedule 2, '**Emergency**' has the meaning given in the Department's Corrective Services Emergency Management Framework.
- (e) The Emergency Management Plan is required to ensure that, in the event of an Emergency or Incident at the Prison:
 - (i) control of the Prison, and of Prisoners at the Prison, is maintained or quickly recovered without threat to the community;
 - (ii) resolve any Emergencies or Incidents at the Prison as quickly and safely as possible with minimum risk to life or the safety of any person, while preventing escapes and with minimal damage to property;
 - (iii) counter disaster or emergency management measures are quickly and effectively undertaken; and
 - (iv) routine operations at the Prison are restored as quickly as possible.
- (f) The Emergency Management Plan must:
 - (i) set out clear levels of responsibilities and accountability, and specify the action to be taken, in the event of an Emergency or Incident at the Prison;
 - (ii) be available to the Contract Workers who are required to manage an Emergency or Incident;
 - (iii) be updated or amended in the light of experience; and
 - (iv) comply with the contingency planning model used by the relevant authorities.

- (g) In developing the Emergency Management Plan, the Contractor must:
 - (i) liaise with Wooroloo Prison Farm Management and the Department's Operational Support area and audit its plans and documentation to ensure compliance and full integration with the Department's incident control system;
 - (ii) meet with the relevant Government Agencies; and
 - (iii) establish relationships with the Western Australia Police Force, DFES, relevant Government Agencies and other authorities.
- (h) The Contractor must test the Emergency Management Plan on simulated and desk-top exercises against an annual testing schedule and must review, revise and re-issue the Emergency Management Plan as part of the testing process (and in response to de-briefs following Incidents in which the Emergency Management Plan was activated).
- (i) The Emergency Management Plan must have a summary 'grab-sheet' for Contract Workers to use in responding to an Emergency or Incident. Each 'grab-sheet' must contain key actions, checks and contacts.
- (j) Where an Incident may involve the activation of a combination of the Emergency Management Plan, such as a fire which requires a full evacuation of the Prison, the correlation between the relevant Incident within the Emergency Management Plan must be made clear in the detail of each Emergency Management Plan.
- (k) Sufficient trained and equipped Contract Workers must be available to respond promptly to Emergencies and Incidents that escalate to a level that jeopardises the safety of the community, Visitors and Contract Workers or the good order and security of the Prison. The Contractor must train sufficient numbers of Contract Workers in specialist areas, such as the use of compressed air breathing apparatus, to ensure it has an effective on-site response capability able to independently manage any Emergencies or Incidents at the Prison without the need for external aid for a minimum of 6 hours from the commencement of the Emergency or Incident. The Contractor must at a minimum:
 - (i) have 40 Contract Workers as part of its qualified response team established under this section 1.1 who respond to Emergencies and Incidents;
 - (ii) have 30 Contract Workers trained in the use of compressed air breathing apparatus, which Contract Workers must complete a one day refresher course in relation to this training on an annual basis; and
 - (iii) maintain eight Contract Workers trained and certified in hostage negotiations.
- (l) The Contractor may seek this training from the Department's Special Operations Group subject to the Contractor covering the Department's cost of providing this training.
- (m) In the event of an Emergency or Incident the Emergency Management Plan must provide for additional Contract Workers to be available to enable the quick activation of an emergency response team. Where necessary, the Contractor must operate a 'call-in' system to support Contract Workers already in the Prison to deal with and resolve Emergencies and Incidents without the need for external aid except as described in section 1.1(k).

- (n) All Contract Workers must be trained and resourced to respond to Incidents within the Prison. The Contractor must ensure that Contract Workers are identified for first response duties when they come on shift.
- (o) The Contractor must develop and implement procedures to ensure that Emergencies and Incidents involving the Prison or Prisoners are isolated, contained and managed to minimise risk to the community, to prevent death or serious injury to any person (including Contract Workers, Prisoners and Visitors) and to protect property.
- (p) The Contractor must develop and implement an appropriate evacuation plan consisting of staged evacuation plans of both internal and external natures, as part of the emergency planning for the Prison.
- (q) Response teams must be in place to respond to Emergencies and Incidents including:
 - (i) barricade (connected to a major disturbance);
 - (ii) bomb threat/explosion;
 - (iii) death of a Prisoner in custody;
 - (iv) death of a Contract Worker, Visitor or any other person on the Site;
 - (v) fire (including fire requiring a compressed air breathing apparatus response);
 - (vi) bush fire;
 - (vii) emergencies of nature – floods, earthquakes, severe storm etc.;
 - (viii) major disturbance (active or passive);
 - (ix) evacuations;
 - (x) Escape from Prison;
 - (xi) Escape by a Prisoner while they are being escorted by the Contractor outside the Prison;
 - (xii) intruder/external perimeter compromise;
 - (xiii) food borne illnesses or infectious diseases that may be passed on to Prisoners, Contract Workers and other persons at the Prison;
 - (xiv) loss of power or water supplies;
 - (xv) loss of catering facility;
 - (xvi) medical emergency (injury or illness);
 - (xvii) hostage situations (static and on the move);
 - (xviii) outbreak of a communicable disease;
 - (xix) pandemic;
 - (xx) public demonstrations;
 - (xxi) radio compromise;
 - (xxii) roof climber (roof top incident);
 - (xxiii) key/lock compromise;
 - (xxiv) tool loss; and

- (xxv) toxic gas/chemical spill.
- (r) The Contractor must develop a separate plan relating to the withdrawal of labour (industrial action) consistent with the Department's Corrective Services Emergency Management Framework and provide a copy of the plan to the State at the same time as the Emergency Management Plan, for approval in accordance with the Review Procedures. The Contractor must ensure:
 - (i) the plan is a confidential document;
 - (ii) no copies of the plan are included or located in the Emergency Management Plan;
 - (iii) the plan is securely stored with the Superintendent and access must be restricted.
 - (s) The Contractor must review the plan referred to in section 1.1(q) on an annual basis as required by the Department's Corrective Services Emergency Management Framework. The updated plan must be submitted to the State for approval in accordance with the Review Procedures.
 - (t) The Contractor must as soon as practicable after the Operations Commencement Date, review the locking schedule within the Prison to verify Contract Workers can effectively respond to an Emergency or Incident in accordance with the Emergency Management Plan developed under this section 1.1.
 - (u) The Contractor must detail the process for requesting assistance from the Department's Special Operations Group where necessary.
 - (v) The Contractor must ensure that Contract Workers, Government Agencies, DFES and other relevant authorities, services, organisations and persons required to retain copies of the Emergency Management Plan are familiar with the elements of the Emergency Management Plan which are relevant to them and the required outcomes of the Emergency Management Plan.
 - (w) The Contractor must ensure that all holders of the Emergency Management Plan are aware of the sensitivity of the Emergency Management Plan and that the Emergency Management Plan should be secured (but available) when not in use.
 - (x) The Contractor must use the incident management framework that has been adopted by the Department, being the Australasian Inter-Service Incident Management System (AIIMS).

1.2 Security – Key Control

- (a) The Contractor must at all times:
 - (i) manage all keys and locks at the Prison so as to keep them in good working order;
 - (ii) manage any electronic locking device at the Prison so as to keep them in good working order;
 - (iii) maintain a register of lock and key combinations at the Prison;
 - (iv) maintain a master inventory of all keys, including restraint keys; and
 - (v) maintain all keys attached to a welded or crimped key ring.

- (b) The Contractor must control the availability, storage, issue, use and retrieval of keys, security access cards, codes and locking devices and maintain secure Records of key and lock relationships.
- (c) In order to comply with its obligations under section 1.2(b), the Contractor must develop and implement systems to ensure all keys, security access cards and other locking devices for the Prison are kept secure, controlled, monitored and accounted for at all times.
- (d) The Contractor must comply with all applicable Legislative Requirements and Departmental Policies regarding the maintenance and use of keys, locks, security access cards and other locking devices at the Prison.
- (e) If any key, security access card or other locking device for the Prison is lost, damaged or destroyed or requires replacement or reprogramming, the Contractor must immediately notify the State and obtain the State's approval prior to repairing, replacing or reprogramming the relevant key, security access card or other locking device.
- (f) When sourcing any replacement key, security access card or other locking device for the Prison or engaging a Subcontractor to repair any key, security access card or other locking device for the Prison, the Contractor must use a supplier or manufacturer or a locksmith services company approved by the State.

1.3 Security – Prevention of Escapes

- (a) The Contractor acknowledges that as a provider of Prison services to the State its primary responsibility is to ensure the protection of the community through the elimination of the risk of Escapes.
- (b) The Contractor must establish, manage and monitor a fully integrated security system (consisting of rules, policies, procedures and Contract Worker training, as well as electronic early detection and physical barriers) which ensures the 24-hour security of the Prison and prevents Escapes from the Prison.
- (c) The rules, policies, and procedures referred to in section 1.3(b) must be incorporated in the Prison Operating Manual dealing with security and address the following:
 - (i) accounting for the whereabouts of each Prisoner and reporting the total number of Prisoners at the Prison to the State at prescribed intervals via TOMS;
 - (ii) perimeter and Prison gate security measures, through operation and control of access points to the Prison, including procedures and conditions of entry to the Prison and a system of identification of persons entering the Prison;
 - (iii) security systems and procedures to deter, prevent and detect Escapes;
 - (iv) movement control of Prisoners and groups of Prisoners at the Prison;
 - (v) mechanisms for separation of Prisoner groups and activities;
 - (vi) searches of Prisoners and other persons in accordance with section 1.5;
 - (vii) effective and speedy responses from Contract Workers to intercept Prisoners attempting an Escape;
 - (viii) procedures for the immediate notification of the Western Australia Police Force in the event of an Escape;

- (ix) procedures for the notification to the State in accordance with clause 16.1 of an Escape or other Notifiable Incident; and
 - (x) the system for the recording and encrypted reporting of any intelligence information on matters which could compromise the good order and control of the Prison and the Western Australia prison system as a whole or constitute a threat to the safety of the community.
- (d) The rules, policies, procedures and Contract Worker training comprising the security system must underscore the primacy of preventing Escapes.
- (e) The Contractor must prevent Escapes through:
 - (i) the use of intelligence, record keeping and monitoring of CCTV;
 - (ii) the monitoring of Prisoners who may plan an Escape or who have previously Escaped;
 - (iii) the conduct of security checks of the physical aspects of the Prison and assessment of the integrity of bars, locks, perimeter warning systems and alarm systems; and
 - (iv) the development and review of all procedures to mitigate the opportunity for a Prisoner to effect an Escape whilst in Prison or on escort ensuring compliance with the Department's minimum standards of Prisoner supervision, escort requirements and restraint.
- (f) The Contractor must ensure that each Contract Worker is trained to understand and perform his or her duties in accordance with the rules, policies and procedures relating to security contained in the Prison Operating Manual.
- (g) The Contractor must include in the security system a security intelligence function which will act as a coordination hub and analysis service for all security related matters to maximise intelligence-led prevention of Escapes.
- (h) The Contractor's management and operation of the security system at the Prison must place particular emphasis on the identification and monitoring of high-risk Prisoners who indicate a propensity to attempt Escapes or whose Escape would pose a serious threat to the community.
- (i) The Contractor must work openly and collaboratively with relevant Government Agencies, including Western Australia Police Force and the Department's Intelligence Services area and ensure that they are involved appropriately in the management and operation of the security system at the Prison.

1.4 Security – Prison Intelligence

- (a) The Contractor must develop and implement an intelligence system as part of the security framework for the Prison to gather, record, process and disseminate intelligence and information on matters that may compromise the safety and good order of the Prison and/or the West Australian prison system.
- (b) The Contractor must ensure that:
 - (i) intelligence and information gathered by way of the Contractor's intelligence system is shared with the Department's Intelligence Services area, which may

also be shared with the Western Australia Police Force and other Commonwealth law enforcement and security agencies where appropriate;

- (ii) all intelligence and information on matters that may compromise the safety and good order of the Prison, the West Australian prison system or the wider community is recorded and reported to the State in a manner and format that is consistent and compatible with the Department's Intelligence Services area and procedural requirements as notified to the Contractor from time to time; and
 - (iii) the intelligence system as part of the security framework includes the monitoring of CCTV in all areas of the Prison to ensure the good order and security of the Prison is not compromised.
- (c) In order to comply with its obligations under section 1.4(b), the Contractor must liaise with the Department's Intelligence Services area to ensure the Contractor employs systems that enable the dissemination of intelligence and information to the Department's Intelligence Services area in an acceptable format. In keeping with this commitment the Contractor must, at the Department's discretion, provide intelligence and information to the Department's Intelligence Services area daily or as frequently as the Department may determine necessary.
- (d) The Contractor must ensure that the operation of the intelligence system is overseen by the Contractor's intelligence area which will form part of an integrated security area.
- (e) The Contractor must ensure that all information gathered is treated as confidential and that all information relevant to the fulfilment of the Department's intelligence requirements (as advised by the Department's Intelligence Services area from time to time) is communicated to the State.
- (f) The Contractor's intelligence system must provide a tool for the collection and collation of data, but just as importantly, the analysis of the data so that appropriate conclusions are drawn and any risk of compromising the safety and good order of the Prison, the West Australian prison system and the whole community is either avoided or mitigated.

1.5 Security – Searching

- (a) The Contractor must establish comprehensive, robust, professional and effective systems and procedures to detect and confiscate articles that may pose a threat to the security of the Prison and the safety of persons at the Prison, or that may be used in an Escape, and document those systems and procedures in the Prison Operating Manual.
- (b) The Contractor must ensure a safe and secure environment is achieved through an effective system of searching including the monitoring of CCTV at the Prison and all Prisoners, Contract Workers and Visitors and their property.
- (c) The Contractor must conduct extensive searching of Cells at the Prison, the Prison grounds and other areas of the Prison and of Prisoners, Contract Workers and Visitors and their property in accordance with applicable Departmental Policies, and Legislative Requirements.
- (d) Searching methods utilised by the Contractor must include, as a minimum:
 - (i) visual search;

- (ii) basic search;
 - (iii) search involving a drug detection dog;
 - (iv) search involving an approved apparatus; and
 - (v) strip search.
- (e) The Contractor must ensure that Contract Workers involved in searching are provided with the appropriate equipment and training to ensure that correct searching techniques are employed and items found are recorded, stored and transferred in such a manner as to ensure continuity of evidence.
- (f) The Contractor must ensure that any Prisoner who is searched is informed of the search before it is performed and of the reasons for the search. The Contractor must work with the Prisoner to complete the search with minimum impact on them.
- (g) The Contractor must display at the Prison gate sections of the Prisons Act and the Prisons Regulations relevant to the conduct of searches and a copy of any delegation made in respect of the Prison under section 51 of the Prisons Act. As a delegation under section 51 is the statutory instrument which gives a Contract Worker the authority to search a Prisoner, the Contractor must retain copies of any such delegation at the Prison gate and make the copies available to anyone on request.
- (h) At all times the Contractor's primary aim must be to prevent the entry into the Prison of items considered to be of potential or actual threat including:
 - (i) any article that could be used to aid an Escape;
 - (ii) illicit drugs of any form;
 - (iii) medication;
 - (iv) petrol;
 - (v) solvent based glues;
 - (vi) alcohol – brewed;
 - (vii) alcohol – in pens or other items;
 - (viii) syringes;
 - (ix) smoking implements;
 - (x) weapons;
 - (xi) computer hardware and software that has not been approved;
 - (xii) personal property that has not been approved; and
 - (xiii) mobile phones or other communication devices.
- (i) The systems and procedures established by the Contractor must be designed to reduce the risk of:
 - (i) possession of any unauthorised article as specified in section 50 of the Prisons Act;
 - (ii) harm to the public, Prisoners or Contract Workers;
 - (iii) damage to property; and

- (iv) Escape or assisting an Escape.
- (j) The Contractor must ensure that a basic search and strip search is only carried out by Contract Workers of the same gender as the person being searched and who have received training in searching techniques and protocols. The Contractor must ensure that strip searches are conducted in an appropriate area not visible to other Prisoners or persons. The Contractor must ensure that all Prisoners are searched on reception at the Prison and subsequently as the State or Contractor may require.
- (k) At a minimum the Contractor must search each area of the Prison as follows:
 - (i) Cell checks – all Cells are to be security and integrity checked at a minimum of once weekly to ensure all physical components are to design standards and are safe and secure;
 - (ii) Cell searches – 15% of Cells must be searched weekly in accordance with the searching requirements incorporated into the Prison Operating Manual. The Cell search must include an inspection and interrogation of all fixtures, fittings and items within the Cell. Observation and management Cells must be searched prior to and upon cessation of a Prisoner being placed in the Cell. Occupied observation and management Cells must be searched daily;
 - (iii) common area searches – all common areas including dayrooms, ovals, workshops, recreation and any other areas where a Prisoner may be reasonably expected to have access to will be subject to a daily inspection and a minimum of once weekly search;
 - (iv) perimeter checks – the perimeter fence/s must be tested to confirm that the Prison's perimeter security systems are in working order and barriers are free from damage. Checks of the Prison perimeter fence/s and searches for contraband in the vicinity must be conducted randomly at a minimum of twice daily; and
 - (v) vehicle searches – all vehicles entering the Prison must be searched when entering or seeking to enter a Prison, with the exception of emergency response vehicles.
- (l) The Contractor must develop searching requirements for inclusion in the Prison Operating Manual which address the key risk searching areas for the Prison in line with Departmental Policies and Legislative Requirements. The searching requirements must address the requirements detailed in section 1.5(k) and include search frequencies, type of search (eg Prisoner search, person search and use of drug and contraband detection equipment) location of search and quality assurance measures.
- (m) The Contractor must record the conduct of all searches on TOMS and ensure that, prior to carrying out searches, Contract Workers have received, as part of their searching training, guidance on occupational health and safety issues, particularly the threat posed by sharps and Prisoners concealing weapons.

1.6 Security – Tool Control and Management

- (a) The Contractor must control, manage and secure tools and equipment at the Prison in a manner that ensures the safety of Prisoners and security of the Prison while providing opportunities for Prisoners to engage in meaningful and constructive activities.
- (b) The Contractor must control the availability, use and storage of tools and record the issue and retrieval of tools and equipment in a register.
- (c) The Contractor must maintain a master tool and equipment register, ensure that all tools are marked with an identification and serial number unique to the Prison and conduct quarterly tool and equipment audits reconciled against the master tool and equipment register.
- (d) The Contractor must incorporate in the Prison Operating Manual processes and procedures relating to tool control.

1.7 Management of Prisoners – Accounting for Prisoners

- (a) The Contractor must develop systems at the Prison which complement the security system developed pursuant to section 1.3 to ensure that for formal counts, at approved times each day, all Prisoners at the Prison are identified and accounted for by sighting the Prisoner and ensuring that he is alive and well, identifying him and recording his location at each approved time during the day before the count is called correct.
- (b) The Contractor must ensure that systems are in place to control and record the movement of Prisoners in order to ensure the accurate location of all Prisoners.
- (c) The system must enable the Contractor to rapidly gain confirmation of the continued presence of all the Prisoners within the secure perimeter of the Prison and, subsequently, the location of each Prisoner and to effectively control the movement of Prisoners within the secure perimeter of the Prison. These goals must be achieved without undue restrictions on the regime of the Prison.
- (d) The Contractor must include rules, policies and procedures associated with accounting for Prisoners in the Prison Operating Manual relating to security.
- (e) These rules, policies and procedures must involve visual confirmation of each and every Prisoner's presence at determinate times throughout every 24 hours. These security milestones must be augmented by real-time running checks between these periods. The roll-check milestones must be Prison-wide, the intervening checks area-specific and 100% Prisoner presence must be achieved by collation of all areas and correlation with the universal tally.
- (f) The Contractor must comply with any reporting requirements that the State may set from time to time and, as a minimum, must comply with the provision of data to the Department's Prisoner count recording system as used on TOMS.

1.8 Management of Prisoners – Escorting Prisoners Outside the Prison

- (a) The Contractor acknowledges that it may be required to escort Prisoners to and/or from external sites. This includes:

- (i) unplanned escorts of Prisoners during Emergencies in accordance with the Contractor's Emergency Management Plan developed pursuant to section 1.1; and
 - (ii) at the direction of the State, planned escorts of any Prisoner to an external site until relieved by a third party or from an external site to the Prison,
in which case the State will pay the Contractor in accordance with section 7 and Table 2 of Schedule 4.
- (b) The Contractor must ensure that transfers of Prisoners from the custody of the Contractor to a third party or from a third party to the Prison are effected in a secure, safe, efficient and consistent manner, which for escorts under section 1.8(a)(ii) includes as far as reasonably practicable the transfer being conducted as a priority in a secure escort vehicle which meets the standards for secure escort vehicles in the relevant Departmental Policy.
 - (c) The Contractor must provide effective training to Contract Workers to enable them to perform Prisoner escort duties external to the Prison in emergency situations securely and safely.
 - (d) The Contractor's managers and Contract Workers must be trained in operational security risk assessment regarding Prisoner escort duties.
 - (e) The Contractor must implement procedures which ensure that the risk of a Prisoner escaping while being escorted by the Contractor outside the Prison is minimised.
 - (f) The Contractor must ensure that Contract Workers maintain high standards of appearance and conduct themselves professionally when escorting Prisoners outside the Prison and they are aware that they have an ambassadorial role to perform for the Contractor and the State when outside the Prison.

1.9 Management of Prisoners – Earned Privileges and Incentives

- (a) The Contractor must ensure that Prisoners at the Prison are managed fairly and equitably using a hierarchical management system, comprising levels of supervision specified in applicable Legislative Requirements and Departmental Policies that empowers Prisoners to perform to a level that is rewarded with additional privileges.
- (b) The Contractor must:
 - (i) detail what privileges are associated with each level of the hierarchical management system;
 - (ii) detail how Prisoners progress and regress through the levels;
 - (iii) detail how many Prisoners can be accommodated at each level;
 - (iv) detail the compliance of the process with all applicable Legislative Requirements and Departmental Policies; and
 - (v) provide an auditable process for progression and regression through each level.
- (c) The Contractor acknowledges that, upon arrival at the Prison, a Prisoner is presupposed to be of an acceptable level of behaviour and will enter at the median level of the hierarchal management system and that remand Prisoners have certain rights under applicable Legislative Requirements and Departmental Policies.

- (d) The Contractor may continue the link between an increased earned privileges and incentives scheme (**EPI Scheme**) level and a decreased level of supervision but:
 - (i) must be alert to Prisoners attempting to gain a lower level of supervision as a key motivation rather than as a consequence of progression in behaviour; and
 - (ii) must ensure that Prisoners who have poor basic skills, self-advocacy or independent (self-care) living skills are not exempt from progression and are supported by Contract Workers and consideration be given to those Prisoners being placed in locations where other high-achieving Prisoners can offer peer support to ensure that these deficiencies do not reduce their access to progression through the EPI Scheme.
- (e) The Contractor must document the EPI Scheme in the Prison Operating Manual.
- (f) The Contractor must operate five levels of the EPI Scheme, being standard supervision, earned supervision, basic supervision, close supervision and disruptive supervision, and must ensure that:
 - (i) the appeals process is simple and accessible and a response is delivered to each complainant speedily and with reasons;
 - (ii) accommodation is linked to the EPI Scheme levels; and
 - (iii) all substantive changes to a Prisoner's routine and disciplinary issues are recorded on the Departmental System.

1.10 Management of Prisoners – Management of Death in Custody

- (a) The Contractor must ensure that systems, procedures and practices are in place to ensure the safety of Prisoners in its care and that Contract Workers use their best endeavours to prevent Prisoner deaths. Should a Prisoner death occur, the Contractor must comply with the processes which the Department has implemented to deal with such an event.
- (b) In the event of a Prisoner death, the Contractor must carry out a full investigation. This investigation will focus on the application of the Contractor's processes and procedures and the actions of Contract Workers. The investigation must be conducted thoroughly but with due emphasis on reaching a timely conclusion. On completion the Contractor must provide a copy of the report of the investigation to the Contract Manager.
- (c) The Contractor's internal investigation described in section 1.10(b) is a separate and additional process from the requirement for an independent and timely audit of all matters surrounding a Prisoner death conducted by a person appointed by the Department.
- (d) The Contractor must ensure that Contract Workers dealing with a Prisoner death are de-briefed and offered any necessary support by the Contractor and are referred to a post trauma management provider.
- (e) In the event of a Prisoner death, the Contractor must ensure that all legal, religious, cultural and spiritual requirements of the Prisoner are met and that appropriate support and assistance is offered to the deceased's family and other Prisoners.

1.11 Management of Prisoners – Prisoner Discipline

- (a) The Contractor must ensure equity and discipline amongst, and the security of, the Prisoners at the Prison in accordance with applicable Legislative Requirements and Departmental Policies.
- (b) The Contractor must ensure that it implements an equitable regime at the Prison in which all Prisoners are safe from intimidation from other Prisoners and in which disciplinary procedures are firm but fair.
- (c) The Contractor must develop and implement systems which:
 - (i) ensure that, where Prisoners at the Prison break rules, transparent processes are in place regarding the imposition and management of sanctions such as loss of privileges and, on occasion, escalation to formal charging of Prisoners in accordance with the Prisons Act;
 - (ii) encourage Contract Workers to exercise discretion in the imposition and management of sanctions; and
 - (iii) ensure that Prisoner disciplinary procedures are carried out in a timely and consistent manner, in accordance with applicable Legislative Requirements and Departmental Policies as notified to the Contractor from time to time.
- (d) The Contractor must:
 - (i) implement a graduated formal disciplinary process at the Prison in accordance with applicable Legislative Requirements and Departmental Policies;
 - (ii) communicate and explain the disciplinary process to Prisoners at the Prison during their induction and when charged;
 - (iii) inform Prisoners at the Prison of the procedures for making complaints about disciplinary action to the Ombudsman;
 - (iv) ensure all disciplinary matters are reported on TOMS and dealt with as soon as possible after each Incident;
 - (v) ensure that any charge for a prison offence, as defined in the Prisons Act, is laid in accordance with section 71 of the Prisons Act by Contract Workers who have the necessary authorisation; and
 - (vi) implement sanctions or penalties imposed in accordance with Part VII of the Prisons Act for any prison offence committed by a Prisoner at the Prison.
- (e) In addition to the requirements in section 2.33, the Contractor must ensure that separate confinement in a disciplinary management Cell or confinement in the Prisoner's sleeping quarters is:
 - (i) only imposed on a Prisoner at the Prison as a result of the imposition of penalties in accordance with Part VII of the Prisons Act;
 - (ii) managed under the least restrictive conditions consistent with the reasons for the placement; and
 - (iii) structured to provide a minimum of 1 hour's exercise out of Cell per day.

- (f) Contract Workers who manage Prisoners undergoing separate confinement must be appropriately trained.
- (g) The Contractor must liaise with other prisons to facilitate the management of transfers to and from the Prison.
- (h) The Contractor must use its reasonable endeavours to create an environment within the Prison in which achievement is encouraged, supported and recognised, and poor behaviour discouraged, challenged and stopped.
- (i) The Contractor must develop a positive and interactive community environment within the Prison, which is underpinned by a transparent EPI Scheme. The Contractor must operate a differentiated regime which recognises each Prisoner's efforts to meet the challenges contained in his IMP and provide a regime which engages each Prisoner on a number of levels to reduce the need to resort to formal disciplinary procedures.
- (j) The systems implemented by the Contractor pursuant to this section 1.11 must be part of a holistic approach taken by the Contractor to maintaining Prisoner discipline. The elements which comprise the systems must include:
 - (i) a properly differentiated EPI Scheme as described in section 1.9 which recognises each Prisoner's response and contribution to the community model within the Prison and to addressing the issues identified in his IMP. The Contractor will offer each Prisoner the opportunity to gain more privileges linked to a regime level in recognition of his positive contribution in accordance with applicable Legislative Requirements and Departmental Policies and must ensure that the formal disciplinary procedure is used as a measure of last resort;
 - (ii) the use of the Prisoner Forum as created in section 2.27(n) through providing the Contractor's management team with a weekly audit check on the mood of the Prisoner population and an insight into current issues;
 - (iii) providing comprehensive healthcare services, including mental health support, so as to support the creation of a pro-social environment;
 - (iv) managing anti-social behaviour by applying proven anti-bullying strategies so as to protect the victim and challenge the perpetrator, allowing the Contractor to deal with this type of behaviour at the earliest opportunity and in a coordinated way by linking in to the EPI Scheme rather than through retrospective use of the disciplinary system; and
 - (v) a zero tolerance approach to illicit drug use and all associated behaviours.
- (k) The Contractor must implement a regime of Prisoner discipline in accordance with the belief that if the Prisoners are held in a stimulating interactive community they are unlikely to be inclined to inappropriate activities and corresponding disciplinary procedures. Where problems do occur the Contractor must deal with them in an openly transparent way with the intention of achieving positive outcomes from potentially negative situations.
- (l) The Contractor acknowledges that there are two levels of sanction which may be used to manage prison offences. The first involves the removal of a privilege from a Prisoner through the EPI Scheme, while the second involves the charging of a Prisoner in

accordance with the Prisons Act and any subsequent management action which may ensue.

- (m) If a Prisoner commits a criminal offence at the Prison which is not covered by the Prisons Act, the Contractor must comply with the requirement to notify the Western Australia Police Force to enable them to investigate the matter.
- (n) The Contractor acknowledges that the adjudication of disciplinary offences is performed in accordance with Part 7 of the Prisons Act and, while the Contractor is not authorised to perform that adjudication, it must implement sanctions and penalties decided by that adjudication. For any person who is appointed to be a visiting justice, as defined in section 54 of the Prisons Act, the Contractor must pay for the travel expenses incurred by the visiting justice in performing the adjudication on a cost recovery basis.
- (o) To ensure that the requirements regarding Prisoner discipline in this section 1.11 are satisfied, the Contractor must ensure that Contract Workers managing Prisoners who are separated from the main Prisoner population are appropriately trained. Such Contract Workers must receive, in addition to the training given to Contract Workers performing Custodial Functions, training in:
 - (i) de-escalation techniques;
 - (ii) 'counter control' and 'conditioning' techniques;
 - (iii) group-work and counselling skills;
 - (iv) documentation and reporting requirements of the adjudication process including maintenance of TOMS;
 - (v) the officer's role as the prosecutor in the adjudication process; and
 - (vi) the cognitive approach to problem solving.
- (p) The Contractor acknowledges that, separate from the formal disciplinary process but nevertheless still important to the good order of the Prison is the need to occasionally remove a Prisoner from a situation or to split up a group of Prisoners. Therefore, the Contractor must develop an effective liaison network with other West Australian prisons to facilitate the management of transfers to and from the Prison.

1.12 Management of Prisoners – Use of Force – Instruments of Restraint and Weapons

- (a) The Contractor must ensure that force and instruments of restraint are used only in accordance with clause 10.8.
- (b) Subject to obtaining the prior approval of the State, the Contractor may use a system of Control and Restraint (**C&R**) techniques for the management of Prisoners, where all other methods have been tried and have failed. The Contractor must ensure that all Prisoners are managed in a professional manner and C&R techniques are used only in accordance with clause 10.8. The Contractor must provide training to Contract Workers to enable them to realise that, by using the correct techniques in a controlled manner when dealing with dangerous, uncertain or disruptive situations, they will reflect credit on themselves, the State and the Contractor. The Contractor must ensure that the C&R techniques are used with skill, professionalism and care for the Prisoner in order to ensure that the Prisoner and the Contract Workers who restrained the Prisoner

are able to return to previous cordial relations without lingering animosity as to the incident.

- (c) The Contractor's procedures and training for the use of force by Contract Workers must comply with the requirements in clause 10.8 and ensure that each Contract Worker who may have to restrain a Prisoner in the course of his or her duty understands and complies with these requirements. The training provided to Contract Workers regarding the use of force must cover the circumstances in which force and instruments of restraint may be used, the process by which all other options must be exhausted first, the approved technique and equipment, the associated obligations of care, reporting requirements and related actions.
- (d) Where force is used, the officer must report the fact through authorised channels to the Contractor's senior management team and provision will be made to provide the Prisoner with a medical examination.
- (e) The Contractor must ensure that, using evidence from live Incidents, Contract Workers involved in Incidents continually relate their decisions to use force against mandated standards. The Contractor must ensure that the reporting of any Incident of the use of force is subject to review and, as part of the reporting process, all Contract Workers involved analyse and validate their decision to intervene through the application of force.

2. Care and Wellbeing

2.1 Prison Administration - Access to the Prison and Prisoners by Authorised Visitors and Persons with Legislative Authority to Access the Prison and Prisoners

- (a) The Contractor must ensure that:
 - (i) representatives of external agencies specified in applicable Legislative Requirements or by the State are able to visit the Prison and the Prisoners and Contract Workers;
 - (ii) a suitable area is available for such representatives to interview Prisoners and Contract Workers;
 - (iii) independent prison visitors, as defined in the Prisons Act, are given unfettered access to the Prison, Prisoners and Contract Workers and they, and their property, are not searched; and
 - (iv) the Contractor de-briefs independent Prison visitors at the completion of their inspection and responds to, and undertakes action planning to address, any issues raised subject to the agreement of the State.
- (b) If the Contractor does not grant access to the Prison, a Prisoner or Contract Worker to a representative of an external agency for security reasons, then the Contractor must document the circumstances in which access was refused and report them to the external agency and the Department.
- (c) The Contractor must use systems to identify and record on TOMS details of each person entering and subsequently leaving the Prison including the reason for the person's visit to the Prison.

- (d) The Contractor must provide basic security induction training to all persons who visit the Prison who will not be escorted in accordance with this section 2.1.
- (e) The Contractor must ensure that, subject to 2.1(a)(iii), independent prison visitors are subject to all necessary security checks and their personal safety is addressed through training, equipment and Contract Workers monitoring them (though in no way compromising their freedom of access or requirements for confidentiality). The Contractor must ensure that other representatives of the Office of Inspector of Custodial Services have unfettered access to the Prison.

2.2 Prison Administration - Accommodation – multiple bed Cells (Peer Support Prisoner Cells, 2 out Cells and 4 out Cells)

- (a) The Contractor must ensure that:
 - (i) Prisoners are only accommodated in shared accommodation if they are personally and culturally compatible;
 - (ii) any Prisoner placed to provide peer support:
 - (A) has received the training and is supported in the manner described in section 2.25; and
 - (B) has been advised as to the level of crisis faced by the other Prisoner, and has given his informed consent, prior to being placed to provide such support;
 - (iii) it does not accommodate Prisoners in a "double bunked" Cell at the Prison unless the Prisoners have agreed to reside "2 out" or the State has authorised the accommodation of the Prisoners in such a manner; and
 - (iv) Cells at the Prison that accommodate 4 Prisoners are used to accommodate Prisoners who indicate a preference to remain in supportive groups.
- (b) The Contractor must build strong and productive links with prisons that feed the Prison, particularly in terms of Prisoner intelligence to enable the collection and use of all information relevant to allocating Prisoners to shared accommodation.
- (c) The Contractor must continually review the manner in which it manages the accommodation units to ensure that the designated uses fit the, possibly changing, Prisoner population and the requirements of the wider justice system.

2.3 Prison Administration - Authorised Absences from Prison

- (a) The Contractor must ensure that:
 - (i) Prisoners are aware of the ability to obtain a grant of a permit under the Prisons Act in prescribed circumstances;
 - (ii) Prisoners at the Prison with a need are offered the capacity to apply for a grant of permit;
 - (iii) processes are in place to ensure the efficient handling of any application for a grant of permit and to avoid unnecessary delays;

- (iv) any such application for a grant of permit is dealt with in accordance with section 83 of the Prisons Act and is completed accurately and dealt with as expeditiously as possible;
 - (v) Aboriginal agencies are used as a reference when determining the validity of any Aboriginal Prisoner's application for a grant of permit and the relative priority of competing applications;
 - (vi) Prisoners may be removed from the Prison in accordance with the Prisons Act; and
 - (vii) authorised absences from the Prison are managed in accordance with sections 28 and 83 to 94 of the Prisons Act.
- (b) The Contractor must ensure that personally and culturally sensitive arrangements are put in place for Prisoners unable to receive a grant of permit, so that their social, emotional and cultural requirements are able to be fulfilled. This may include memorial services, group prayers and spiritual or cultural ceremonies.
 - (c) The Contractor must complete a full risk assessment in relation to all applications for a grant of permit, including any particular recommendations for the particular escort required for the Prisoner. The Contractor acknowledges that authorised absences inevitably require the balancing of custody and containment with care and well being, and that it must always err on the side of caution in recognition of the primacy of the former.

2.4 Prisoner Services - Bedding

- (a) The Contractor must provide every Prisoner at the Prison with his own bed and must ensure that the bed is equipped with:
 - (i) a flame retardant mattress or mattress with a flame retardant cover;
 - (ii) a pillow and pillow case;
 - (iii) two sheets per bed;
 - (iv) a towel; and
 - (v) two blankets or one blanket and one doona.
- (b) The Contractor must ensure that additional blankets are made available, at the request of Prisoners, to cater for climatic conditions.
- (c) The Contractor must ensure that bedding, including mattress, are clean when issued, kept in good order, and washable items such as sheets, pillow cases and towels are exchanged for clean replacements at least once each week or more often if necessary.
- (d) The Contractor must ensure mattresses at the Prison are of an approved flame retardant type, and that there is sufficient existing stock of these and the other items described in section 2.4(a) to meet immediate demand.
- (e) The Contractor must ensure that each Prisoner's sheets, pillow cases and towels are laundered weekly or more often if they are heavily soiled. Each Prisoner's doona and blankets must be laundered or dry cleaned every three months or more often if they are heavily soiled.

- (f) The Contractor must inspect the condition of all mattresses and clean all mattresses every six months or more often if they are heavily soiled. The inspection must include a visual inspection for tears, staining and damage as well as a physical test of the mattress to ensure the integrity of the foam composition.
- (g) The Contractor must inspect all bedding items when they are cleaned or laundered and replace any items that are worn or unable to be returned to an acceptable state.
- (h) The Contractor must ensure that, where a Prisoner occupies a Cell for the first time, be that on reception, or through changing location, the Cell is equipped with clean bedding items.

2.5 Prisoner Services - Communication by Mail, Telephone and Other Acceptable Means

- (a) The Contractor must ensure that Prisoners at the Prison are able to communicate with friends and relatives and communicate confidentially with legal practitioners and other approved agencies by approved means and that the following are available for use by Prisoners:
 - (i) telephone;
 - (ii) mail;
 - (iii) video conferencing;
 - (iv) email (via the system approved in accordance with clause 16.14); and
 - (v) other approved means.
- (b) The Contractor must utilise the State's PTS for Prisoner telephone calls. The State will be responsible for provision of the PTS to the Contractor including system support and maintenance of the handsets. The Contractor must utilise the same telephone communication carrier as the State, and charge Prisoners a rate set by the State to utilise the PTS and fully pass through to the State the income it collects from Prisoners for PTS calls.
- (c) The Contractor must ensure that Prisoners from remote areas, who do not have the benefit of ease of social visits, receive enhanced opportunities for contact through other means such as telephone, mail and other approved means (e.g. video conferencing). The Contractor must in consultation with Aboriginal Prisoners, advisors and communities, develop means to increase contact between Aboriginal Prisoners and their families within the first 100 days after the Operations Commencement Date.
- (d) The Contractor must:
 - (i) advise Prisoners of their mail entitlements and must maintain Records of all Prisoner mail on TOMS;
 - (ii) advise Prisoners of their telephone entitlements and must ensure that all Prisoner telephone calls are facilitated and recorded through the approved monitored PTS in accordance with Departmental Policies and Legislative Requirements; and
 - (iii) facilitate and maintain Records of Prisoner communication through video conferencing and other approved means in accordance with applicable Legislative Requirements and Departmental Policies.
- (e) The Contractor must provide to each Prisoner:

- (i) a reasonable amount of mail, in accordance with applicable Legislative Requirements and Departmental Policies, sent free of charge;
 - (ii) confidential (unmonitored and unrecorded) telephone calls for the purpose of contacting independent statutory government agencies in accordance with applicable Legislative Requirements and Departmental Policies;
 - (iii) confidential (unmonitored and unrecorded) telephone calls to the Prisoner's registered legal practitioner (on matters related to the Prisoner's current sentence or outstanding charges) in accordance with applicable Legislative Requirements and Departmental Policies; and
 - (iv) a reasonable amount of writing material, supplied free of charge.
- (f) The Contractor must ensure that each Prisoner has reasonable access to a telephone in accordance with applicable Legislative Requirements and Departmental Policies and must determine that the recipient is willing to receive the communication.
- (g) The Contractor must provide a reasonable amount of free telephone calls in accordance with applicable Legislative Requirements and Departmental Policies to Prisoners from remote areas and who, by virtue of their imprisonment, have become socially isolated from their family and community. This may be expected to apply mainly to Aboriginal Prisoners and is at the discretion of the Superintendent.
- (h) The Contractor must ensure that communications from and to the community are screened in accordance with applicable Legislative Requirements and Departmental Policies to ensure the safety of the community.
- (i) The Contractor must pay particular attention to communications to and from Prisoners who are the subject of restraining orders.
- (j) The Contractor must use best endeavours to ensure that communications by Prisoners are not in breach of any Legislative Requirements or Departmental policies.
- (k) In accordance with Legislative Requirements and Departmental policies, the Contractor must ensure that privileged mail is not opened.
- (l) The Contractor must ensure that prohibited mail is not sent that contravenes Australia Post Mail Regulations or Legislative Requirements, including sections 471.11, 471.12 or 471.13 of the *Criminal Code Act 1995 (Cth)* or mail that:
 - (i) may jeopardise the good order or security of the Prison;
 - (ii) contains a threat to a person or property;
 - (iii) constitutes or is expressed in code;
 - (iv) contains any photographs that have not been approved by the Superintendent;
 - (v) is addressed to a protected person, in violation of the terms of a current restraining order; and
 - (vi) is addressed to a third party and intended to result in contact with a protected person.
- (m) Where mail is found to contravene the requirements of section 2.5(l), it must be retained and reported in accordance with Legislative Requirements and Departmental policies.

- (n) The Contractor must ensure that mailboxes are provided for Prisoners to deposit privileged mail and that they are placed separately from general mailboxes and in areas away from and out of sight of unit or block control offices. The Contractor must:
 - (i) ensure envelopes are freely available and accessible next to each mailbox;
 - (ii) develop procedures to manage the security and clearance of privileged mail for inclusion in the Prison Operating Manual; and
 - (iii) ensure privileged mail (incoming and outgoing) is recorded and processed in accordance with Legislative Requirements and Departmental policies.
- (o) The Contractor must offer to Prisoners the ability to nominate family or friends to receive regular updates regarding the Prisoner's stay at the Prison in the categories consented to by the Prisoner, for example information relating to the Prisoner's education and training milestones.
- (p) The Contractor must offer the ability for messages from nominated family or friends to be relayed to Prisoners.

2.6 Prisoner Services - Visits and Visitor Access

- (a) The Contractor must:
 - (i) ensure that visits are made available for Prisoners at the Prison as scheduled;
 - (ii) ensure that a bus service is provided for Visitors from Midland Railway Station to the Prison to coincide with visits times;
 - (iii) ensure that Prisoner visits are closely managed;
 - (iv) put in place deterrents to prevent trafficking of contraband;
 - (v) ensure that Contract Workers are aware of their responsibilities in interacting with Visitors;
 - (vi) record and manage all visit bookings and associated data including time of entry and exit on TOMS;
 - (vii) forward any intelligence gathered to the Department in a timely manner;
 - (viii) implement strategies to facilitate remand Prisoners' visits;
 - (ix) implement strategies to facilitate special visits and longer visits for Visitors from remote areas; and
 - (x) ensure that Prisoners at the Prison are not denied access to, or visits with, their children, unless such access or visits compromise the best interests or safety of the child or children.
- (b) Visits must take the form and frequency of:
 - (i) one contact visit per week of at least 60 minutes duration for those Prisoners eligible for contact visits;
 - (ii) one non-contact visit per week of at least 60 minutes duration for those Prisoners eligible for non-contact visits.
- (c) The Contractor must ensure that visits are augmented by non-contact links such as those described in sections 2.5 and 5.18.

- (d) The Contractor must provide social and official visiting facilities for Prisoners that are safe, secure and accessible.
- (e) The Contractor must, as a minimum, maintain the four-day visiting system in place immediately before the Operations Commencement Date.
- (f) The Contractor must ensure that visits are made available to each Prisoner for a legitimate reason and, in particular, to enable the Prisoner to maintain and develop ties with the Prisoner's external personal support network, to access community agencies that can assist him meet legal obligations and reduce his isolation.
- (g) The Contractor will facilitate greater visiting entitlements for Prisoners who require greater contact with persons from the community in preparation for release.
- (h) The Contractor must ensure that the contact and non-contact visits facilities are fit-for-purpose and the visits facilities must be clean, quiet and ordered and staffed by sensitive and professional Contract Workers.
- (i) The Contractor must ensure that the necessary security routines in respect of visits are comprehensive, but managed quickly and with tact, and that the supervision of visits is comprehensive but not oppressive. The Contractor's security responses must be intelligence-led and deliver maximum impact for minimum disruption.
- (j) The Contractor must use its reasonable endeavours to introduce normality into the visiting system and mitigate the stereo-typical picture that Prison visits may have. In order to achieve this, the Contractor must provide each Prisoner with a uniform that includes a shirt and trousers allowing the Prisoner to present himself well. The Contractor may also use visits as a venue for award events and the like, with Prisoners receiving certificates of achievement with their families watching.
- (k) The Contractor must ensure that visits are scheduled carefully and efficiently so as to maximise the use of visiting periods and avoid either party being kept waiting unduly. Within the limitations of a Prisoner's EPI Scheme level and other operational considerations, the Contractor may allow visits to extend beyond their planned duration.
- (l) The Contractor must adopt a flexible approach to visiting days and visiting structures, in particular, to enable Visitors who have travelled long distances to have longer and more frequent visits with Prisoners.
- (m) The Contractor must hold an extended visits day each quarter for eligible Prisoners with various activities, including sports, games and other suitable activities which allows Prisoners an opportunity to spend longer, quality time with family members and other approved Visitors. The Contractor must seek the State's approval prior to holding the extended visits days.
- (n) The Contractor must implement a multi-level approach of close direct and CCTV observation by Contract Workers, dedicated seats for Prisoners, Prisoners in uniforms and/or wearing bibs, photographic ID of Visitors, and biometrics to enable the identification of Visitors and their separation from Prisoners at the end of the visit.
- (o) The Contractor must assist fully in the mixed gender inter-Prison visits system operating within Western Australia. The Contractor must comply with Legislative Requirements

and Departmental Policies regarding Prisoner marriages and must assist fully with facilitating marriage of a Prisoner if approved by the State.

2.7 Prisoner Services - Visitors Centre and Children's Crèche

- (a) The Contractor must provide a visitors centre outside the perimeter of the Prison to:
 - (i) provide a safe and secure family support centre to assist Prisoners to receive Visitors;
 - (ii) provide child care services (crèche facility for child minding during visits) to assist Prisoners to receive Visitors;
 - (iii) provide short-term support to the families, friends and relatives of Prisoners and assist them to access other welfare services; and
 - (iv) contribute to a reduction in management problems in the Prison.
- (b) The Contractor must provide a children's crèche at the visitors centre, staffed by qualified child-care workers during the visits period for use by Visitors who are families and friends of Prisoners (**Social Visitors**), and develop the existing visitors centre into a family support centre that can offer advice and publications to Social Visitors on a range of family issues.
- (c) In addition to the information described in section 2.7(b), the family support centre must provide comprehensive information on all aspects of the Prison.
- (d) The family support centre must contain:
 - (i) generic information including visiting times, property arrangements, Prison vision, security arrangements, local accommodation and travel arrangements and cash arrangements; and
 - (ii) family specific information including drugs, pre- and post-release programs, housing options, effective parenting, education services, health services and counselling.
- (e) The family support centre must enable the location and dissemination of information, linking those in need with appropriate services.
- (f) The Contractor must publicise the family support centre and the children's crèche and make these services available to families visiting Prisoners.
- (g) The Contractor must comply with all Legislative Requirements and Departmental Policies applicable to the maintenance and operation of the family support centre and children's crèche.

2.8 Prisoner Services - Clothing

- (a) The Contractor must provide Prisoners with clothing and footwear of a standard suitable to climatic conditions and the range of activities the Prisoner may engage in.
- (b) The Contractor must ensure each Prisoner at the Prison at a minimum is issued with the following clothing upon reception:
 - (i) 1 x tracksuit bottoms;
 - (ii) 1 x tracksuit top;

- (iii) 3 x t-shirts (short-sleeved);
 - (iv) 4 x briefs;
 - (v) 4 x pairs of socks;
 - (vi) 1 x pair soft shoes;
 - (vii) 1 x long shorts (above the knee);
 - (viii) 1 x light trousers (no belt required);
 - (ix) 1 x shirt;
 - (x) 2 x towels;
 - (xi) 1 x floppy hat (upon request); and
 - (xii) 1 x outer jacket (upon request).
- (c) The Contractor must ensure a change of clean clothing is provided to Prisoners at least once a week unless work, climatic conditions, illness or other factors necessitate more frequent exchange to assure cleanliness. The Contractor must ensure the change of clothing allows for a daily change of underwear.
- (d) The Contractor must:
- (i) provide each Prisoner at the Prison with sufficient, good quality, clean Prison clothing;
 - (ii) ensure that each Prisoner has the opportunity to maintain such clothing in a clean condition and in a state of good repair;
 - (iii) ensure that each Prisoner's personal clothing is removed from the Prisoner's possession, laundered and securely stored until his release or transfer to another prison in a manner such that no harm comes to it; and
 - (iv) ensure that any clothing from another prison in the possession of a Prisoner must be laundered and returned to that other prison.
- (e) If a Prisoner arrives with excessive amounts of clothing, the Contractor must arrange for the agreed excess (in negotiation with the Prisoner) to be picked up by his family or friends at their next visit or, if this is impracticable, put into deep store.
- (f) The Contractor must ensure the Prisoner's property is kept secure and must record items on TOMS.
- (g) As part of arrangements for release, the Contractor must, at the Prisoner's request, launder the Prisoner's stored clothing.
- (h) The Contractor must issue Prison clothing that is appropriate and not degrading or humiliating.
- (i) The Contractor must allow Prisoners attending court to wear their own clothing and those awarded a grant of permit likewise to wear their own clothing. If the Prisoner does not have a stock of functional personal clothing in good repair for these activities and for his eventual release, the Contractor must issue the Prisoner with a basic stock to meet his immediate needs.

- (j) The Contractor must ensure that Prisoners are issued with clothing that is standardised and does not support differentiation within the Prison.
- (k) Upon arrival, all Prisoners must be notified of the Contractor's clothing policy.

2.9 Prisoner Services - Food Services

- (a) The Contractor must:
 - (i) provide at least three meals daily at times consistent with community standards (breakfast, lunch and dinner) and at times that accommodate Prisoners' daily activities;
 - (ii) ensure that the meals are of sufficient quantity, quality, are appetising and nutritionally adequate by quality assessment in accordance with the National Health and Medical Research Council regulations and dietary guidelines;
 - (iii) ensure that the meals are presented at the correct temperature, include a varied diet and take into account the seasonal availability of fresh produce and are quality assured; and
 - (iv) ensure that the hygiene of the food preparation area is maintained, and that food is procured, stored, prepared and distributed in a hygienic manner in accordance with all applicable Legislative Requirements and Departmental Policies.
- (b) The Contractor must ensure that:
 - (i) food is not used as a disciplinary measure, and is culturally appropriate;
 - (ii) the daily menu consists of at least one hot meal and that meals are provided at the correct temperature;
 - (iii) at least one meal per week contains red meat;
 - (iv) specially prepared meals and diets are made available to Prisoners where required for reasons of ceremony and celebration, health/medical advice, religious practices, cultural and tribal practices and established food preferences (such as vegetarianism);
 - (v) potable water is made available to every Prisoner when needed;
 - (vi) the menu is rotated every four weeks as a minimum; and
 - (vii) ample portions of good quality food are provided.
- (c) The Contractor must ensure that the diverse population at the Prison is provided culturally, ethnically and religiously appropriate foods. In particular, Aboriginal Prisoners must be able to access an additional range of appropriately sourced items.
- (d) The Contractor must employ the services of a nutritionist to inform its delivery of food services, and that menus are assessed and approved by a qualified dietician a minimum of twice per year.
- (e) The Contractor must ensure that the menu style for the Prisoners and content is as follows:
 - (i) Breakfast will be in continental style, cereals with milk, toast with an assortment of jams, tea and coffee.

- (ii) Lunch will be 'brown bag' consisting of a range of sandwiches or salads with fruit and drinks.
- (iii) Dinner will be the main meal of the day, with 3 courses of which 2 will usually be hot. There will be at least 3 choices of meal for dinner. Some choices may meet special dietary needs but will be available to all Prisoners, unless items are prohibited due to medical reasons.
- (f) All Prisoners must be offered the same menus and choices at meal times.
- (g) Prisoners in self-care accommodation must be offered a range of menus from which to select the required ingredients.
- (h) The Contractor must ensure that all menu items are reviewed and tested for compliance, prior to their introduction and that each week there are:
 - (i) a maximum of eight red meat meals;
 - (ii) two fish meals;
 - (iii) one poultry meal;
 - (iv) only one fried meal;
 - (v) only one pastry meal;
 - (vi) fresh fruit available daily;
 - (vii) a minimum of three desserts per week; and
 - (viii) seasonal, fresh vegetables.

2.10 Prisoner Services - Health Services

(a) Service Requirements

- (i) The Contractor must provide a health care service to Prisoners at the Prison that:
 - (A) is commensurate with those provided in the community;
 - (B) integrates with community health services;
 - (C) caters for the needs of all culturally and ethnically diverse Prisoners, in particular Aboriginal Prisoners through the employment of sufficient Aboriginal health workers to meet the needs of Aboriginal Prisoners;
 - (D) will, upon admission to the Prison identify a Prisoner's physical and mental health risks, care needs and manage any immediate needs and ensure arrangements are in place for ongoing care, by a qualified registered nurse or medical practitioner;
 - (E) caters for all Prisoners' primary health care and facilitates secondary health care;
 - (F) includes a medical interpreter service for culturally and linguistically diverse (**CALD**) Prisoners;
 - (G) delivers illness prevention and health promotion educational programs to Prisoners in accordance with the requirements of the Department;

- (H) ensures continuity of care throughout imprisonment and on release into the community;
 - (I) is able to be accredited by and comply with the standards of the Royal Australian College of General Practitioners, which standard must be achieved within 12 months after the Operations Commencement Date;
 - (J) is staffed by sufficient Contract Workers exercising Custodial Functions to ensure the security of Prisoners and the safety of Contract Workers and administered by appropriately qualified Contract Workers;
 - (K) ensures all health, medical and nursing staff are trained in Australian Resuscitation Council, Advanced Life Support Level 1; and
 - (L) complies with all applicable Legislative Requirements and Departmental Policies.
- (ii) The Contractor must create a holistic approach to health and wherever possible, the Contractor must integrate health services into the wider work of the Prison so that Prisoners are not disadvantaged by their health needs and interruptions to daily life created by these needs are kept to an absolute minimum.
 - (iii) Where health issues threaten to impact on a Prisoner's ability to carry out particular tasks, the Contractor must ensure adequate assessment of risk to the Prisoner and others with whom the Prisoner works or interacts in order to account for a Prisoner's health needs whilst allowing him to continue with normal daily routines.
 - (iv) Where a particular illness, condition or physical injury prevents a Prisoner from engaging in his normal routines the Contractor must, using its network of advisors, provide alternatives for the Prisoner which allow him to remain active and in some circumstances assist in his return to good health.
 - (v) The Contractor must develop procedural protocols in accordance with the Department's requirements and Departmental Policies, which cover all aspects of the Contractor's health service delivery and act as process rules and guidance for Contract Workers.
 - (vi) The Contractor must use the Department's on call medical practitioner service, where on call medical advice is required. Access to the on call medical practitioner service is available twenty four hours per day, seven days a week (24/7). The use of the Department's on-call medical practitioner service will be on a cost recovery basis.
 - (vii) The Contractor must use the Departmental System for medical bookings for all Prisoners who require treatment at an external public health or private health facility.

(b) Primary Health Care: Assessment and Prevention

The Contractor must provide on-site primary health care services and programs to Prisoners at the Prison. Such services must be approved by the Department and ensure that:

- (i) within 6 hours of admission to the Prison, each Prisoner's medical Records are considered and reviewed by a qualified registered nurse or medical practitioner to:
 - (A) identify changes in physical and mental health risks and care needs; and
 - (B) manage any immediate needs and ensure arrangements are in place for ongoing care (including voluntary testing for HIV, Hepatitis B, and C and other diseases notified by the State);
- (ii) if not already completed by the sending prison a comprehensive health assessment is completed by a qualified medical practitioner at the Prison within 3 months of admission, if the Prisoner is transferred to the Prison before spending 3 months at a different Prison;
- (iii) within 72 hours of admission at the Prison all Prisoners receive as part of the Induction and Orientation Process described in section 2.19 an orientation program on Prison health services and policies, including medication prescribing processes;
- (iv) within 1 month of admission at the Prison all Prisoners receive as part of the Induction and Orientation Process described in section 2.19 a minimum of 2 hours formal health education regarding blood borne communicable disease and risks from IV drug use, unsafe sex, smoking, alcohol and diet. (Refresher programs are also to be arranged on an annual basis);
- (v) infectious or potentially infectious Prisoners are managed, counselled, referred and tested in accordance with Australian Guidelines for Prevention and Control of Infection in Healthcare, Royal Australian College of General Practitioners - Infection Prevention and Control Standards, Western Australia Department of Health Guidelines for the Prevention and Management of Gastroenteritis Outbreaks in Residential Care Facilities and Guidelines for Prevention and Management of Influenza Outbreaks in Residential Care Facilities;
- (vi) infection is controlled through regular programs of education of Contract Workers and Prisoners in infection control and appropriate disposal of infectious waste products;
- (vii) hygiene of Prisoners and cleanliness of the Prison is consistent with Departmental Policies, procedures and community standards; and
- (viii) all Prisoners receive an annual health review in accordance with Departmental Policies. The annual health review is to be completed during the month of the anniversary date (12 months) of the Prisoners recieval into prison for their current term of imprisonment.

(c) Primary Health Care: Prisoners at Risk

The Contractor's health-care arrangements must ensure that:

- (i) Prisoners who are identified as acutely at risk to themselves through self-harm or suicide are:

- (A) referred and managed in accordance with the Department's ARMS Manual, Departmental Policies and section 2.21;
 - (B) receive any immediate treatment as required;
 - (C) assessed by a qualified primary healthcare professional within 24 hours or the next business day; and
 - (D) receive treatment and management consistent with the assessment and direction of PRAG.
- (ii) suitably equipped crisis care facilities are provided and that, where appropriate, acutely at risk Prisoners are transferred (with the approval of the State); and
 - (iii) Prisoners with psychiatric illnesses are identified and receive appropriate clinical treatment and management, including referral for ongoing treatment services and/or assessment for admission to a secure hospital.

(d) Primary Health Care: Emergency Health Response

The Contractor must provide in-prison primary health care programs at the Prison to ensure:

- (i) attendance to all Prisoners requiring an emergency health response by a qualified primary healthcare professional within 10 minutes of the Contractor first becoming aware of the need for the response, by a medical practitioner where required within 2 hours of the Contractor first becoming aware of the need for the response and timely transfer to the nearest hospital emergency department where appropriate;
- (ii) the necessary escort and security of Prisoners in emergencies if required (note that the Contractor must resource emergency escorts); and
- (iii) the maintenance and currency of CPR certificates and first aid training for all healthcare workers at the Prison and Contract Workers exercising Custodial Functions.

(e) Primary Health Care

The Contractor must provide:

- (i) an appropriately equipped health centre, generally in accordance with a Level 2 Accident and Emergency Department (as per the Western Australian Health Department Health Facility Design Guidelines) incorporating assessment and treatment, consultation and necessary clinical support facilities adequate to meet the needs of all Prisoners at the Prison;
- (ii) sick bay facilities to allow 24 hour medical observation and/or recovery after discharge from hospital;
- (iii) access to appropriately trained Aboriginal health workers and medical services;
- (iv) specific health services for geriatric Prisoners;
- (v) psychiatry, optometry, physiotherapy, podiatry, audiology, pathology and other allied health services and dental treatment for Prisoners identified as eligible under applicable Legislative Requirements;

- (vi) required medical supplies and prescribed medication in blister packs to Prisoners; and
- (vii) administration of medication, which is conducted in accordance with prescription and managed in a responsible, legal and professional manner in accordance with applicable Legislative Requirements.

(f) Mental Health, Alcohol and Other Drugs Care

The Contractor must:

- (i) provide a multidisciplinary mental health service to all Prisoners in accordance with Legislative Requirements, Departmental Policies and that is:
 - (A) Prisoner centred;
 - (B) focused on recovery and wellbeing;
 - (C) culturally sensitive and inclusive;
 - (D) trauma informed;
 - (E) includes the patient in constructing their care and management plan; and
 - (F) family sensitive.
- (ii) provide mental health care to all Prisoners that is delivered by a multidisciplinary team under a case management model which must include access to a qualified consultant psychiatrist to ensure appropriate clinical governance and clinical reviews; and
- (iii) facilitate continuous care on discharge from Prison as far as possible including the completion of documentation in accordance with Departmental Policies.

(g) Secondary and Tertiary Health Care

The Contractor must:

- (i) facilitate access by Prisoners at the Prison to secondary and tertiary health care facilities and services at a standard generally available to the community and, where clinically appropriate, provide the necessary escort and security of Prisoners if required in an emergency;
- (ii) ensure that Prisoners requiring inpatient care will, upon agreement with the facility concerned, be transferred to a hospital (general or psychiatric) or to specialised health care facilities at another facility;
- (iii) ensure that Prisoners are able to receive treatment from private health care specialist personnel if there are reasonable grounds and provided they can meet the cost of such treatment; and
- (iv) bear the cost incurred in arranging transportation of a Prisoner to a public hospital or other health facility.

2.11 Prisoner Services - Hygiene

- (a) The Contractor must ensure that Prisoners at the Prison maintain a reasonable standard of hygiene by the provision of:

- (i) soap;
 - (ii) comb or hair brush;
 - (iii) toothpaste;
 - (iv) toothbrush;
 - (v) shaving implements (including safety razors, shaving soap, shaving brush); and
 - (vi) toilet paper.
- (b) The Contractor must ensure that safety razors for shaving are provided to Prisoners on request and issue and return is managed in accordance with Departmental Policies.
 - (c) The Contractor must ensure that Prisoners have regular access to hairdressing services.
 - (d) The Contractor must ensure that all Prisoners have access to laundry services to ensure clean clothing, bedding and linen.
 - (e) The Contractor must ensure that Contract Workers inspect all Cells to ensure that hygiene standards are maintained in accordance with Departmental Policies.
 - (f) The Contractor must monitor the standard of hygiene of Prisoners, and provide guidance and support to Prisoners to assist them to maintain reasonable standards of hygiene. The Contractor will give recognition to those Prisoners who maintain a reasonable standard of hygiene.
 - (g) The Contractor must ensure that Contract Workers tactfully advise Prisoners whose hygiene is unacceptable. This must be handled sensitively and with due regard to the Prisoner's circumstances.
 - (h) In particularly serious cases where a Prisoner's hygiene poses as risk to oneself or to other Prisoners, the Contractor may consider relocating the Prisoner and/or the withdrawal of privileges, if the Prisoner's hygiene continues to be unacceptable and wilful non-compliance with basic hygiene requirements persists.
 - (i) Where poor hygiene results from a lack of understanding of hygiene requirements, the Contractor's focus must be on providing health education with the assistance of healthcare staff. Health education must be the Contractor's preferred strategy to address issues of non-compliance with hygiene requirements.
 - (j) The Contractor must maintain an overall hygiene-aware culture and an environment which models good hygienic practices.
 - (k) The Contractor must acknowledge the different individual preferences and cultural practices with regard to matters of hygiene and must respect and facilitate these as far as is reasonable and practicable.

2.12 Prisoner Services - Prisoner Property

- (a) The Contractor must ensure:
 - (i) the safety and security of each Prisoner's property, including valuable property such as credit cards;
 - (ii) that Records of each Prisoner's property are maintained on TOMS;

- (iii) that procedures are in place to manage Prisoners' property;
 - (iv) that a quarterly audit of Prisoners' property is conducted;
 - (v) that effective processes are in place to transfer Prisoners' property as required;
 - (vi) that each Prisoner's property on transfer out of the Prison is checked against the record on TOMS and signed by the Contractor and any third party conducting Prisoner escorts or Departmental staff member conducting the escort outside the Prison;
 - (vii) that each Prisoner's property is searched on transfer out of the Prison; and
 - (viii) that all TOMS Records in relation to a Prisoner's property are completed after the Prisoner is transferred.
- (b) The Contractor will base its property management system on:
- (i) identification;
 - (ii) classification;
 - (iii) recording;
 - (iv) storage;
 - (v) release;
 - (vi) seizure; and
 - (vii) authorisation.
- These elements provide for effective control of Prisoners' property.
- (c) In dealing with Prisoners' possessions the Contractor must ensure that, when handling or otherwise managing items, the Prisoner must sign at appropriate points in the process for propriety reasons.
 - (d) Any property of a Prisoner that is retained at the Prison, either in the Prisoner's personal possession or in storage, must be recorded, stored, transferred and controlled in an effective manner and in a way that respects the entitlement of the Prisoner to such property.
 - (e) If property of a Prisoner is not to be retained at the Prison, then the Contractor must ensure that the Prisoner signs out that property where appropriate.
 - (f) The total volume of property allowed per Prisoner in any Cell is the amount that will fit into the standard packing carton (40 x 40 x 60cm). This excludes electrical items, doonas and computer systems.
 - (g) The Contractor must store a reasonable amount of the Prisoner's property in a holding area separate to the Prisoner's Cell. The Contractor may refuse to store purchases or brought in items in the holding area in excess of what the Contractor considers to be a reasonable amount. If a Prisoner arrives with what the Contractor reasonably considers to be excessive property, the mutually agreed excess will be externally stored.
 - (h) The Contractor may order that any property, which, in the opinion of the Contractor, is of a perishable, dangerous or unhygienic nature, be destroyed or otherwise dealt with in accordance with applicable Legislative Requirements and Departmental Policies and

must ensure that any such action is taken with the full knowledge of the Prisoner and a record of such order and action is noted on the inventory.

- (i) The Contractor must ensure that each Prisoner's property is searched during the reception process, with particular attention being paid to the integrity of security seals as affixed at sending Prisons.
- (j) On the release of a Prisoner, all of the Prisoner's property (other than property destroyed or otherwise dealt with under section 2.12(g)) and any accumulated unspent money must be returned to the Prisoner.
- (k) The Contractor retains responsibility for the correct management of Prisoners' property and acknowledges the State's insistence on these matters. In these circumstances, claims relating to property remain the responsibility of the Contractor.

2.13 Prisoner Services - Recreation

- (a) The Contractor must ensure that all Prisoners have regular and equitable access to a range of recreational and hobby activities and must ensure a range of recreation and hobby activities are provided to Prisoners that are gender, age, health and culturally appropriate for all Prisoners.
- (b) The Contractor must ensure a formal schedule of recreational and healthy lifestyle activities and programs is developed and available to Prisoners and includes the process to access the activities.
- (c) The Contractor must ensure health assessments are conducted upon reception and prior to Prisoners undertaking approved recreation activities which include strenuous exercise.
- (d) The Contractor must ensure that:
 - (i) Prisoners can undertake daily exercise and recreation accommodation units or other designated areas;
 - (ii) Prisoners can undertake competitive sports in larger spaces;
 - (iii) sporting and other recreational facilities are available to all Prisoners;
 - (iv) different groups of Prisoners have access to these facilities in appropriate ways;
 - (v) all Prisoners have access to open-air for at least one hour per day;
 - (vi) a range of active, passive, individual and group recreation activities are provided at the minimum rate of 10 hours per Prisoner per week;
 - (vii) facilities for team sports are provided and available to all Prisoners at the Prison;
 - (viii) physical education, fitness and sporting activities are appropriately supervised by trained and qualified staff;
 - (ix) Prisoners have access to a well-stocked library services; and
 - (x) a comprehensive range of arts and crafts is included to provide options for recreational activities.
- (e) Sections 2.13(d)(i) to 2.13(d)(iii) (inclusive), 2.13(d)(v)(v) to 2.13(d)(vii)(vii) (inclusive), 2.13(d)(ix) and 2.13(d)(x) do not apply to Prisoners under disciplinary management in accordance with applicable Legislative Requirements and Departmental Policies.

- (f) The venues for recreation will be the following areas of the Prison:
 - (i) the oval;
 - (ii) the gymnasium;
 - (iii) the residential units (internal);
 - (iv) the residential units (external);
 - (v) the basketball court; and
 - (vi) any other designated areas.
- (g) The Contractor must ensure that activities are a mix of activities available in accommodation units and at dedicated sites. Access to recreational activities in accommodation units must be outside the hours during which the Prisoner is engaged in meaningful and constructive activities pursuant to section 2.16 and limited to evenings and weekends.
- (h) Contract Workers must encourage all Prisoners to be involved in informal and more structured recreation and must pay close attention to those that decline the invitation as this may be indicative of underlying issues such as vulnerability, bullying or crisis.
- (i) The Contractor must ensure that equality of access amongst Prisoners is maintained in terms of provision quantity but also in terms of cultural relevance.
- (j) The Contractor must provide a range of hobby and craft equipment to develop skills and increase in-Cell activity. The Contractor may also install fixed residential assets with the prior approval of the State.
- (k) As part of recreational activities, Contract Workers must encourage healthy lifestyles and direct Prisoners to advice on smoking cessation, fitness assessments and other linked services.
- (l) The Contractor must ensure all exercise and recreational activities are evaluated on a minimum annual basis in consultation with Prisoners to assess their continued relevance.
- (m) The Contractor must provide Prisoners with an opportunity to volunteer, for example by coaching other Prisoners in a particular activity, when a Prisoner has developed excellence in the activity.

2.14 Prisoner Management - Bullying and Intimidation

- (a) The Contractor must:
 - (i) include in the Prison Operating Manual details on its approach to preventing bullying and intimidation at the Prison;
 - (ii) use reasonable endeavours to ensure that Prisoners are not exposed to bullying or intimidation whilst in Prison including:
 - (A) psychological pressure, name calling and threats;
 - (B) vandalism of property;
 - (C) unprovoked attacks;

- (D) repeated occurrences of those referred to in paragraphs 2.14(a)(A), 2.14(a)(B) and 2.14(a)(C); and
 - (E) the intention to cause fear or harm to the victim.
- (iii) ensure the effective management of Prisoners at risk or under threat through appropriate strategies and interventions;
- (iv) ensure that the perpetrator of any bullying is sanctioned, not the victim;
- (v) ensure Prisoners are sufficiently supervised to minimise the risk of bullying, verbal and physical abuse, racial abuse and threats of violence in all areas; and
- (vi) ensure that Contract Workers are trained in anti-bullying strategies.
- (b) The Contractor must ensure the management of all Prisoners at the Prison, is sensitive to the diversity of Prisoners and be implemented fairly and appropriately.
- (c) The Contractor must address issues of bullying, intimidation, self-harm and vandalism, be they direct or indirect, by identifying causations and focussing on prevention rather than cure.
- (d) The Contractor must ensure that Contract Workers behave in an exemplary manner, being careful through their actions not to reinforce any negative behaviours of Prisoners.
- (e) Each Prisoner's behaviour must be directly linked to the EPI Scheme and the Prisoner's performance against his IMP. The former will contain a suite of core basic behaviours required in which an absence of bullying and intimidating activities will be noted. Those who behave in a responsible and pro social manner will be rewarded through an improved EPI Scheme level, whilst those who do not will be reduced in terms of their EPI Scheme level.
- (f) The Contractor must ensure Prisoners are consulted through the Prisoner Forum as created in section 2.27(n) in developing strategies to address bullying, victimisation, violence, and conflict resolution and assist with making their lives in Prison safer.

2.15 Prisoner Management Cell Alarms

- (a) The Contractor must ensure that Cell alarms are answered immediately after being activated, either in person or over the cell call intercom system depending on the nature of the activation. In any event, where a response in person is required, the response must be within 3 minutes after activation of the Cell alarm.
- (b) Whether the response to a Cell alarm is in person or over the intercom system, the Contractor must ensure that appropriate action is taken to resolve the Prisoner's issue and summon such additional assistance as is necessary.
- (c) The Contractor must maintain a record of all Cell alarms and the actions taken to resolve the Prisoner's issue.
- (d) The Contractor must ensure that the cell call intercom systems of all Cells being used for:
 - (i) assisted care;
 - (ii) crisis care and medical observation; and

- (iii) disciplinary management,

are tested on a daily basis and that the cell call intercom systems of all other Cells are tested fortnightly. In addition, the cell call intercom system of a Cell must be tested immediately before a new occupant moves into the Cell.

- (e) The Contractor must ensure that Contract Workers are trained in appropriate Cell alarm response and recording practices, including the role Cell alarm activation and response plays in the associated Emergency Management Plan such as Cell fire or suicide/self-harm attempt.
- (f) The Contractor must ensure that:
 - (ii) Contract Worker training includes awareness of the misuse of the cell call intercom; and
 - (iii) Prisoners are informed that misuse of Cell alarms may result in disciplinary sanctions.

2.16 Prisoner Management - Hours out of Cell

- (a) The Contractor must ensure that each Prisoner at the Prison (other than a Prisoner under disciplinary management in accordance with applicable Legislative Requirements and Departmental Policies or in crisis care) is out of his Cell for a minimum of 12 hours each day. The Contractor must ensure that, during out of Cell hours, each Prisoner is engaged in meaningful and constructive activities for at least 30 hours per week.
- (b) The Contractor must provide a varied range of appropriate and accessible activities that meet each Prisoner's identified needs. The activities must contribute to the development of a pro-social environment at the Prison in which Contract Workers have ample time to interact with Prisoners in guiding and supporting roles that demonstrate, by example, desirable behavioural models.
- (c) The Contractor must provide an out of Cell activities program, which engages each Prisoner and encourages his interaction with Contract Workers. The program must be sufficiently diverse to enable each Prisoner to be engaged and stimulated and to offer support to assist him to address his offending behaviour and to prepare for a return to the community as a law abiding member of society.
- (d) The Contractor acknowledges that a meaningful and constructive activity is one that is structured, organised and delivered by Contract Workers, having defined outcomes, being of demonstrable benefit to the Prisoner, and a fixed and identifiable part of a wider regime. It includes:
 - (i) Prison Industry, education and vocational training and program involvement approved by the State;
 - (ii) recreation;
 - (iii) attending court and other external appointments; and
 - (iv) social and official visits and other appointments within the Prison.

2.17 Prisoner Management - Aboriginal Prisoner Strategy

- (a) The Contractor must ensure that Aboriginal Prisoners are managed in a culturally sensitive manner by:
 - (i) employing Aboriginal Contract Workers to perform Custodial Functions;
 - (ii) employing Aboriginal Contract Workers to provide functions specifically related to Aboriginal Prisoners, including:
 - (A) appointment of an Aboriginal cultural advisor to the senior management team;
 - (B) providing cultural and welfare support to Aboriginal Prisoners, including the appointment of an Aboriginal activities coordinator responsible for the development and ongoing delivery of activities that are culturally competent and appropriate to Aboriginal Prisoners;
 - (C) appointment of an Aboriginal peer support worker that works closely with the rehabilitation and reintegration team in delivering the Peer Support Strategy and management of Peer Support Prisoners which is culturally appropriate to Aboriginal Prisoners and in accordance with section 2.25;
 - (D) working closely with Contract Workers providing health and mental health support services to Aboriginal Prisoners (including participation in PRAG in accordance with section 2.21) to identify any potential risks for Aboriginal Prisoners, including the appointment of a Registered Nurse – Aboriginal health, an Advanced Enrolled Nurse – Aboriginal health and two Aboriginal health workers;
 - (E) contributing to the development of Individual Management Plans for Aboriginal Prisoners from a cultural and welfare perspective;
 - (F) delivering Offender Programs (as defined in section 3.5) to increase engagement of Aboriginal Prisoners in Offender Programs; and
 - (G) rehabilitation and reintegration services in accordance with section 3, specifically allocating 10 positions to Aboriginal Contract Workers to deliver rehabilitation and reintegration services and using reasonable endeavours to engage Aboriginal organisations to deliver rehabilitation and reintegration services to Aboriginal Prisoners in accordance with section 3;
 - (iii) training Contract Workers in Aboriginal issues prior to their commencement at the Prison;
 - (iv) providing shared accommodation for Prisoners if requested;
 - (v) providing access to information / media in their language;
 - (vi) providing Prisoners with access to Aboriginal community organisations, professionals and persons of tribal significance;

- (vii) recognising the special family and kinship obligations of Aboriginal Prisoners which extend beyond the immediate family, with regard to visits to the Prison, and to sick relatives in hospital and attendance at funerals;
 - (viii) facilitating the development of Aboriginal support groups within the Prison;
 - (ix) facilitating the visitation by community and agency Aboriginal groups;
 - (x) facilitating the expression by such Prisoners of their Aboriginality with regard to food preferences, customs, spirituality, celebrations, ceremonies, arts and crafts consistent with good management of the Prison; and
 - (xi) offering educational vocational training and other programs that are specifically developed for Aboriginal Prisoners and which take account of appropriate teaching methods and learning dispositions of Aboriginal Prisoners.
- (b) The Contractor must ensure that:
- (i) Aboriginal Prisoners are engaged in programs that address their particular offence patterns, provide solutions and achieve outcomes that improve their immediate and long-term future in culturally appropriate ways as identified in their IMPs;
 - (ii) suitable places are set aside where Aboriginal spiritual and cultural needs may be met for Aboriginal Prisoners and must consider the development of separate cultural areas for the various traditional groups, the opportunity for them to practice their tribal ceremonies including pre-funeral rites and the provision of outdoor cooking pits for celebratory use through the preparation of appropriate foodstuffs;
 - (iii) it fosters and encourages Aboriginal Prisoners being placed in the highest level of accommodation; and
 - (iv) it fosters the employment of Aboriginal Prisoners in the highest position possible with regards to the Prisoner's application, skills and knowledge.
- (c) The Contractor's services to Aboriginal Prisoners must be:
- (i) culturally appropriate and responsive, recognising that in many situations this will be best achieved through service-delivery by Aboriginal people;
 - (ii) accessible, so that Aboriginal Prisoners are not disadvantaged by geographic location, cultural and language background, or access to technology;
 - (iii) place-based and flexible, taking into account the interconnected nature of social, economic and health issues; and
 - (iv) family-focused, and responsive to the intergenerational impacts of trauma.
- (d) The Contractor's Aboriginal Programs must address the following issues:
- (i) community, culture and spirituality;
 - (ii) health and wellbeing;
 - (iii) Aboriginal diet;
 - (iv) education;
 - (v) skills training;

- (vi) work programs; and
 - (vii) post release support.
- (e) The Contractor must, through its programs, take a proactive approach to the management of Aboriginal Prisoners and ensure that this group of Prisoners is able to access the opportunities offered at the Prison. The Contractor must ensure that there is equality of access to programs and, through a suitably differentiated provision that Aboriginal Prisoners can achieve to the same level as other Prisoners.
 - (f) The Contractor must engage and consult with Aboriginal Prisoners and their respective elders in order to ensure that the needs of such Prisoners are understood, and particularly, that appropriate solutions to Aboriginal Prisoner issues are found and that the method of delivery is culturally appropriate.
 - (g) The Contractor must ensure that, in developing a thematic response to the management of Aboriginal Prisoners, the Aboriginal Prisoners do not become segregated from their non-Aboriginal peers. In addition the Contractor must ensure that Aboriginal Prisoners do not receive, and are not perceived to receive, preferential treatment. The Contractor must take a whole-Prison community approach and actively promote cross-cultural activities, interaction and awareness.
 - (h) The Contractor must adopt an integrated strategy, with measurable targets, for the management of all aspects of Aboriginal Prisoner care at the Prison and, in doing so, must liaise with relevant Government Agencies, community groups and organisations, such as the Department of Training and Workforce Development, the Department of Planning, Lands and Heritage, the Department of Communities, the Department of Health, regional employers, NAIDOC, and Aboriginal Prisoners themselves.
 - (i) The Contractor must work with the Department of Aboriginal Affairs to implement Family History Programs, Management of Heritage Site programs, and other relevant programs that will benefit Aboriginal Prisoners at the Prison.

2.18 Prisoner Management - Reception of Prisoners

- (a) To facilitate the reception of all Prisoners into the Prison, the Contractor must accept all Prisoners who are directed to the Prison with the proper authority when returning from courts or being transferred from other prisons.
- (b) The Contractor must put in place robust, auditable procedures to ensure that:
 - (i) no person is admitted into the Prison as a Prisoner without a valid commitment order or an approved placement as agreed with IMP or MAP placement approvals; and
 - (ii) the details of the commitment order are entered onto a permanent record as soon as practicable including:
 - (A) the reasons and authority for the commitment;
 - (B) the date of admission of the Prisoner; and
 - (C) details of the identity of the Prisoner, including country of birth and any claimed membership of an ethnic, cultural or racial group.

- (c) The Contractor must provide all Prisoners with the facilities to make a telephone call to inform their families of their imprisonment as soon as practicable after their admission to the Prison, or prior to their transfer to another prison, other than in exceptional circumstances. This telephone call must be provided to the Prisoner free of charge and, pursuant to section 2.5, must be of at least five minutes duration and, in the case of foreign nationals, may be to any location in the world. If, at the time of reception, the person whom the Prisoner wishes to contact is unavailable, the Prisoner may carry this entitlement forward for 24 hours.
- (d) The Contractor must ensure that upon reception to the Prison a Multiple Cell Occupancy Risk Assessment is completed for each Prisoner on TOMS as prescribed by Departmental Policies.
- (e) The Contractor must ensure that upon reception to the Prison, an At Risk Management System Reception Intake Assessment is completed for each Prisoner on TOMS as part of the screening for at risk indicators to identify whether the Prisoner is at risk of suicide or self-harm and any associated processes and procedures in accordance with the Department's multi-disciplinary suicide prevention system for offenders known as the At Risk Management System (**ARMS**) Manual and the Department's whole of prison approach to the way Prisoners who require multi-disciplinary intervention are identified and monitored known as the Support and Monitoring System (**SAMS**) Manual.
- (f) The Contractor must ensure that upon reception to the Prison, each Prisoner's medical record is considered and reviewed as described in section 2.10(b)(i) in order to identify and provide appropriate intervention for any pressing medical condition (including drug, alcohol or mental health needs) and welfare concerns.
- (g) The Contractor must provide all Prisoners with appropriate opportunities to make arrangements for the welfare of their children, next of kin or other dependents as soon as practicable after admission. This will usually be carried out as part of the Induction and Orientation Process described in section 2.19 but if the Prisoner's need is pressing, the Contractor must respond flexibly and provide such additional facilities to the Prisoner as are required.
- (h) In order to maximise the understanding of information by Prisoners a further or extended period of induction and orientation, referred to as the Induction and Orientation Process, will be provided to Prisoners.
- (i) The key Contract Workers and others contributing to the reception process are:
 - (i) the visits reception - unit manager (or equivalent) who manages the process;
 - (ii) reception officers who deliver the process;
 - (iii) an induction officer (or equivalent), a member of the Induction and Orientation Process, who informs of next steps;
 - (iv) an Aboriginal Contract Worker who attends reception for Aboriginal Prisoners;
 - (v) a qualified nurse practitioner (or equivalent) who carries out health screening; and
 - (vi) a Peer Support Prisoner who provides peer support, assistance and information as necessary.

- (j) The Contractor must ensure that the reception process is a formal, documented process and that the Prisoner is aware of behavioural parameters from the outset and is provided with the Prisoner Handbook as defined in section 2.19.
- (k) The Contractor must ensure that the Prisoner, upon completing the reception process, has all information necessary for him to operate without loss of opportunity or ignorance until the Induction and Orientation Process commences.
- (l) The Contractor must ensure that all information described in this section 2.18 is provided to Prisoners in an understandable format and using translations, easy-read documents, the assistance of the persons described in section 2.18(i) and a welcome video in various languages. All information must also be conveyed orally and presented in a linguistic and culturally relevant form, using interpreters where necessary.
- (m) The Contractor may provide an audio introduction to the reception process, Induction and Orientation Process and the Prison.
- (n) The Contractor must develop a complete set of first night procedures for the management of Prisoners who are vulnerable and or at risk of self-harm for inclusion in the Prison Operating Manual.
- (o) The Contractor must be careful to demarcate the reception process and the Induction and Orientation Process on the basis that the reception process should ensure the safety and welfare of the Prisoner and provide immediate, necessary knowledge while the Induction and Orientation Process addresses the Prisoner's longer term needs.

2.19 Prisoner Management – Induction and Orientation

- (a) The Contractor must provide a formal induction and orientation to each Prisoner being received into the custody of the Contractor at the Prison which must be completed within the timeframes and requirements stipulated in the relevant Departmental Policies (**Induction and Orientation Process**).
- (b) The Contractor must develop and provide to all Prisoners a hardcopy handbook (**Prisoner Handbook**) during the reception and Induction and Orientation Process which includes the following information:
 - (i) details about the Prisoners' rights, responsibilities, entitlements and services available to them at the Prison;
 - (ii) key information necessary for the Prisoner to understand the Prison regime and the requirements placed on Prisoners; and
 - (iii) a written code of conduct summarising the behaviour required of the Prisoner including the work conduct requirements referred to in section 4.3(d).
- (c) The Contractor must complete an Orientation Checklist on TOMS for each Prisoner to confirm that the Induction and Orientation Process is complete.
- (d) Protection Prisoners must receive the Induction and Orientation Process delivered locally to their residential location.
- (e) The Contractor must ensure that upon completion of the Induction and Orientation Process:
 - (i) the Prisoner is safe;

- (ii) the Prisoner is apprised of the philosophy of the Prison;
 - (iii) the security status of the Prisoner has been confirmed;
 - (iv) the Prisoner is advised of all available support mechanisms available at the Prison and the process to access them;
 - (v) the Prisoner's needs have been fully assessed;
 - (vi) the Prisoner has an agreed plan to address his needs and a timetable through which to do it including case management, sentence management, re-entry processes and programs
 - (vii) the Prisoner is advised of the expectations for the Prisoner's behaviour and attitude and has agreed to meet those expectations;
 - (viii) the Prisoner is advised of what is expected of him in terms of effort, application and outcome and has agreed to meet those expectations;
 - (ix) the Prisoner is advised of the routines of the Prison;
 - (x) the Prisoner is advised of the different levels comprising the EPI Scheme described in section 1.9 and how they are achieved;
 - (xi) the Prisoner is identified if he is at risk or vulnerable from other Prisoners; and
 - (xii) the Prisoner is advised of the various functions of the Prison including the Prison Canteen Service, External Prisoner Purchases, telephones and mail systems and education, work and training opportunities.
- (f) The Contractor must involve Peer Support Prisoners (as that term is defined in section 2.25) in the Induction and Orientation Process.
 - (g) The Contractor must promote and provide Prisoners with access to the Aboriginal Contract Workers performing functions in accordance with section 2.17 during the Induction and Orientation Process. The Contractor must make available dedicated Contract Workers to conduct the Induction and Orientation Process for a Prisoner and must ensure that Contract Workers who will be working with the Prisoner on an on-going basis are involved in the process. The Induction and Orientation Process must take place across the Prison and involve the introduction of the Prisoner to other Prisoners and Contract Workers and to areas of operation.
 - (h) The Contractor must ensure that Prisoners also undergo an appropriate Induction and Orientation Process prior to progressing or regressing between EPI Scheme levels.
 - (i) The Contractor must ensure that all information described in this section 2.19 is provided to Prisoners in an understandable format and using translations and easy-read documents. All information must also be conveyed orally and presented in a linguistic and culturally relevant form, using interpreters where necessary.
 - (j) The Contractor must conduct regular evaluation of the Induction and Orientation Process. The Contractor must request every Prisoner to complete an evaluation form upon completion of the Induction and Orientation Process and, at the same time, ensure that the Prisoner undertakes a final tick-list of the items covered in the process so that he has an opportunity to query any points. The Contractor must perform a formal evaluation of the Induction and Orientation Process on an annual basis.

2.20 Prisoner Management - Management of Illicit Substances

- (a) In this section 2.20:

Adulterated Sample means a urine sample provided by a Prisoner which has been adulterated by adding a substance to the sample other than water, for example, soap or bleach; and

Diluted Sample means a urine sample provided by a Prisoner which has been diluted by the Prisoner ingesting substantial amounts of water prior to giving the sample or by adding water to the sample after it is taken.

DPT List means a Drug Prevalence Testing (DPT) List which is issued by the State and is a randomised program of urinalysis testing of Prisoners.

Illicit Substance means any substance not lawfully issued to a Prisoner and includes opiates, cannabinoids, amphetamines and benzodiazepine.

Positive Urine Sample Test Result means a test result obtained from an accredited laboratory in respect of a urine sample provided by a Prisoner that indicates the presence in the sample of an Illicit Substance exceeding the allowable benchmark as specified in the State's testing protocols. A Refusal will be deemed to be a Positive Urine Sample Test Result.

Refusal means the refusal by a Prisoner to provide a urine sample for testing.

RUT List means a monthly Random Urine Test (RUT) List issued by the State.

- (b) The Contractor must utilise a number of independent but mutually supportive strategies to identify Prisoners who are engaged in high risk behaviours, including substance abuse, and use appropriate methods to address them.
- (c) The Contractor must put in place effective processes to manage the dispensing of medication to Prisoners and must ensure prescription medication is provided on the basis of assessed need pursuant to the Contractor's health care strategy and not on the basis of demand.
- (d) The Contractor must ensure the integrity of all urine samples taken from Prisoners including by preventing the provision of Adulterated Samples and Diluted Samples by Prisoners.
- (e) The Contractor must ensure that:
- (i) urine samples are taken from Prisoners on the RUT List as directed by the State and must ensure appropriate records are maintained to demonstrate the result as directed by the State;
 - (ii) urine samples are taken from Prisoners on the DPT List as directed by the State;
 - (iii) urine samples are taken in accordance with, Departmental Policies, the State's testing requirements and regulation 26 of the Prison Regulations;
 - (iv) the urine samples, upon being taken, are tested for the presence of Illicit Substances;
 - (v) the urine samples are tested in accordance with Departmental Policies and non-negative urine samples are sent to a laboratory approved by the State and the results forwarded to the Prison;

- (vi) the results for all tests are recorded on TOMS;
 - (vii) all Positive Urine Sample Test Results are reported and charged as an offence under section 70 of the Prisons Act; and
 - (viii) copies of the original certificates issued by the laboratory are submitted to the State within 10 Business Days of the tests being conducted.
- (f) The Contractor must ensure that:
- (i) health services are in place to manage Prisoners under the influence of substances;
 - (ii) targeted testing of Prisoners with identified substance misuse histories is carried out;
 - (iii) random testing is carried out as directed by the Department; and
 - (iv) Prisoners are able to commence on pharmacotherapy treatment programs or continue such programs.
- (g) The Contractor must bear all costs of random and targeted, RUT and DPT samples. Requests made by the State for specific testing, other than the targeted, RUT and DPT testing, will be paid for by the State.
- (h) The Contractor must:
- (i) use reasonable endeavours to prevent Illicit Substances from entering the Prison, the manufacture of alcohol by Prisoners in the Prison and the trade or exchange of prescription medications within the Prison;
 - (ii) ensure that where Prisoners gain access to illicit drugs, appropriate procedures including health management procedures are initiated; and
 - (iii) ensure that if a Prisoner has a history of drug, alcohol or substance abuse, he will be encouraged and facilitated to engage in an appropriate treatment program as soon as practicable.
- (i) The Contractor must take appropriate measures to identify the presence of any Illicit Substances in the Prison and take all reasonable steps to remove them.
- (j) The Contractor must ensure that each new Prisoner is introduced to the Contractor's Illicit Substance education program as part of the Induction and Orientation Process.
- (k) The Contractor must develop and implement a drug strategy for inclusion in the Prison Operating Manual and aligns with the Department's Prisons Drug Strategy and its strategies including those of supply control, demand reduction and harm reduction. The Contractor must review the drug strategy on a yearly basis.

2.21 Prisoner Management - Assessment and Management of Prisoners Identified as at risk

- (a) The Contractor acknowledges that Prisoners may pose a risk to themselves and the reasons for this may be many, complex and enduring. The Contractor acknowledges that the risk drivers may be subtle and hidden, sometimes intentionally, and that an on-going assessment of each Prisoner's at risk status and the Contractor's response is required.

- (b) The Contractor must ensure the safety of all Prisoners identified as at risk at the Prison by developing and implementing procedures that:
 - (i) enable the location of each Prisoner to be known at all times in accordance with section 1.7;
 - (ii) provide sufficient Contract Workers to deter misconduct, enforce rule compliance and supervise the safety of all Prisoners;
 - (iii) provide immediate and effective treatment as required;
 - (iv) prevent Prisoners from being under the control of other Prisoners;
 - (v) enable Prisoners to alert Contract Workers to threats to a Prisoner's safety;
 - (vi) ensure the provision of accommodating at risk Prisoners in special Cells if they are regarded as in crisis;
 - (vii) ensure that each Prisoner's at risk status is taken into account when reviewing IMPs and MAPs; and
 - (viii) enable the reporting of Incidents of attempted suicide and self-harm to the Department via TOMS.
- (c) The Contractor must ensure that:
 - (i) all Contract Workers are trained to recognise at risk indicators, to recognise what action they should take in circumstances where they identify a Prisoner as being at risk, in first aid procedures, and in relevant policies and procedures and reporting requirements;
 - (ii) a Prisoner Risk Assessment Group (**PRAG**) is formed consisting of a member of the Contractor's senior management team and relevant members of prison counselling, health services, Contract Workers supervising Peer Support Prisoners and at least one unit manager;
 - (iii) the PRAG also considers inviting the Chaplain to join PRAG;
 - (iv) the PRAG must include an Aboriginal Contract Worker performing functions specifically related to Aboriginal Prisoners as detailed in section 2.17(a)(ii) if the Prisoner being reviewed by PRAG is an Aboriginal Prisoner;
 - (v) any Prisoner identified as being at chronic risk and within the criteria of SAMS is subject to ongoing monitoring in the general Prison population by the SAMS described in the Department's SAMS Manual;
 - (vi) any Prisoner identified as being in crisis or at risk of self-harm is managed by the ARMS described in the Department's ARMS Manual; and
 - (vii) a Safer Custody Coordinator is appointed to ensure a coordinated approach to the management of ARMS, SAMS, PRAG, violence prevention and anti-bullying.
- (d) The Contractor must comply with the arrangements in place immediately before the Operations Commencement Date for inter prison transfers of Prisoners needing acute in-patient psychiatric care from the Prison to Casuarina Prison.

- (e) The Contractor must differentiate chronic and acute risk factors and to retain and manage at risk Prisoners in general location and accommodation where possible but to separate them when risk assessment so dictates.
- (f) The Contractor will provide constructive distraction and achievement for at risk Prisoners, through provision of purposeful activities. The Contractor is aware that risky behaviour and self-harm seldom occurs in group settings and will configure its management of at risk Prisoners accordingly.
- (g) The Contractor must conduct quarterly reviews of prison practice and procedure relating to self-harm awareness, prevention and incidents of self-harm including the activities of the PRAG team as guided by the Department's ARMS Manual, to support the effective functioning of the team.
- (h) The Contractor must individually case manage Prisoners identified as at risk through a multi disciplinary team in order to reduce the risk. The Contractor must operate three levels of risk management requiring three levels of intervention in accordance with the Department's ARMS Manual.
- (i) If logistics associated with the location of at risk Prisoners throughout the Prison complex proves a difficulty, the Contractor must relocate some or all at risk Prisoners to the Contractor's crisis care unit.
- (j) The Contractor must involve the at risk Prisoner, appropriate groups and agencies and the Prisoner's family in the management of the Prisoner.
- (k) The Contractor must ensure that first aid kits are appropriately stocked and located throughout the Prison.
- (l) The Contractor must include in the Prisons Operating Manual the Contractor's approach to prevention of suicide and self-harm, which covers the minimum requirements of the applicable Legislative Requirements and Departmental Policies.
- (m) The Contractor must ensure that its approach to the prevention of suicide and self-harm is supported by healthcare staff and Peer Support Prisoners (as that term is defined in section 2.25).
- (n) The Contractor must ensure that the Emergency Management Plan identifies the role of Contract Workers who attend as first on the scene and further roles in order to manage an appropriate response to deal with the issues presented.
- (o) The Contractor acknowledges that evenings and night periods are periods of high risk as it is usually at these times that Prisoners are less active. These periods can also increase feelings of isolation which are risk triggers. The Contractor must minimise the risk of self-harm during evenings and night periods by increasing the frequency of checks on Prisoners conducted by Contract Workers.
- (p) The Contractor must ensure that:
 - (i) the TOMS system is used to manage the recording of alerts for Prisoners at risk;
 - (ii) Records reflect a Prisoner's risk level whenever the Prisoner is transferring to or from the Prison;
 - (iii) Incident reports are completed whenever a Prisoner is identified as undergoing an increase in risk level;

- (iv) any known risk level is identified and reflected in each Prisoner's sentence planning documents, such as IMPs and MAPs, developed for each Prisoner and located on the Departmental System (**Sentence Planning Documents**); and
- (v) it complies with the requirements of the prescribed process for treating Prisoners undergoing any risk issue.

2.22 Prisoner Management - Management of Prisoners Requiring Protection (from other Prisoners)

- (a) The Contractor must:
 - (i) establish procedures for the management of prisoners who require protection from other prisoners for any period during imprisonment (**Protection Prisoner**). The Contractor shall provide protection in the least restrictive manner practicable;
 - (ii) use reasonable endeavours to prevent Prisoners from being under the control of other Prisoners;
 - (iii) enable Prisoners to alert Contract Workers to threats to Prisoner's safety;
 - (iv) identify Prisoners who are at risk from other Prisoners;
 - (v) ensure the placement of any Prisoner requiring protection in a safe and secure area;
 - (vi) use reasonable endeavours to ensure that any Prisoner requiring protection is afforded the same work, education and vocational training and program opportunities as are afforded to other Prisoners at the Prison; and
 - (vii) ensure that any Prisoner requiring protection can access the same health, recreation and chaplaincy opportunities as are afforded to other Prisoners at the Prison.
- (b) The Contractor must ensure that:
 - (i) the behaviour of protection Prisoners is monitored by Contract Workers to ensure that they are protected as necessary and that their need for protection is reviewed in accordance with Departmental Policies;
 - (ii) strategies are in place to minimise protection applications by prioritising management options for perpetrators of violence; and
 - (iii) protection Prisoners have an alert to this effect on TOMS.
- (c) The Contractor must provide escorts to protect Prisoners where appropriate, regularly assess, at least fortnightly, protection arrangements in place to determine whether they should continue or be modified in any way and implement appropriate assessment techniques to process a Prisoner's request for protection.
- (d) The Contractor must ensure that protection Prisoners are:
 - (i) managed fairly and openly without discrimination on the grounds of offence type, race, colour, gender, sexual orientation, marital status, physical or mental impairment, language, religion or other opinion, national or social origin, property, birth or other status, except as necessary in properly meeting the needs of a disadvantaged group; and

- (ii) managed within a prison system that provides for graduated levels of restriction and security according to the risk posed to the Prisoner.
- (e) The Contractor must ensure that its Contract Workers:
 - (i) are trained to understand issues concerning protection Prisoners and to appropriately assess the risk that protection Prisoners state they are under or that they are under;
 - (ii) in particular, Contract Workers involved in the reception of Prisoners, the provision of healthcare to Prisoners and the Induction and Orientation Process, identify Prisoners they perceive would require protection from other Prisoners; and
 - (iii) balance the need to arrange protection for Prisoners, with the requirement to challenge Prisoners who make erroneous demands to be so located, recognising that this is a constant source of tension and the Contractor's arrangements for management, support and guidance in this regard must be comprehensive.
- (f) The Contractor must ensure that equality of opportunity for protection Prisoners is achieved and maintained within the operational constraints of the Prison environment and augment it with appropriate outreach provision.

2.23 Prisoner Management – Management of Prisoners Posing a Threat to other Persons

- (a) The Contractor must identify and manage Prisoners who present a risk to other persons at the Prison including Contract Workers, Visitors and other Prisoners and place them in situations which minimise their opportunities to harm others or to be harmed.
- (b) The Contractor must ensure that the fact a Prisoner presents a risk to others is taken into account when reviewing the requirements in the Prisoner's Sentence Planning Documents.

2.24 Prisoner Management - Management of Special Needs Prisoners

- (a) In addition to any applicable obligations in sections 2.17, 2.18, 2.19 and 2.21, the Contractor must:
 - (i) take account of the special needs of:
 - (A) Aboriginal Prisoners;
 - (B) Prisoners of the CALD group;
 - (C) disabled Prisoners;
 - (D) geriatric and aged Prisoners;
 - (E) SAMS criteria;
 - (F) transgender, gender diverse and intersex Prisoners;
 - (G) Prisoners subject to the *Criminal Law (Mentally Impaired Accused) Act 1996* (WA); and
 - (H) terminally ill Prisoners.

- (ii) ensure that those Prisoners with special needs (including Prisoners with limited literacy skills, Prisoners from remote areas or other countries and Aboriginal Prisoners) have contact with their families maximised; and
 - (iii) manage each group of special needs Prisoners in a pro-social manner.
- (b) The Contractor must ensure that:
 - (i) Prisoners with special needs are effectively linked to relevant support agencies, visits to support agencies are facilitated and liaison with guardians as required;
 - (ii) all Prisoners spending more than 12 consecutive months in the custody of the Contractor at the Prison are afforded the opportunity to attain basic literacy skills to a minimum National Reporting System Level 2;
 - (iii) aged and infirm Prisoners (geriatrics) at the Prison are accommodated in a specialist unit that provides an adjacent passive exercise area;
 - (iv) the specific health and service needs of geriatric Prisoners are satisfied including:
 - (A) the involvement of a carer, additional health assessments and the development of IMPs that address their specific requirements; and
 - (B) specific work, education and training programs and the referral, if necessary, to relevant community agencies for specialist assistance;
 - (v) assessment processes exist to identify Prisoners with special needs; and
 - (vi) policies and procedures specify accommodation, management and service provision for Prisoners with special needs.
- (c) The Contractor must conduct a population profiling exercise of the Prison every two years to clearly understand the nature of the Prison population and its needs.
- (d) The Contractor must conduct a needs assessment of each Prisoner upon his reception into custody to identify any special needs of the Prisoner.
- (e) The Contractor must include in the Prison Operating Manual details of the Contractor's approach to dealing with special needs Prisoners and the services in place for such Prisoners and must inform Prisoners of the support and services available.
- (f) The Contractor must operate in a flexible manner and address individual Prisoners and their needs on a personal basis.
- (g) The Contractor must ensure that Contract Workers who work with Prisoners with disabilities are given access to the range of support services available to them through Government Agencies and professional non-government agencies throughout Western Australia.
- (h) The Contractor must provide educational opportunities for Prisoners with special needs. In terms of educational progression, the Contractor acknowledges that the progress of a Prisoner is more important than the level of education achieved.
- (i) The Contractor must not limit a Prisoner's ambition or progress and must assist the Prisoner to achieve whatever level the Prisoner desires to, or is capable of, achieving.

- (j) The Contractor must monitor Prisoners' progress, and ensure that Prisoners are not faced with a benchmark that is unachievable or insufficiently challenging, through the performance of initial and on-going educational assessments of Prisoners.
- (k) The Contractor must work closely with the Department's Disability Services Unit, the Department's Education and Vocational Training area and community groups to ensure service provision to special needs Prisoners is the most effective and relevant possible.
- (l) The Contractor must seek to recognise Prisoners' abilities and set realistic and challenging targets which they can achieve.

2.25 Prisoner Management - Peer Support Strategy

- (a) The Contractor must implement a network of Prisoners who offer peer support to Prisoners (**Peer Support Prisoners**) who are in crisis but not at such a level that formal crisis-care is needed.
- (b) The Contractor must ensure that:
 - (i) there are a sufficient number of Contract Workers employed to oversee Peer Support Prisoners;
 - (ii) the Peer Support Prisoner network is managed by a member of the prison counselling services area;
 - (iii) Peer Support Prisoners are provided training including methods of offering support to fellow Prisoners and, in particular, how to identify any change in the risk level of the Prisoner to whom they are offering support;
 - (iv) Peer Support Prisoners are aware of the limitations of their role and to whom they should report matters;
 - (v) Peer Support Prisoners are never in a position of supervision over any other Prisoner;
 - (vi) Peer Support Prisoners meet at least fortnightly with Contract Workers who supervise Peer Support Prisoners, the Contractor's senior management team and a member of the prison counselling area who manages them; and
 - (vii) Peer Support Prisoners are able to de-brief to Contract Workers who supervise Peer Support Prisoners.
- (c) The Contractor must ensure that Contract Workers are aware of the value of peer support processes and interact positively with Peer Support Prisoners.
- (d) The Contractor must ensure Peer Support Prisoners are available in each accommodation unit and have comprehensive knowledge of the Prison routine and activities in order to assist other Prisoners.

2.26 Prisoner Management - Prisoner Businesses

- (a) The Contractor must ensure that, in accordance with applicable Legislative Requirements:
 - (i) Prisoners do not carry on a business from Prison;
 - (ii) Prisoners do not operate bank accounts at any external agency.

- (b) The Contractor must ensure that during the reception process described in section 2.18 the Prisoner is asked if there are any business issues to be managed. If so, and at the Prisoner's expense, the Contractor will make available resources, such as communication facilities, through which the Prisoner may arrange for the business interests to be transferred to a third party, wound-up, or temporarily suspended.
- (c) The Contractor acknowledges that these transitional arrangements are the business of the Prisoner, and must ensure that the Prisoner notifies Contract Workers when he is satisfied that he has taken all the actions required. The Contractor may not offer any formal guidance, advice or assistance to the Prisoner and must ensure that it is not, and does not become, involved in any way in any Prisoner's business and is not seen to be involved.
- (d) To ensure that Prisoners do not continue to operate businesses, the Contractor must monitor Prisoner communications in accordance with section 2.5, Prisoner financial details and liaise with partners to identify and stop any attempt by Prisoners to do so.
- (e) The Contractor must ensure that Prisoner access to, and management of, the existing bank accounts is similarly controlled. No access is to be permitted after initial actions are taken by the Prisoner to inform the bank of his circumstances and to put holding arrangements in place.
- (f) The Contractor must as part of resettlement activities assist Prisoners to open bank accounts and lodge the Prisoner's funds in them ready for the Prisoner's release.

2.27 Prisoner Management - Prisoner Complaints

- (a) For the purposes of this section 2.27, **Complaint** means a Prisoner's written or verbal statement that something is wrong or not satisfactory, which the Prisoner would like to be addressed.
- (b) The Contractor must develop and implement a process for lodging and addressing Prisoner Complaints (**Complaints Process**) that is consistent and provides linkage with the Department's that is included in the Prison Operating Manual. The following matters are excluded from the Complaints Process:
 - (i) Complaints associated with statutory disciplinary decision;
 - (ii) Complaints about matters set out within Acts or other subsidiary legislation and Departmental Policies;
 - (iii) Complaints related to offences or acts of a criminal nature; and
 - (iv) Complaints made on behalf of another Prisoner.
- (c) The Contractor must ensure that Prisoners are advised of the following mechanisms in which to make Complaints:
 - (i) verbally or in writing to Contract Workers;
 - (ii) verbally or in writing to the Department's Administration of Complaints Compliments and Suggestions (ACCESS) area;
 - (iii) in writing to the CEO or delegate;
 - (iv) in writing to the Minister for Corrective Services; and

- (v) verbally or in writing to external Government Agencies and bodies.
- (d) The Contractor must ensure that:
 - (i) the Complaints Process is accessible to all Prisoners and provides an accountable, fair, transparent and prompt system for lodging and resolving Complaints and that Prisoners are assisted to express their concerns and seek redress without fear of retribution;
 - (ii) Prisoners are provided with information about the Complaints Process as part of the reception and Induction and Orientation Process as defined within section 2.19 including the range of internal and external mechanisms available for them to make a Complaint;
 - (iii) where a Prisoner makes a verbal Complaint and it cannot be resolved verbally, Prisoners shall be encouraged to make a written Complaint; and
 - (iv) Complaints are managed and addressed according to a standardised process that:
 - (A) ensures that Prisoners are informed of the outcome of their Complaint in the same medium in which the Complaint was reported;
 - (B) makes provision for appeal in cases where the Complaint is not resolved to the satisfaction of the Prisoner with appeals being dealt with quickly, equitably and credibly; and
 - (C) ensures that Prisoners are informed of the process for withdrawing Complaints in accordance with Departmental Policies.
- (e) The Contractor must ensure that Contract Workers involved in dealing and resolving Complaints shall do so confidentially and must not discuss the Complaint except for in the discharge of their duties.
- (f) The Contractor must ensure there are sufficient Contract Workers designated to manage the Complaints Process. The Contractor must ensure the Contract Workers managing the Complaints Process:
 - (i) have oversight and monitor all Prisoner Complaints handled at the Prison;
 - (ii) manage all written Complaints that are not resolved by unit managers/nurse managers; and
 - (iii) ensure the Prison maintains a record keeping system of all Prisoner Complaints.
- (g) The Contractor must ensure that TOMS Prisoner Complaint forms and unit interview forms are accessible and freely available to all Prisoners.
- (h) The Contractor must ensure that Prisoners are appropriately assisted to complete TOMS Prisoner Complaint forms in accordance with Departmental Policies.
- (i) The Contractor must ensure:
 - (i) all hardcopy and signed TOMS Prisoner Complaint forms are forwarded to the Contract Workers designated to manage the Complaints Process;

- (ii) TOMS Prisoner Complaint forms and hardcopy Records relating to the Complaint are held at the Prison for 12 months before being forwarded to the Department's Records management area; and
 - (iii) no TOMS Prisoner Complaint forms and hard copy Records relating to the Complaint are to be held on the Prisoner's hard copy file that is held by the Contractor.
- (j) The Contractor must ensure the Complaints Process must record the initial application made by the Prisoner and identify the individual assigned to deal with it and record the details on TOMS.
- (k) The Contractor must ensure that a response is given to the Prisoner within ten working days of the Prisoner making the Complaint.
- (l) The Contractor must provide reasonable assistance required in the resolution of requests or complaints made by a Prisoner to a third party. Should a Prisoner wish to raise a concern which is outside the remit of the Contractor's Complaints Process, the Contractor must advise the Prisoner of the appropriate process and give further assistance.
- (m) The Contractor must manage a Complaints Process which allows minor issues and general enquiries to be dealt with quickly by Contract Workers. The Contractor must use all reasonable endeavours to resolve any and all issues before the written complaints process is instigated, mindful of the absolute right of the Prisoner at any time to invoke it. The Contractor must ensure that Contract Workers are available for Prisoners to discuss their Complaints, concerns or any suggestions.
- (n) The Contractor must create a forum for Prisoner representatives (**Prisoner Forum**) to bring issues to the attention of the Contractor's management team and for the dissemination of information to Prisoners. The Prisoner Forum will effectively enfranchise Prisoners and give them a voice, while providing the Contractor's management team with feedback on the issues and concerns of the Prisoner population. The Contractor must ensure a Prisoner Forum meeting is held at least monthly. Specialist topics, must be covered at regular intervals (e.g. Prisoner Canteen Services, catering, recreation and healthcare etc).
- (o) The Contractor must ensure where a Prisoner makes a Complaint relating to misconduct by a Contract Worker it must be reported to the Department's Professional Standards Division.
- (p) The Contractor must ensure where a Prisoner makes an allegation of assault the Contractor must report the Incident in accordance with Departmental Policies to the Western Australia Police Force within 24 hours.

2.28 Prisoner Management - Privileges for Prisoners

- (a) The Contractor must provide a system of privileges for Prisoners which may be granted as a reward for behaviour and application or removed as a sanction.
- (b) For the purposes of this section 2.28, **Prisoner Privileges** includes:
 - (i) access to the Prison Canteen Service;
 - (ii) access to External Prisoner Purchases;

- (iii) access to recreation, hobbies and sporting facilities or equipment;
 - (iv) the retention of television sets, radios or other electrical items in the Prisoner's Cell;
 - (v) the retention of a computer in the Prisoner's Cell;
 - (vi) accommodation of the Prisoner in a self care unit;
 - (vii) the retention of or access to musical instruments;
 - (viii) the retention of approved items of personal property in the Prisoner's Cell;
 - (ix) access to the Prison library for recreational purposes; and
 - (x) any other privileges determined by the Contractor.
- (c) The Contractor must:
- (i) ensure that all Prisoners have fair and equitable access to Prisoner Privileges;
 - (ii) provide a verbal warning to a Prisoner before removing any Prisoner Privilege, unless the Prisoner's misbehaviour is sufficiently serious;
 - (iii) ensure that Prisoner Privileges are only removed after consultation with the Prisoner;
 - (iv) ensure that Prisoners with special needs are not adversely impacted by the removal of any Prisoner Privileges;
 - (v) use TOMS to record the loss of Prisoner Privileges; and
 - (vi) ensure that there is a transparent audit trail of the reason for the removal of any Prisoner Privileges.
- (d) Subject to sections 2.28(e) and 2.28(f), the Contractor may withdraw a Prisoner Privilege from a Prisoner if, in its opinion:
- (i) the Prisoner Privilege is being misused;
 - (ii) there has been a breach of a lawful order issued to the Prisoner;
 - (iii) the Prisoner Privilege constitutes a threat to, or breach of good order, and the security of the Prison;
 - (iv) the withdrawal of the Prisoner Privilege constitutes a management option for failing to meet the standard of behaviour required by the Prison; or
 - (v) for any other reason approved by the CEO.
- (e) Before a Prisoner Privilege is withdrawn, the following process must be observed.
- (i) The Contractor must inform the Prisoner of the facts giving rise to the proposed withdrawal of the Prisoner Privilege.
 - (ii) The Prisoner may make a submission to the Contractor regarding the proposed withdrawal of the Prisoner Privilege.
 - (iii) The Contractor, after due consideration, must inform the Prisoner of his or her decision.
 - (iv) The loss of the Prisoner Privilege and reason for its loss, including any ensuing discussions, must be recorded on the Prisoner's file.

- (f) If a Prisoner Privilege is withdrawn, the Prisoner may request a review of the withdrawal of that Prisoner Privilege in accordance with applicable Legislative Requirements and Departmental Policies.
- (g) The Contractor must link Prisoner Privileges to each EPI Scheme.
- (h) The Contractor must communicate to Prisoners the advantages to them of EPI Scheme progression in addition to the worth of the activities they are undertaking.
- (i) A Prisoner may lose Prisoner Privileges through an EPI Scheme down-grading, which is a specific sanction for an act or failure that, by itself, does not warrant an EPI Scheme review or as a result of a hearing of a proven disciplinary offence.
- (j) Pursuant to section 5.12, this may involve a reduction in the Prisoner's gratuity but may also be a temporary restriction of any or a combination of privileges.
- (k) The Contractor must develop and provide to Prisoners a facilities list which enables Prisoners and Contract Workers to know, at a glance, what each Prisoner on an EPI Scheme level may have.
- (l) The facilities list must be developed in consultation with Prisoners via the Prisoner Forum as created in section 2.27(n) and must be reviewed annually.

2.29 Prisoner Management - Pro-Social Environment

- (a) The Contractor must ensure that a pro-social environment is developed and maintained in the Prison through Contract Worker/Prisoner relations, programs and management routines and by:
 - (i) treating Prisoners with due respect;
 - (ii) maximising/optimising each Prisoner's freedom of movement consistent with the need for order and security;
 - (iii) creating good relationships between Contract Workers and Prisoners; and
 - (iv) minimising physical barriers between Contract Workers and Prisoners and Visitors and Prisoners and making the Prisoner as "open" an establishment as possible within the confines of the perimeter of the Prison, subject to good order, security and safety considerations.
- (b) The Contractor must ensure that all Contract Workers performing Custodial Functions are:
 - (i) trained in conflict resolution and normalisation of the Prison environment;
 - (ii) trained in the use of negotiation and mediation as problem solving procedures;
 - (iii) trained in the special needs of Aboriginal Prisoners from various tribal groups;
 - (iv) de-briefed following incidents of Prisoner/Prisoner and Prisoner/Contract Worker conflict; and
 - (v) given access to counselling services designed to assist them with work related difficulties.

- (c) The Contractor must ensure that each Prisoner is:
 - (i) managed as an individual consistent with the Department's principles and guidelines, where the negative effects of imprisonment are to be minimised and ensure that the Prisoner is given as much opportunity as possible to manage himself in an appropriate manner and demonstrate his developing learning and skills;
 - (ii) managed without discrimination or harassment on the grounds of race, national origin, colour, sexual orientation, physical or mental impairment, language, religion, political or other opinion except as is necessary in properly meeting the needs of a disadvantaged individual or group;
 - (iii) given the maximum amount of freedom of movement and association consistent with the security of the Prison and the Prisoner's IMP;
 - (iv) classified at the lowest appropriate security level; and
 - (v) managed according to an incentive scheme encouraging good behaviour and compliance with rules.
- (d) The Contractor must ensure that, within the Prison, limitations and removals of freedom are consistent with security requirements and the freedom of Prisoners is not managed by reference to the lowest common denominator. Instead, the Contractor must manage each Prisoner individually to ensure the majority do not pay for his approach.
- (e) The Contractor must seek to foster an environment in which Contract Workers and Prisoners are continually and comfortably in each other's company.
- (f) To the extent that the Contractor uses technology within the Prison, it must ensure that the technology does not form a barrier between pro-social interactions. The Contractor must encourage Contract Workers to deal with Prisoners face-to-face rather than from behind glass or in offices.
- (g) The Contractor must ensure that, in all its considerations, the Contractor's senior management team protects and develops the pro-social environment in the Prison.
- (h) The Contractor must provide training to Contract Workers regarding pro-social behaviour.
- (i) The Contractor must appropriately challenge unacceptable behaviour and practices from both Contract Workers and Prisoners and encourage openness and respect.
- (j) The Contractor must use the Prisoner Forum as created in section 2.27(n) and other forums for discussion, consultation and information sharing and encourage Prisoners to participate in real decision making wherever possible and prudent.
- (k) The Contractor must play an active role in looking at the wider issues of crime, particularly those seen as 'victim free', and in emphasising a more socially responsible attitude amongst the Prisoners. The Contractor must ensure that Prisoners re-engage with the community through personal reparation targets and volunteering.
- (l) The Contractor must celebrate the variations in culture and expectations in different communities and ensure that the realities of each individual's experience can be translated into an understanding of society and community expectations.

2.30 Prisoner Management - Psychological Services

- (a) The Contractor must have a prison counselling services area with registered and qualified social workers and psychologists as required that will have a range of responsibilities throughout the Prison. Through this area the Contractor must ensure that Contract Workers cover a breadth of issues and that supervision and professional development is appropriately managed.
- (b) The Contractor must ensure that:
 - (i) any Prisoner who is assessed by a Contract Worker as being at risk of self-harm or suicide receives psychological counselling and a referral to ARMS;
 - (ii) any Prisoner who is assessed by a Contract Worker as vulnerable and requiring additional support and monitoring receives a referral to SAMS;
 - (iii) the prison counselling services area works closely with the Prison's health service staff, particularly the mental health nurse and Prison support staff to meet the social, emotional and cultural health and wellbeing of Prisoners; and
 - (iv) the prison counselling services area works closely with its counterparts in the West Australian public prison system to ensure consistency of service provision.
- (c) The Contractor may consider extending the psychological services provided by the prison counselling services area by involving external groups and voluntary organisations.
- (d) The Contractor must ensure that its psychological staff liaise effectively with Contract Workers and the wider Prisoner and staff population.
- (e) The Contractor must ensure that its psychological staff liaise effectively with Prisoner counselling services provided in other prisons.

2.31 Prisoner Management - Release of Prisoners

- (a) The Contractor must:
 - (i) ensure that Prisoners are released on the earliest legal date;
 - (ii) ensure that no Prisoner is detained after his release date, except if he has so requested and that request has been approved in accordance with applicable Legislative Requirements and Departmental Policies;
 - (iii) maintain timely and accurate reporting and discharge planning to enhance a Prisoner's capacity to be released;
 - (iv) use best endeavours to ensure that where a Prisoner's home is not within the Perth metropolitan area, the Prisoner is transferred to and released from the Prison nearest the Prisoner's home unless the Prisoner requests to be discharged from the Prison;
 - (v) where a Prisoner's home is within the Perth metropolitan area, provide the Prisoner with a "fare home" or other means of transport to enable the Prisoner to return to his home; and
 - (vi) ensure that all Prisoner property and any accumulated unspent money is returned to a Prisoner upon his release.

- (b) The Contractor acknowledges that a Prisoner's release will be to freedom or to a supervised community order.

2.32 Prisoner Management - Remand Prisoners

- (a) The Contractor must ensure that:
 - (i) remand Prisoners remain at the Prison if they elect to do so and the circumstances allow it;
 - (ii) remand Prisoners have, as a minimum, the same access to services as sentenced Prisoners including the ability to make External Prisoner Purchases;
 - (iii) remand Prisoners are presumed to be innocent until found guilty and are treated without restriction other than those necessary for Prison organisation and the security of the Prison and remand Prisoners;
 - (iv) the treatment of remand Prisoners is not less favourable than that of sentenced Prisoners;
 - (v) where work is available, remand Prisoners are offered the opportunity to work, but are not required to work;
 - (vi) remand Prisoners who choose to work are paid as other Prisoners;
 - (vii) each remand Prisoner has a MAP or IMP and, if education or vocational training or appropriate programs are available, the remand Prisoner is encouraged to avail themselves of these opportunities;
 - (viii) remand Prisoners have increased Visitor access at the discretion of the Contractor; and
 - (ix) remand Prisoners and all Prisoners who have legal matters pending, whether they are on remand or sentenced to a term of imprisonment, are able to meet and have telephone conversations with their lawyers, consistent with security requirements and have access to legal library resources, as far as practicable.
- (b) The Contractor must operate a differentiated regime for remand Prisoners which meets the needs of Prisoners, the Department and the wider justice system. This must be achieved in consultation with the Prisoner, taking into account his individual circumstances. For example, if a Prisoner is close to completing a vocational qualification and his status then changes, but his court appearances can be facilitated from the Prison, it is appropriate to encourage the completion of his training course as it is a key benefit for the Prisoner.
- (c) The Contractor must ensure that remand Prisoners have increased levels of provision appropriate to their status. The Contractor must balance the needs of remand Prisoners with those of the majority of the sentenced Prisoner population.
- (d) The Contractor must ensure that any Prisoner who changes in status to remand has their position explained to them and written material provided explaining their position and the increased entitlements associated with remand status. This will enable the Prisoner to discuss with Contract Workers issues of their management and make appropriate requests.

- (e) The Contractor must train Contract Workers to understand the differences in the status of remand Prisoners as opposed to convicted, un-sentenced and sentenced Prisoners, as the Contractor considers it is critical to understand that external court proceedings often create a considerable amount of additional pressure and stress, both for the Prisoner and his family, in addition to more formal variations in the Prisoner's management.
- (f) The Contractor must comply with all Legislative Requirements and Departmental Policies applicable to remand Prisoners.

2.33 Prisoner Management - Separate Confinement

- (a) In addition to the requirements in section 1.11(e), the Contractor must ensure that:
 - (i) prolonged separate confinement, corporal punishment, punishment by placement in a dark Cell, reduction of diet, sensory deprivation and all cruel, inhumane or degrading sanctions are not used;
 - (ii) the Prisoner is treated with respect and decency at all times and Contract Workers pay due regard to the dignity of the Prisoner;
 - (iii) the Contractor Superintendent does not exercise his or her powers under section 36 of the Prisons Act as a "matter of course";
 - (iv) a record is made of the reason(s) for the separate confinement and the regime under which access to facilities and entitlements is determined;
 - (v) the Prisoner is informed verbally and in writing of the reason(s) for the separate confinement and the period of the separate confinement placement;
 - (vi) every Prisoner who is placed in separate confinement as a punishment is visited daily by:
 - (A) a member of the Contractor's management team;
 - (B) a representative of the medical officer; and
 - (C) a psychologist from the prison counselling services area;
 - (vii) such visitation is recorded in a disciplinary management unit occurrence book, or similar;
 - (viii) if the medical officer or their representative, or member of the Prisoner counselling team advises the officer in charge of the Prison that they consider the termination or alteration of the separate confinement is necessary on grounds of physical or mental health, the separate confinement is immediately terminated or altered accordingly (unless the Prisoner is undergoing separate confinement as part of a disciplinary management regime, in which case it may not be terminated except at the direction of the Department's Superintendent performing the adjudication); and
 - (ix) the same requirements apply for Prisoners separately confined for management or administrative reasons.
- (b) The Contractor must ensure that, during any period of separate confinement, the Prisoner is held in suitable accommodation that is fit for purpose.

- (c) The Contractor must ensure that any decision to request an order under section 43 of the Prisons Act is reasonable in the circumstances and justifiable according to the threat the relevant Prisoner poses to the good order of the Prison. The Contractor acknowledges that any resulting order is not a punishment and must act accordingly. Before making such a request to the CEO (or delegate) the Contractor must consider all other options available to it.
- (d) If a Prisoner is subject to separate confinement at the time of his reception at the Prison, the Contractor must maintain the regime in place at that time for the period specified.

2.34 Prisoner Management - Throughcare

- (a) The Contractor must manage each Prisoner at the Prison in accordance with assessment and case management requirements detailed in applicable Legislative Requirements and Departmental Policies and recommendations detailed in the Prisoner's IMP or MAP.
- (b) The Contractor must facilitate the seamless management of a Prisoner between external throughcare providers during and after the Prisoner's imprisonment at the Prison.
- (c) The Contractor acknowledges that Prisoners may be serving finite sentences or be eligible for Prisoners Review Board consideration and must work closely with the Department's Adult Community Corrections area to manage their transition into the community.
- (d) The Contractor must include in the Prison Operating Manual details of its service provision in the area of throughcare and the aims of the Prison in meeting the Prisoner's throughcare needs, including resettlement strategies.
- (e) The Contractor must seek external support to facilitate this process, including drawing down external funding and create a multi-disciplinary team including Government Agencies and relevant re-entry providers to manage throughcare issues and develop the linkages and partnerships required for a Prisoner to be successfully supported in a seamless manner.
- (f) The Contractor must establish clear protocols and communication structures to ensure the smooth incorporation of external groups and staff, and ensure that its resettlement strategy feeds into the wider prison system and supports the aims of the Department.
- (g) The Contractor must develop for inclusion in the Prison Operating Manual throughcare processes and procedures for the Contractor's management and use of:
 - (i) prisons that operate as sending and receiving prisons;
 - (ii) the Department Adult Community Corrections area;
 - (iii) family support networks;
 - (iv) external accommodation support networks;
 - (v) employment agencies;
 - (vi) commonwealth employment initiatives;
 - (vii) education agencies; and

- (viii) rehabilitation and development programs.

2.35 Prisoner Management - Voluntary Starvation (Hunger Strike)

- (a) The Contractor must ensure that, where a Prisoner embarks upon a course of voluntary starvation:
 - (i) all appropriate measures are taken to resolve any Complaints;
 - (ii) the Prisoner's choice not to eat is respected;
 - (iii) all appropriate measures are taken to maintain the Prisoner's health including through counselling of the Prisoner, peer support, ongoing provision of food, monitoring of food and fluids and regular weighing of the Prisoner; and
 - (iv) the Contract Manager is notified in accordance with Departmental Policies.
- (b) The Contractor must ensure that voluntary starvation is managed as a health issue and healthcare staff govern decisions relating to the Prisoner during any such episode.

3. Rehabilitation and Reintegration

3.1 Sentence Management and Case Management - General

(a) Definitions

Case Conference means a formal meeting convened to discuss a Prisoner's initial IMP and subsequent IMP reviews including the Prisoner's progress against the IMP. Special Case Conferences can also be called when there are particular concerns about a Prisoner's behaviour or circumstances.

Classification Review Checklist means the checklist completed to review a Prisoner's security rating after they have been sentenced for at least 6 months. This checklist is to be completed as part of the regular IMP review process and informs the Security Rating for that review. The completed checklist is to be considered with the IMP review by Case Conference. This checklist will also be used to review a Prisoner's Security Rating where necessary, outside of scheduled IMP reviews.

Education and Vocational Training Checklist means a checklist that is completed on TOMS for each Prisoner by qualified education assessors to assist in the determination of educational and vocational needs for each Prisoner.

Individual Management Plan or IMP means the plan developed for a Prisoner serving an effective sentence of 6 or more months in consultation with the Prisoner. The IMP spans the Prisoner's sentence through to release, identifies the Prisoner's needs and contains recommendation for prison placements, security classification and interventions that will assist the Prisoner to live a pro-social life upon his release to the community. The IMP outlines the management of the prisoner and provides information in regard to the following areas:

- (i) Custody and Containment - term details, Security Rating, placement, Prisoner Behaviour, outstanding court dates and information regarding restricted visits;
- (ii) Care and Wellbeing - special needs referrals and family/social contact issues;

- (iii) Rehabilitation and Reintegration - main intervention needs (identified through the application of Education and Vocational Training Checklist and Treatment Assessment Report) and specific parole issues; and
- (iv) Reparation - industry/vocational skills the Prisoner has to offer for participation in Prison Industries.

Management and Placement Checklist - Remand (MAP-Remand) means the checklist completed for a Prisoner to determine initial Security Rating and placement for a remand Prisoner.

Management and Placement Checklist - Sentenced (MAP-Sentenced) means the checklist completed for a Prisoner to determine initial Security Rating and placement for a sentenced Prisoner and generally will define a Prisoner's Security Rating for the first 6 months in custody post-sentencing.

MAP means a Management and Placement Checklist – Remand or MAP-Remand or a Management and Placement Checklist – Sentenced or MAP-Sentenced.

Security Rating means the outcomes following the application of either the initial Security Rating contained in the MAP (Remand or Sentenced) or the Classification Review Checklist will result in a numeric score, which will identify a security rating for the Prisoner. Each Prisoner will be assigned one of the following three Security Ratings: Maximum Security, Medium Security and Minimum Security.

Treatment Assessment Report means a report that is completed by qualified treatment assessors in the determination of the treatment intervention needs associated with offending behaviour (criminogenic treatment needs) for each Prisoner. These criminogenic treatment needs are specific to each Prisoner and can be both directly or indirectly linked to the Prisoner's offending behaviour. Treatment assessors gather relevant background information, conduct a clinical interview and administer risk assessment and psychometric tools to determine suitability, type and mode of therapeutic intervention. The report must incorporate all relevant administered assessments in determining the Prisoner's risk of re-offending, identified treatment targets and recommended interventions matched to each Prisoner's needs.

(b) General Obligations of Contractor

The Contractor must work with the Department's sentence management systems and personnel, the Department's Adult Community Corrections and any other relevant agencies, in the case management and sentence management process for Prisoners at the Prison in accordance with the requirements of this section 3.1 and section 3.2.

3.2 Sentence and Case Management - Administration

(a) Sentence Management

- (i) The Contractor acknowledges that sentence management requires the administration, by the Contractor, in cooperation with the Department and any other relevant agencies, of the Sentence Planning Documents applicable in respect of each Prisoner.
- (ii) The Department is responsible for the development of Prisoner initial IMPs and MAPs

- (iii) In the event that a Prisoner at the Prison does not have an initial IMP or MAP the Contractor may notify the Department to resolve the matter.
- (iv) Sentence Management is intended to achieve the following aims:
 - (A) to reduce the risk of re-offending by Prisoners by identifying areas of risk and providing IMPs for Prisoners during imprisonment aimed at reducing that risk;
 - (B) to enable Prisoners to make constructive use of their time in prison through structured IMPs;
 - (C) to provide strategies for Prisoners to avoid further offending and consequent further periods of imprisonment through the provision of appropriate programs for Prisoners and to work towards the possibility of the earliest release of Prisoners from custody;
 - (D) to provide information to assist administrators to target resources more effectively in order to ensure that prison regimes and services more closely match the identified needs of Prisoners;
 - (E) to determine the individual security rating and the appropriate placing of a Prisoner based on risk;
 - (F) to place Prisoners in programs based on Prisoner risks, needs and available resources;
 - (G) where practicable, to place Prisoners as close as possible to family, friends and/or significant others in order to promote family, community and social support; and
 - (H) to schedule regular reviews to assess a Prisoner's progress, placement and security rating.
- (v) The Contractor's approach to sentence management must be governed by the following fundamentals:
 - (I) to ensure effective sentence management, the Contractor must work closely with its colleagues in other prisons, the Department and other justice stakeholders to provide comprehensive information on the provision of sentence management at the Prison, its capabilities and its expertise;
 - (J) to ensure effective sentence management, the Contractor must carry out a review of all Sentence Planning Documents on the Prisoner's arrival to assess its currency and refine the planning documentation (in liaison with the State and the Prisoner) should this be considered advantageous ('At Arrival – Checking ').
 - (K) to ensure effective sentence management, the Contractor must regularly review, on a planned and as-needs basis, Sentence Planning Documents to ensure continued currency, to respond to developing and changing needs and risks, and to move the hurdles forward to maintain the Prisoner's momentum ('During – Updating'); and

- (L) to ensure effective sentence management, the Contractor must work closely with 'next-stage' providers and partners to provide provision that dovetails and overlaps with that provided within the Prison ('Before Leaving – Transferring').
- (vi) The Contractor must promote good communication and record control in sentence management.
- (vii) The Contractor must ensure that its sentence management staff have a primary role in coordinating sentence management provision and recording activity.
- (viii) The Contractor must work with the Department's sentence management systems and personnel and the Adult Community Corrections and any other relevant agencies, to ensure that there is timely provision of information regarding the Prisoner's progress to releasing authorities.
- (ix) The Contractor must ensure that security of the Prison is managed efficiently and effectively by the placement of Prisoners in a range of accommodation options at varying levels of security.

(b) Case management

- (i) The Contractor acknowledges that case management requires the day-to-day provision of assistance and support to Prisoners by case officers, to assist Prisoners to achieve the goals and outcomes set out in their Sentence Planning Documents. In particular, case officers must work with each Prisoner to assess progress in the achievement of their goals and outcomes and sentence management targets, to inform any later sentence management processes.
- (ii) The Contractor:
 - (A) must recruit Contract Workers to fulfil the role of case officers and describe the full responsibilities of case officers and the training which they will receive to ensure they have the capacity to perform their role;
 - (B) must describe how case officers' functions will be assessed and monitored on an ongoing and regular basis;
 - (C) acknowledges that the role of case officers in case management is intrinsic to the sentence management process; and
 - (D) must provide case officers with such ongoing training as may be required for their role and manage them in a way that reflects their status.
- (iii) The Contractor must integrate with the Departmental System to ensure comprehensive and accurate record keeping for case management requirements.

(c) Individual Management Plans Reviews

- (i) The Contractor must ensure that every Prisoner for which an initial IMP has been completed has the IMP reviewed as scheduled and otherwise in accordance with applicable Legislative Requirements or Departmental Policies.
- (ii) The Contractor must ensure that each IMP for a Prisoner is updated as may be required and contains:

- (A) details of any security concerns regarding the Prisoner (including past and current escape attempts and breaches of discipline);
- (B) details of any Incidents which may be relevant to maintaining the Prisoner's wellbeing and stressors relevant to the Prisoner's mental equilibrium, particularly relating to self-harm or suicide;
- (C) the Prisoner's at risk status as identified pursuant to section 2.21;
- (D) details of whether the Prisoner poses a threat to other persons as identified pursuant to section 2.23;
- (E) information regarding the location of the Prisoner's family and visiting and telephone arrangements;
- (F) details of other Prisoners or groups of Prisoners from whom the Prisoner should be separated;
- (G) recommendations on sources of professional and informal support and help to the Prisoner;
- (H) an assessment of the Prisoner's risk of re-offending both within the prison system and in the community;
- (I) plans and recommendations for the Prisoner's education, employment, vocational skills development and involvement in programs designed to address the Prisoner's offending behaviour, risk of re-offending and maintain his health and wellbeing (including drug, alcohol and substance abuse programs); and
- (J) progress against scheduled interventions.

(iii) The Contractor must:

- (A) use reasonable endeavours to ensure that each Prisoner sights and signs off his updated IMP following its review under this section; and
- (B) keep each Prisoner's IMP confidential from other Prisoners.

(iv) The Contractor must ensure that:

- (A) programs are delivered to each Prisoner in accordance with the type, date, duration and intensity as scheduled in the Prisoner's IMP;
- (B) any cancellations or waivers of a program by a Prisoner must be supported by robust evidence; and
- (C) the inclusion of a Prisoner in a program, outside of those Prisoners scheduled to participate, must be supported by a diagnosed need.

(v) The Contractor must arrange Case Conferences in accordance with each Prisoner's IMP.

(d) Classification Reviews

(i) The Contractor must ensure that:

- (A) for each Prisoner that has an initial IMP, a Classification Review Checklist is completed at the time the Prisoner's IMP is reviewed, in accordance with the IMP review schedule;

- (B) a Classification Review Checklist is completed in the event of a change in the Prisoner's circumstances, which warrants a review of the Prisoner's Security Rating and amendment to the IMP;
- (C) the Classification Review Checklist considers different Security Rating factors, than those considered in the initial Security Rating score. The Contractor must ensure the score takes into account the progress of a Prisoner, or otherwise, at each review. All of the Security Rating items are to be scored as accurately as possible in accordance with the Department's Sentence Management Manual.
- (D) the information used to score the items and complete the Classification Review Checklist is reliable and where possible verified via a documented source.

(e) Management and Placement Checklists

- (ii) The Contractor must ensure that the requirements contained within a Prisoner's MAP are met or are delivered to that Prisoner (as the case may be).

3.3 Prisoner Programs - Education and Vocational Training

- (a) **(Overview)** The Contractor acknowledges that:
 - (i) educational studies and traineeships support skills development and the rehabilitation of Prisoners;
 - (ii) as education and traineeships require the ongoing delivery of a service leading to the attainment of a certificate or qualification, a Prisoner's continuance of a course of study or traineeship is considered to be of equal importance to the delivery of the education or traineeship;
 - (iii) while it is expected that some Prisoners may wish to alter their planned education program, the Contractor must ensure that withdrawals are kept to a minimum; and
 - (iv) Prisoners wishing to withdraw from educational studies or traineeships must be counselled as to their actions.
- (b) The Contractor must plan and implement education and training programs at the Prison in accordance with this section 3.3, the Prisoner's IMPs and applicable Legislative Requirements and Departmental Policies to facilitate greater rehabilitation and employment opportunities for Prisoners upon their release from Prison through:
 - (i) assisting Prisoners to develop skills more relevant to gaining and retaining employment upon release;
 - (ii) increasing Prisoners' literacy and numeracy skills whilst in Prison in alignment with the Department's Literacy and Numeracy Strategy; and
 - (iii) providing seamless and supported transition from prison to Prison and from Prison to community educational settings or employment.
- (c) The Department may allocate Prisoner traineeship placements for Prisoners at the Prison where student selection, instructor supervision and industry work facilities at the Prison comply with the Department's traineeship requirements as notified to the

Contractor from time to time. The Contractor must use its reasonable endeavours to gain Prisoner traineeship placements from the Department.

- (d) The Contractor must comply with the National Strategy for Vocational Education and Training for Adult Prisoners and Offenders in Australia and any replacement of it.
- (e) The Contractor must consult widely with a range of Western Australia education, training, employment, and personnel companies and organisations to ensure that it develops an integrated solution to the education and vocational training needs of the Prisoners at the Prison. As soon as practicable after the Operations Commencement Date, the Contractor must develop an Education and Training Strategy for the Prison for inclusion in the Prison Operating Manual.
- (f) The Education and Training Strategy must be based on the National Strategy for Vocational Education and Training for Adult Prisoners and Offenders in Australia and must seek:
 - (i) to improve access to accredited vocational education and training for Prisoners;
 - (ii) to support successful participation and attainment across a range of fields of study and levels of vocational education and training;
 - (iii) to contribute to the employment and learning pathways which can support the successful re-integration of Prisoners in the community; and
 - (iv) to create an accountable system that provides equitable vocational education and training outcomes for offenders.
- (g) The Contractor must comply with State and National standards regarding the provision of education and vocational training to Prisoners at the Prison and must ensure that:
 - (i) educational programs are conducted in accordance with the Standards For Registered Training Organisations 2015 – each program must have a standardised course guide document which lists its aims, objectives, modules, accreditation pathway and delivery methods;
 - (ii) service provision covers at least 48 weeks per year – service provision must be for 48 weeks for each individual element, but provision will be 52 weeks of the year as an element may close down for a short period while all others remain operational, the shut-down period(s) being used for continuing professional development for Contract Workers;
 - (iii) education coordinators hold, at a minimum, tertiary teaching qualifications, and Certificate IV Training and Assessment qualifications or any replacement of the Certificate IV qualifications – the post holder will either hold this, or achieve it within 12 months after the Operations Commencement Date;
 - (iv) Contract Workers delivering education and vocational training to Prisoners hold the minimum qualifications required by the Standards for Registered Training Organisations 2015 and are provided with on-going professional development opportunities to enable them to have current vocational education training information – the post holders will either hold this, or achieve it within 12 months after the Operations Commencement Date;

- (v) student/teacher ratios reflect models of best practice for correctional environments (one to one, small group under 10, large group not more than 20). The Contractor will use student/teacher ratios of 1 to 1 and groups of 8, 10 and 12 in education and groups of 16 in vocational training;
- (vi) there is a process in place that ensures that vocational training provided to Prisoners at the Prison is consistent with industry identified State skills shortages;
- (vii) it maximises vocational training opportunities in Prison Industry activities – the Contractor's solution provides for six vocational training workshops with an accreditation focus first, and a limited production potential second. Its five industries will deliver appropriate accreditation as a secondary element to production whilst Prison operations such as catering, cleaning and maintenance will all be mapped against accreditation criteria;
- (viii) educational incentives are in place to encourage Prisoners' involvement in educational programs – the scale and detail of education provision will inform the IMP and must be based on local and prior assessments, the programs must be actively marketed, be attractive to Prisoners, education must attract pay parity with other activities, and progression and achievements must be recognised and rewarded;
- (ix) educational screening, assessment and evaluation of applications by Prisoners for education/training enrolment are in place and are consistent with the Department's standards – the Contractor must ensure that applicants undergo a full education assessment and interview with senior education staff, the assessment being of an approved type. The Contractor acknowledges that unsolicited applications are unusual as changes in the provision of education are informed by the IMP reviews and based on need. However, applications from Prisoners to participate in additional activities over and above those contained within their IMPs will be welcomed;
- (x) Contract Workers with tertiary teaching qualifications administer appropriate tests to screen, assess, counsel and evaluate Prisoners – as noted an authorised assessment tool will be used and Contract Workers must be qualified to the required level;
- (xi) training products and delivery methods used by Contract Workers delivering education and vocational training to Prisoners accommodate diverse learning styles - each standardised course guide will contain details of differentiation strategies in terms of both delivery and content. Every month a Contract Worker will peer review a session by a colleague;
- (xii) each Prisoner has access to contemporary information communication technology methods of training which comply with the Department's security standards;
- (xiii) education Records are maintained, recorded on the appropriate part of the Departmental System and provided to the Department within the timeframes specified by the Department – every student must have a personal Record of Achievement which will be portable and detail (in a Prison-environment free way)

his assessments, activities, achievements and plans. Records must be transferred with the Prisoner;

- (xiv) education personnel must develop operational plans for the education programs at each site that articulate throughout the system. The Education and Training Strategy must contain a list of action points that provide a task-list for the Department for the coming year, each of which must be tested for potential impact and integration issues with the wider estate;
 - (xv) there is a system-wide policy/procedure(s) for tertiary educational programs and student participation – students must be encouraged to achieve at all levels including tertiary. The Contractor must provide such qualifications via distance learning arrangements but seek to formally partner with an external college or university in regards to these and other qualifications;
 - (xvi) policies and procedures are in place enabling the provision of a comprehensive education program on the system-wide level. The Contractor must adhere to process and quality standards.
- (h) The Contractor's Education and Training Department must develop a Quality Assurance system that governs management/leadership, curriculum development, course delivery, accreditation routes, recording progression and links with next-steps education providers in the community. The system must comply with Departmental, State and National standards. The Contractor must undertake an annual review of the operations of its Education and Training Department.
- (i) A key fundamental basis for the Contractor's service is that Prisoners are not required to achieve at the same level. It is the 'distance travelled' that is the defining and desirable factor.

3.4 Prisoner Programs - Pharmacotherapy

- (a) The Contractor must:
- (i) treat Prisoners for addiction using pharmacotherapy in accordance with the Department of Health's health services policy or any replacement of it;
 - (ii) store medications and keep Records of them in accordance with applicable Legislative Requirements; and
 - (iii) provide a methadone program and offer other forms of detox where appropriate.
- (b) The Contractor must provide Prisoners access to pharmacotherapy on the basis of identified need and must maintain the premise of equality of opportunity.
- (c) The pharmacotherapy service provided by the Contractor must cover the ranges of need, link into complementary services and operate within the broader context of drug treatment services.
- (d) The Contractor must ensure that qualified member of the Contractor's health services team manages and administers the pharmacotherapy service.
- (e) The Contractor must integrate substance abuse information across a range of subjects and into a number of courses where appropriate.

- (f) The Contractor must provide information and advice on substance abuse during the regular health checks to promote healthy lifestyles, given pursuant to section 2.10.
- (g) As drug, alcohol and substance abuse issues not only impact a Prisoner but his family too, the family support centre described in section 2.7 must be a focal point to develop a service for families and support them in facing their own issues. This will also support Prisoners with HIV or Hep C, in working through these issues with their families prior to and upon release.

3.5 Prisoner Programs - Psychological Interventions

- (a) **(Definition)** In this section 3.5:

Offender Program or **Program** means a structured intervention that addresses the factors directly linked to a Prisoner's offending behaviour.

An **Accredited Degree** for the purposes of section 3.5(h)(i) means a degree that is recognised as a prerequisite for registration by the Australian Health Practitioner Regulation Agency (**AHPRA**) or Psychology Board Australia as subsumed within AHPRA for psychologists, or the Australian Association of Social Workers for social workers.

- (b) **(Provision of Offender Programs)** The Contractor must:

- (i) provide Offender Programs at the Prison which facilitate greater rehabilitation opportunities for Prisoners through:
 - (A) the delivery of Programs in accordance with Prisoners' IMPs; and
 - (B) the provision of seamless and supported rehabilitative transition from prison to prison and from prison to the community;
- (ii) ensure that the individual rehabilitative needs of each Prisoner are afforded a high priority and accommodated in the Prisoner's IMP; and
- (iii) ensure that each Prisoner is encouraged to become engaged in one or more Programs directed to reducing re-offending subject to such being appropriate and indicated on his Sentence Planning Documents, including those categories of Offender Programs in section 3.5(r).

- (c) **(Risk/Intensity)** The Contractor must ensure that the intensity of each Offender Program is clearly defined and matches the re-offence risk level of the target group of Prisoners.

- (d) **(Program Documentation)** The Contractor must ensure that documentation comprehensively defines each Offender Program including its purpose, monitoring, design and delivery, and implementation. The documentation must:

- (i) **(Program Theory)** identify the genesis, empirical evidence and model(s) of change upon which the Program is based;
- (ii) **(Program Management)** identify the target group of Prisoners, criteria for participant eligibility, assessment process, and exclusion/inclusion factors;
- (iii) **(Program Facilitation)** set out the aims of each Program session and how each Program session is to be delivered so that the Program can be delivered in the way it was designed;

- (iv) **(Assessment and Evaluation)** describe the assessment and evaluation tools and guidance on their appropriate administration, to determine the impact of the Program;
 - (v) **(Facilitator Requirements)** set out the minimum training, supervision, competencies and other characteristics required to deliver the Program;
 - (vi) **(Participant Material)** describe the exercises and handouts required by the target group of Prisoners for the Program to be delivered;
 - (vii) **(Organisational Support)** specify the nature and level of organisational support required for effective delivery of the Program; and
 - (viii) **(Risk Management)** identify procedures for managing risks to participating Prisoners and Contract Workers.
- (e) **(System Integration)** The Contractor must ensure that:
- (i) each Program is part of an integrated approach to offender management;
 - (ii) Prisoners are scheduled to participate in a Program as part of their IMPs;
 - (iii) each Program is appropriately linked to other relevant interventions, and participating Prisoners have access to a sequence of Programs (including maintenance and booster sessions, and Prison to community throughcare programs) if necessary to meet their treatment needs; and
 - (iv) Contract Workers involved in the delivery of a Program are aware of the Program's objectives.
- (f) **(Organisational Support)** The Contractor must ensure that:
- (i) responsibility for the effective delivery of each Program is shared with Contract Workers involved in the Program, including at the highest organisational levels; and
 - (ii) the broader system encourages participation in the Program and the Program is not subject to undue disruption due to system and site requirements.
- (g) **(Program Environment)** The Contractor must ensure that:
- (i) each Program is delivered in a therapeutically appropriate and safe environment that takes into consideration participant and facilitator needs, such as:
 - (A) level of privacy;
 - (B) comfort;
 - (C) cultural sensitivity;
 - (D) accessibility; and
 - (E) physical resources and equipment.
- (h) **(Program Staffing)** The Contractor must ensure that:
- (i) Contract Workers involved in the delivery of each Offender Program:
 - (A) have qualifications, skills and experience for delivering Programs for the type, nature and intensity of the Program, including an Accredited Degree in psychology or social work;

- (B) receive regular professional supervision by a qualified and experienced practitioner to monitor and enhance program integrity;
 - (C) receive performance appraisal and professional development; and
 - (D) are managed so as to ensure consistent program delivery.
- (ii) Contract Workers involved in conducting assessments for each Program are appropriately qualified, resourced and trained.
- (i) **(Managing Risk/Safety)** Each Offender Program must identify any specific risks to Contract Workers and participating Prisoners inherent in the program and have mechanisms to minimise such risks.
- (j) **(Program Participation)** The Contractor must implement processes to minimise the number of Prisoners who fail to complete Programs and the impact of non-completion on Prisoners.
- (k) **(Facilitation Style)** The Program strategies must reflect Best Industry Practice in program delivery including group process work which maximises the effectiveness of the Program.
- (l) **(Monitoring and Evaluating Participants)** The Contractor must:
 - (i) provide regular feedback to participants;
 - (ii) ensure that the Program specifies a protocol for reporting of participant progress and outcomes and highlighting changes in criminogenic needs that are based on relevant and verifiable information, empirically justified methods and sound clinical judgement; and
 - (iii) prepare progress and outcome reports which objectively review each Prisoner's progress in a Program and are in a format that assists Contract Workers, other agencies and stakeholders in the subsequent management of each Prisoner.
- (m) **(Monitoring and Evaluation of Program)** The Contractor must ensure that:
 - (i) each Program is routinely monitored and evaluated;
 - (ii) procedures are in place to monitor the progress of each Program and to ensure Program integrity;
 - (iii) each Program has clearly stated objectives and there are procedures in place to evaluate the outcomes of the program; and
 - (iv) evaluation of each Program is conducted within relevant ethical guidelines.
- (n) **(Psychological Interventions)** The Contractor must ensure that:
 - (i) Prisoners are given the opportunity to undergo psychological interventions and rehabilitative treatment programs to address offending behaviour, as ordered by the court or as determined during IMP assessments and other assessment points throughout the Prisoner's sentence;
 - (ii) program names and content are consistent with those provided by the Department at other prisons and are delivered in accordance with an approved schedule;

- (iii) program design and content are in accordance with international trends in Prisoner treatment;
 - (iv) any Contractor addition to the program suite, or modification to the current Programs, is reviewed and approved by the State; and
 - (v) copies of treatment completion reports prepared by Program facilitators are forwarded to the State.
- (o) Subject to agreed changes with the Department, the Contractor must deliver the Offender Programs determined by the State for the categories detailed in section 3.5(r) during each calendar year and deliver a minimum of 6,000 Offender Program hours for programs conducted in groups each calendar year.
- (p) The Department will review the Offender Programs on an annual basis. As part of the review of Offender Programs, the Contractor may propose alternative Offender Programs. The Department will advise the Contractor of any changes to the Offender Programs and whether other Offender Programs are required to be provided as referred to in section 3.5(r)(vii).
- (q) The Department will provide to the Contractor a calendar of Offender Programs no later than 3 months prior to the calendar year to be delivered by the Contractor.
- (r) The category of Offender Programs that the Contractor must deliver are as follows:
 - (i) Cognitive Skills / Preparatory - provide Prisoners with treatment needs relating to cognitive skills, such as problem solving, coping skills, social interactions and self-management skills as they relate to their offending behaviour ;
 - (ii) General Offending - provide Prisoners with treatment needs relating to generalist offending behaviour (in most cases where a more specialist program is assessed as not needed);
 - (iii) Violent Offending - provide Prisoners with treatment needs relating to the perpetration of violent offending behaviours
 - (iv) Family Domestic Violence - provide Prisoners with treatment needs relating to the perpetration of violent offending behaviours in the context of family and domestic relationships;
 - (v) Sex Offending - provide Prisoners with treatment needs relating to the perpetration of sexual offending behaviours;
 - (vi) Addictions - provide Prisoners with treatment needs relating to the perpetration of offending behaviours related to alcohol and/or other drugs; and
 - (vii) Other – Offender Programs that the State may require in the future.
- (s) **Individual Counselling** – in instances where an Offender Program cannot be delivered in a group format due to the individual or treatment needs of the Prisoner, the Contractor must provide individual counselling to the Prisoner to meet the Prisoner's treatment needs. Subject to agreed changes with the Department, the Contractor must deliver up to 500 individual counselling hours each calendar year in addition to the minimum Offender Program hours referred to in section 3.5(o). Where there is insufficient demand for up to 500 hours of individual counselling in a calendar year, the Department

may reallocate any unused amount of hours to the Offender Program hours referred to in section 3.5(o).

- (t) **(Life-Skill, Parenting and Supportive Programs)** The Contractor must develop systems to deliver services in accordance with the requirements of each Prisoner's IMP and the necessary support programs of a personal and social development nature as required.
- (u) The Contractor must be capable of delivering a range of programs at various intensity, through a multi-disciplinary team.
- (v) The Contractor must examine each Prisoner's profile, identify needs, identify gaps in delivery and seek to fill those gaps.
- (w) The Contractor must work with the Department to examine alternative options for delivery, particularly where the Contractor has experience in delivering alternative programs.
- (x) The Contractor must ensure Prisoners are given every opportunity, support and encouragement to meet their IMP and MAP targets, and that their success is recognised and celebrated, including with their families where appropriate.
- (y) The Contractor must provide additional support for those Prisoners who require it in order that they may meet their goals, and ensure that programs are prioritised and provided in an equitable manner.
- (z) The Contractor must ensure that a Prisoner with a clear need in these areas is in no way excluded from these valuable interventions due to educational or other deficiencies, and must work with appropriate practitioners to remove barriers to progression.
- (aa) The Contractor must ensure the Contract Workers have the right competencies to undertake the tasks required and that they are appropriately supervised, managed and supported in their role.
- (bb) The Contractor must ensure that the Prison plays its full part in meeting the Department's state-wide systems and programs objectives.
- (cc) The Contractor must ensure that program delivery is an integral part of a productive day.
- (dd) The Contractor must, in addition to Offender Programs, make available and deliver to all Prisoners (including those who are not eligible as part of their IMP or are awaiting a Program) non-clinical (non-criminogenic) programs as approved by the State such as:
 - (i) drug and alcohol programs which:
 - (A) assist in reducing the demand for illicit drug use;
 - (B) minimise the harm associated with substance use in Prison;
 - (C) reduce relapse upon release; and
 - (D) aim to reduce the risk of re-offending associated with substance use upon return to the community;
 - (ii) family domestic violence programs;
 - (iii) life skills programs;

- (iv) parenting programs; and
- (v) other supportive programs.

3.6 Prisoner Programs - Reintegration Services

- (a) The Contractor is responsible for the provision and overall coordination of reintegration services to all Prisoners at the Prison to assist them to make a successful transition from custody to community life, through pre release, re-entry and post release services **(Reintegration Services)** in accordance with this section 3.6.
- (b) The Contractor must:
 - (i) provide Reintegration Services that meet the needs of Prisoners assessed at a low risk of re-offending which are consistent with the programs and support services provided by the Department's approved reintegration service providers which may include:
 - (A) re-entry support services, including;
 - (i) pre-release skills, including establishing relationships, employment, health and life skills;
 - (ii) establishing post-release referrals and connections with relevant education, employment, training or other services;
 - (iii) establishing post-release connections to other community based activities and services;
 - (iv) establishing relevant community connections;
 - (v) building cultural support frameworks to pre-release programs and services, including:
 - a. facilitating regional and remote based links to Aboriginal elders and communities, promoting land connection, culture re-establishment and therapeutic care; and
 - b. provision of education and employment opportunities specifically tailored to Aboriginal people;
 - (vi) supporting mentoring schemes with culturally relevant role models; and
 - (vii) establishing post-release referrals to, and connections with relevant family and parenting services;
 - (B) transitional and sustainable housing services; and
 - (C) evidence based and culturally responsive alcohol and other drug services;
- (ii) identify, coordinate and refer Prisoners assessed at a medium or high risk of re-offending to the Department's approved reintegration service providers;
- (iii) identify, coordinate and refer life sentenced Prisoners, Prisoners who are subject to the *Criminal Law (Mentally Impaired Accused) Act 1996 (WA)* or

Dangerous Sexual Offenders Act 2006 (WA) to the Department's approved reintegration service providers; and

- (iv) identify, coordinate and refer all eligible Prisoners for parenting and family support services to the Department's approved reintegration service providers.
- (c) The Contractor must ensure:
 - (i) that a sufficient number of Contract Workers are employed to manage and coordinate Reintegration Services;
 - (ii) effective identification, coordination and referral to the Department's approved reintegration service providers;
 - (iii) that Reintegration Services in relation to Prisoners assessed at a low risk of re-offending are provided to those Prisoners at least 6 months prior to the Prisoner's expected date of release and that the Contractor provides support to Prisoners up to 12 months post release from the Prison;
 - (iv) that, in relation to Prisoners assessed at a medium or high risk of re-offending, the Department's approved reintegration service providers commence the provision of services to those Prisoners at least 6 months prior to the Prisoner's expected date of release and that support is provided to Prisoners up to 12 months post release from the Prison;
 - (v) that the Contractor's Reintegration Services to Prisoners assessed at a low risk of re-offending are reviewed and amended where necessary; and
 - (vi) Contract Workers are aware of the function of the Department's approved reintegration service providers and any other external service provider/s.
- (d) The Contractor must work closely with the Department's Adult Community Corrections area and the Department's approved reintegration service providers in providing the Reintegration Services to Prisoners.
- (e) The Contractor must embed itself in the network of community and Prison-based reintegration organisations and systems, actively market to the Prisoners the many and varied support systems available and encourage Prisoners to avail themselves of these in a supported manner.
- (f) The Contractor must build up a portfolio of voluntary sector organisations which require approval from the State prior to engagement that can provide further support for Prisoners assessed at a low risk of re-offending both within custody and once they have been released. Where possible the Contractor must obtain external funding to improve such working partnerships and therefore enhance the service provision for Prisoners.
- (g) The Contractor must as part of Reintegration Services facilitate and provide to Prisoners a support line via a free call number which is accessible and operating Monday to Friday during business hours for non-emergency support.
- (h) The Contractor must provide Prisoners with electronic access to the reintegration service providers managed by the Contractor through the system approved in accordance with clause 16.14.
- (i) The Contractor must liaise with the Department and provide in a timely manner any information as requested by the Department regarding the involvement of the

Department's approved reintegration service providers managed by the Department's Offender Services area.

- (j) The Contractor must ensure that it identifies all Prisoners who are about to re-enter the community and manages their release in accordance with applicable Legislative Requirements and Departmental Policies. The Contractor must provide additional support to lifers about to move into open conditions, as this marks a significant step in their progression and one which needs to be managed appropriately to enable them to adapt to their new environment more successfully. The Contractor must provide additional support to Prisoners facing extradition, who will require greater assistance and a more flexible service to meet their needs.
- (k) The Contractor must provide Reintegration Services taking into account local factors such as Prisoner profile, the West Australian context and existing provider networks.
- (l) The Contractor must ensure preparation and planning for Reintegration Services for all Prisoners commences from when a Prisoner enters the Prison, noting that the Reintegration Services must be provided in accordance with the timelines specified in sections 3.6(c)(iii) and 3.6(c)(iv).
- (m) All sentence-related structures within the Prison, including the IMP, MAP and EPI Scheme, have a core Reintegration Services element.
- (n) The Contractor must assist Prisoners with housing, employment, further education/training, personal issues, necessary support structures (for example drug and alcohol counsellors local to their homes) and other services that reflect the needs of individual Prisoners.
- (o) The Contractor must ensure areas that need further work such as social skills or independent living skills will be assessed and appropriate support arranged. In addition the Contractor must provide a course designed to assist Prisoners in finding employment if they have not already achieved this.
- (p) The Contractor must build relationships with Government Agencies in order to influence and involve them in the issues relating to Prisoners' release.
- (q) The Contractor must use its reasonable endeavours to build up a portfolio of employers who would be willing to employ Prisoners directly once they are released from Prison and offer facilities for employers to interview Prisoners whilst in custody or support this process through a video link should the distance be too great. The Contractor may involve its industrial partners in this process.
- (r) The Contractor must use reasonable endeavours to ensure that the appropriate recommendations under the IMP have been met, subject to the efforts of the Prisoner, however where it believes there is more work that could be completed and would contribute towards the reduction in risk the Prisoner poses upon his release, it must liaise with the Department's Adult Community Corrections area to assist in this being arranged. The Contractor must also liaise in cases such as parole where resettlement issues are firmly linked to community work.
- (s) The Contractor must work with the other Government Agencies and authorities to assist in a more regulated release of high risk Prisoners that pose a risk to the public. The Contractor acknowledges that information sharing protocols and involvement in

structured release plans are vital to ensuring all the relevant authorities have the necessary information to supervise a high risk Prisoner and to ensure the prevention of the commission of further offences. The Contractor must ensure that reports are produced in a timely and accurate manner ensuring that all relevant and appropriate information is forwarded to the decision making bodies.

- (t) The Contractor must use all reasonable endeavours to secure external funding streams to support a mentoring structure which would operate post-release and give some support for a specified period within the community for those Prisoners with no identifiable support network.
- (u) The Contractor must allow (closely supervised) Prisoners to liaise with community agencies, employers, housing agencies and other relevant Government Agencies or providers relating to their release.

3.7 Prisoner Matters - Interpreter Services

- (a) The Contractor must ensure that all of its communications and dealings are clear and concise and recognise wider communication deficiencies in the Prison population. The Contractor must use its reasonable endeavours through clear written and pictorial resources to minimise the 'comprehension-gap'. The Contractor must ensure that information regarding the classification and placement system and induction is communicated to Prisoners in a way they can understand, ensuring that CALD Prisoners, for whom English is not their first language, including Aboriginal Prisoners, are appropriately informed.
- (b) The Contractor is encouraged to use other Prisoners as a resource to assist in communicating with Prisoners. The Contractor may use appropriately skilled Prisoners as interpreters for non-sensitive operations throughout the Prison and must keep a log of those able and willing to assist. In demonstrating their responsibility and full and active membership of the Prison's supportive community such Prisoners will receive recognition through the Peer Support Prisoner scheme and the volunteering scheme and progress through the EPI Scheme.
- (c) The Contractor must develop language skills amongst CALD Prisoners as part of its wider up-skilling of Prisoners, utilising appropriate multi-media resources in the learning resource centre as part of educational activities.
- (d) The Contractor must prepare appropriate audio-visual resources to service fixed elements of its service such as health assessments, induction, health and safety training.
- (e) The Contractor must use the services of specialist service providers including external bodies and its Aboriginal Contract Workers. The Contractor must provide access to, as appropriate, interpreters or elders from Aboriginal communities and other ethnic groups of the same cultural background as Prisoners to assist in communicating with Prisoners and particularly with regard to critical formal processes such as classification and placement decisions and Prisoner disciplinary hearings.
- (f) The Contractor must undertake regular consultation with the Prisoners and their relevant communities to develop a language service strategy appropriate to their needs.

- (g) The Contractor must include in the Prison Operating Manual details of its approach to providing interpreter services.

3.8 Prisoner Matters - Library Services

- (a) The Contractor must:
 - (i) ensure that Prisoners have equitable access to a library and ensure compliance with the Australian Library and Information Association Minimum Standard (**ALIA Standard**) Guideline for Library Services to Prisoners and any replacement;
 - (ii) ensure that the library is adequately stocked with both recreational and information resources and is operated according to standard library practice;
 - (iii) encourage Prisoners to make full use of the library;
 - (iv) ensure that Aboriginal Prisoners access and use the library;
 - (v) provide stand alone computers for resource use;
 - (vi) ensure that Prisoners have adequate access to legal library resources, and ensure appeal Prisoners are informed about the library services available to them;
 - (vii) ensure that appropriate books and other resources are available for Prisoners with differing cultural and ethnical backgrounds, including books in languages other than English;
 - (viii) ensure that Prisoners can access newspapers and appropriate magazines in accordance with applicable Legislative Requirements and Departmental Policies; and
 - (ix) ensure that Prisoners are allowed to procure, at their own expense, or at the expense of a third party, such books, newspapers, writing material and other means of occupation as are compatible with the security and good order of the Prison and in accordance with applicable Legislative Requirements and Departmental Policies.
- (b) The Contractor must progressively increase the stock of books to meet the ALIA Standard of ten books per Prisoner and actively encourage Prisoners to make full use of the library.
- (c) The Contractor must offer an inter library loan service to Prisoners on the same terms and conditions as offered to Prisoners immediately before the Operations Commencement Date.
- (d) The Contractor must work in cooperation with the Casuarina Library Officer and the State Library Librarian to participate in the State Library Service inter library loan service, to access other benefits of inter Prison cooperation in the provision of library services.
- (e) The Contractor will be responsible for any fees associated with the provision of this service.
- (f) The Contractor considers that a library should not be a passive utility but an integral part of the life of the Prison and must actively engage Prisoner participation in the library through regular library based learning and recreational activities.

3.9 Prisoner Matters - Meeting Prisoners' Religious or Spiritual Needs

- (a) The Contractor must provide for the spiritual needs of Prisoners through pastoral care and religious observance from approved Prison chaplains, religious leaders and traditional Aboriginal spiritual leaders.
- (b) The Contractor must appoint a cultural activities coordinator who is responsible for the development and ongoing delivery of activities that are culturally competent and appropriate to Prisoners from diverse ethnic and cultural backgrounds.
- (c) The Contractor acknowledges the increasing number of Islamic and Pacific Islander Prisoners and will use reasonable endeavours to recruit Contract Workers from these backgrounds.
- (d) The Contractor must ensure that there is equality of access and opportunity for all Prisoners to practice their recognised faiths subject only to limitations of good order and security.
- (e) The Contractor must work closely with its counterparts in the West Australian public prison system to ensure consistency of service provision.
- (f) The Contractor must ensure that, consistent with Prison security and good prison management:
 - (i) all Prisoners have the right to practise the religion of their choice;
 - (ii) all Prisoners are able to join with other persons in practising their religion;
 - (iii) Prisoners are able to possess such articles as are necessary to practise their religion;
 - (iv) Prisoners are able to access spiritual leaders from their chosen faith for services, pastoral visits, religious instruction and private pastoral counselling; and
 - (v) Aboriginal Prisoners are given access to recognised spiritual leaders or tribal elders and Aboriginal spirituality is encouraged and strengthened through observance of customs related to language, food, death, healing, art, story-telling, rites of passage and tribal traditions.
- (g) The Contractor must arrange for pastoral and religious/spiritual observance services and meet the needs of Prisoners described in section 3.9(f). The Contractor must respect and facilitate individual and corporate worship where necessary through the provision of equipment, locations and religious/spiritual requisites.
- (h) The Contractor must ensure that Aboriginal Prisoners can access spiritual places, commonly known as meeting places, subject to the security and good order of the Prison.
- (i) The Contractor acknowledges the role of the Prison chaplain in facilitating individual and congregational worship, providing pastoral care, and assisting in the accreditation and accessing of practitioners of faiths for the Prisoners.
- (j) In recognition of the importance of place in religion and spirituality the Contractor must provide areas of worship which are a mixture of dedicated and multi-faith places of worship.

4. Prison Industries

4.1 Definitions

For the purposes of this section 4, the following definitions apply:

Prison Industry or **Prison Industries** means:

- (a) the provision of domestic services within the Prison, including food preparation, gardening and cleaning; and
- (b) the manufacture or assembly of goods, or the provision of services, undertaken in the Prison by Prisoners, but excludes any activities which constitute a Trading Concern.

Trading Concern has the same meaning given to that expression in section 4(3) of the *State Trading Concerns Act 1916* (WA).

4.2 Prison Industry – Purpose and Intent

The Contractor acknowledges that the objectives of Prisoners undertaking Prison Industries at the Prison are to:

- (a) promote the health and wellbeing of Prisoners;
- (b) enable Prisoners to acquire knowledge and skills that will assist them to adopt law abiding lifestyles on release;
- (c) assist Prisoners to integrate within the community on release;
- (d) provide opportunities for Prisoners to utilise their time in Prison in a constructive and beneficial manner;
- (e) provide opportunities for work, leisure activities, and recreation; and
- (f) assist Prisoners to make reparation for the offences they have committed.

4.3 Prison Industry – Requirements

- (a) The Contractor must arrange for Prison Industries to be undertaken by Prisoners at the Prison in accordance with this Agreement, all Legislative Requirements and Departmental Policies and with a view to achieving the objectives set out in section 4.2.
- (b) The Contractor must not undertake Prison Industries to the extent it involves activity that constitutes a Trading Concern.
- (c) In arranging for Prisoners to undertake Prison Industry, the Contractor must:
 - (i) aim to achieve 100% practical employment;
 - (ii) ensure that Prison Industry makes up a significant element but not all of the 30 hours of meaningful and constructive activities which each Prisoner is required to be engaged pursuant to section 2.16;
 - (iii) develop accredited vocational skills, traineeships and apprenticeships to enhance chances of post-release employment in fields reflecting labour market trends and industry needs although, depending on sentence length, it may only be possible to complete an introductory course with linkage to apprenticeships or related study on release;

- (iv) provide work opportunities for all sentenced Prisoners, including disabled Prisoners, protection Prisoners and geriatric Prisoners and for all remand Prisoners who elect to work;
 - (v) provide work experiences for Aboriginal Prisoners relevant to the communities into which they will be released. In this regard the Contractor must take advice from specialist advisors to ensure its proposals are both pragmatic and relevant;
 - (vi) ensure that all Prisoners undertaking Prison Industry in the Prison have completed appropriate occupational health and safety training; and
 - (vii) ensure that specialist equipment will only be used by the Prisoners trained fully in its use.
- (d) The Contractor must provide Prisoners undertaking Prison Industry with a "Code of Conduct" that prescribes a set of guiding principles and duty of care obligations, which assist them in determining acceptable workplace conduct.
 - (e) The Contractor must include work conduct requirements in the handbook provided to Prisoners during the reception process described in section 2.18.
 - (f) The Contractor must comply with occupational health and safety standards in all Prison work and insure Prisoners against industrial injury (including industrial disease).
 - (g) The Contractor must give Prisoners access to a range of productive employment and facilities that provide them with the opportunity to use their time at the Prison in a constructive and beneficial manner, and maximise their opportunity for post release employment.
 - (h) The Contractor must ensure that Prison Industry is undertaken by Prisoners in accordance with all applicable Legislative Requirements, including section 69(b) of the Prisons Act, Part V of the Prisons Regulations and Departmental Policies.

4.4 Reparation to the Community – Goods and Services

- (a) The Contractor must make arrangements to assist community groups through Prison Industry by Prisoners or monies raised from such Prison Industries.
- (b) The Contractor must:
 - (i) maximise the use of Prison work and activity programs for the benefit of community groups;
 - (ii) specify the percentage of Prisoner work time to be spent in assisting community groups; and
 - (iii) actively liaise with community groups to promote their use of Prisoner work/activity programs.

- (c) The Contractor must assist each Prisoner in developing and meeting a reparation target as part of his IMP. Progress towards the target will be measured through the IMP reviews and the intervening EPI Scheme interviews.
- (d) The Contractor must ensure that activities are broadly based on minimising the costs of imprisonment, assisting those in the community less able, and contributing to the community infrastructure and cohesion.
- (e) The Contractor must involve Prisoners in identifying opportunities for reparative activity and suggest innovations as to how they can make a positive difference. Prisoners must also be given opportunities to nominate community groups to benefit from some reparative activities.
- (f) The Contractor must seek innovative ways to maximise the use of Prison work and activity for the benefit of community groups.
- (g) Peer Support Prisoners and volunteering will not normally be regarded as reparative unless the latter has a direct benefit to the wider community.
- (h) The Contractor must use its reasonable endeavours to retain and build upon existing links in place immediately before the Operations Commencement Date.

4.5 State's Prior Approval

- (a) The Contractor must not permit any Prison Industry activity to take place without the State's prior written approval.
- (b) The Contractor must provide the State with a written request to undertake a proposed Prison Industry (**Prison Industry Request**). A Prison Industry Request must address the following matters to the satisfaction of the State:
 - (i) the Contractor must demonstrate that the proposed Prison Industry aligns with the Prison Industries requirements as set out in this Agreement;
 - (ii) the Contractor must demonstrate how it will ensure compliance with this Agreement in conducting the proposed Prison Industry; and
 - (iii) the Contractor must provide any additional information and documentation requested by the State (at its absolute discretion) from time to time with respect to the proposed Prison Industry.
- (c) Upon receipt of a Prison Industry Request submitted in accordance with section 4.5(b), the State may (in its absolute discretion):
 - (i) approve the Prison Industry Request without condition;
 - (ii) approve the Prison Industry Request subject to any conditions as the State considers are necessary having regard to the proposed Prison Industry; or
 - (iii) reject the Prison Industry Request in which case the State is under no obligation to provide its reasons for rejecting the Contractor's Prison Industry Request, by giving written notice to the Contractor.
- (d) The Contractor shall be permitted to allow Prisoners to undertake Prison Industries the subject of an approved Prison Industry Request from the date of the State's notice of approval under sections 4.5(c)(i) and 4.5(c)(ii).

4.6 Records and audit

- (a) The Contractor must keep and maintain detailed Records of every matter relating to the Prison Industry in accordance with clause 16.10 and section 5.5.
- (b) The Records specified in section 4.6(a) must be made available for inspection and audit by the State in accordance with clause 16.11 and section 5.5.

4.7 No Prison Industry for Contract Workers

- (a) The Contractor must ensure that no Prison Industry is undertaken by, or for the benefit of, the Contractor, any Contractor's Associates, any Subcontractor or any Contract Workers without the consent of the State.
- (b) The provisions of section 4.7(a):
 - (i) do not affect any other right of a Party under this Agreement; and
 - (ii) are in addition to any other right of a Party under this Agreement.

4.8 Suspension or termination of Prison Industry

- (a) The State may suspend or terminate a Prison Industry (in whole or in part) where the State (acting reasonably) determines that:
 - (i) the Contractor has failed to conduct the Prison Industry in accordance with this Agreement and all applicable Legislative Requirements or Departmental Policies;
 - (ii) the Contractor has failed to comply with a condition of approval as contemplated under section 4.5(c)(ii); or
 - (iii) the delivery of the relevant Prison Industry activity constitutes a Trading Concern, by giving written notice to the Contractor.
- (b) Where the State has issued the Contractor a notice of suspension or termination of Prison Industry under section 4.8(a), the suspension or termination (as the case may be) will take effect from the date of the State's notice under paragraph 4.8(a) or such other time has specified by the State to the Contractor in writing.
- (c) The Contractor may refer the State's deamination to suspend or terminate Prison Industry to the Dispute regime under clause 37.
- (d) The suspension or termination of a Prison Industry by the State under this section 4.8 does not constitute a variation to this Agreement, and the State bears no liability for any Losses suffered by the Contractor as a result of the suspension or termination of a Prison Industry.

5. Business Systems

5.1 Information Management – Access to and Management of Electronic Information

- (a) From the Operations Commencement Date, the Contractor must establish an interface between the Contractor Computer to the Departmental System(s), using software, which can facilitate an interface with the Departmental System(s) to:
 - (i) ensure the collection and maintenance of comprehensive, adequate and accurate Records on each Prisoner, the Prison and the Services; and

- (ii) ensure the collection, keeping, up-dating and availability of information on each Prisoner covering:
 - (A) IMPs or MAPs;
 - (B) in-Prison behaviour;
 - (C) offences and convictions;
 - (D) test results from medical, psychological, aptitude and other testing; and
 - (E) other matters relevant to the Prisoner's management.
- (b) The Contractor must record all data and information regarding Prisoners, the Prison and the Services in a format that:
 - (i) allows the data and information to be made available to the State and Prisoners Review Board, on request, in a timely and uniform manner on the appropriate part of the Departmental System; and
 - (ii) maximises the usability of the data and information from a reporting, an identification of needs and an operational perspective.
- (c) The Contractor must keep prescribed statistical data which:
 - (i) is compatible with TOMS;
 - (ii) uses the range of types of data and frequency of data entry on TOMS; and
 - (iii) is entered directly on to TOMS,
 and the Contractor must maintain the currency and confidential nature of such data.
- (d) The Contractor must:
 - (i) maintain the security and integrity of the Departmental System;
 - (ii) maintain information about the Prison, Prisoners, Contract Workers and Visitors in a secure manner;
 - (iii) maintain Prisoner and administrative Records in an electronic form that integrates with the Departmental System; and
 - (iv) ensure that Prisoners do not electronically access information pertinent to themselves or other Prisoners or Contract Workers.
- (e) The Contractor must employ Best Industry Practice for Information management and security based on the globally recognised IT Infrastructure Library (**ITIL**) methodology to ensure service and support delivery of information technology solutions and processes are maintained at the highest levels. The ITIL methodology covers:
 - (i) service management;
 - (ii) IT financial management;
 - (iii) capacity and availability management;
 - (iv) continuity management;
 - (v) incident and problem management;
 - (vi) configuration management;
 - (vii) change and release management; and

- (viii) security.
- (f) Where appropriate, the Contractor must maintain or exceed information security management processes and practices in accordance with Departmental Policies and international standard ISO17799.
- (g) All electronic information must be stored on physical infrastructure located in Australia.
- (h) The Contractor must put in place robust, auditable procedures to ensure that Prisoner admission and management processes capture all relevant data required by the Department, the data is entered onto the Departmental System as soon as practicable, and that completeness, accuracy and integrity of the data is achieved.
- (i) The Contractor must manage and provide systems that require all users to be authenticated before being able to access any resources or data, ensure access to systems and data is controlled based on a needs basis and ensure approval for access to systems is documented so an audit trail is maintained.
- (j) The Contractor must implement, actively monitor and maintain all systems to ensure that the risk of unauthorised access to data is minimised and integrity and completeness is maximised.
- (k) The Contractor must conduct its own internal audits of security and assist fully in any external audits.

5.2 Information Management - Data Quality

- (a) The Contractor must ensure that Contract Workers, where necessary, are able to access information from TOMS.
- (b) The Contractor must review Incident reports to determine useful sources of trend information and use trend information to inform the CEO of any matter that may jeopardise the security of the Prison or the welfare of Prisoners.
- (c) The Contractor acknowledges that data quality is a product of both the data entered and the number of potential variables in entry method. This includes the number of ways individuals might enter the data. The Contractor must manage access to systems and applications based on business requirements to ensure only personnel required to have access to data will be granted access, thereby limiting the possibility for variations in entry method.
- (d) The Contractor must provide data entry systems at locations as close as practicable to the point of data collection to reduce the latency of the data, maintain Prisoner Records to the greatest accuracy at any given point in time and minimise the possibility of data loss.
- (e) The Contractor must maintain a data backup strategy to ensure that recovery from any data corruption is possible with the minimal amount of data loss and requirement for re-entry and possible error.
- (f) The Contractor must ensure that the interface between the Contractor Computer and the Departmental System operates securely and must keep the software and systems on the Contractor Computer up to date to be able to meet Departmental Policies.

- (g) The Contractor Computer must provide access and information as required to provide the Services and provide authorised users with the systems needed to record and manage information.

5.3 Information Management – Security and Privacy

- (a) The Contractor must:
 - (i) keep any documentation under its control secure;
 - (ii) respect the privacy of Contract Workers' information;
 - (iii) respect the privacy of citizen and community information by maintaining files in strict confidence;
 - (iv) ensure that Contract Workers access information only in the proper course of their duties;
 - (v) ensure that Contract Workers report information or documentation received that may result in personal gain or perceived favour, knowing that safeguards are in place to prevent their employment status being prejudiced as a result; and
 - (vi) use internal systems, including performance indicators, to monitor and evaluate its own performance and compliance with the strategies and practices proposed.
- (b) The Contractor acknowledges that the requirements of this section 5.3 apply in addition to the requirements of clause 16.

5.4 Information Management - Incident Reporting

- (a) The Contractor must ensure that:
 - (i) all reporting of Incidents is managed in a timely and accurate manner; and
 - (ii) all reporting of Incidents is completed in accordance with clause 16.1.
- (b) The Contractor must ensure that all Incidents are reported and finalised in accordance with Departmental Policies after they occur by all Contract Workers involved, including witnesses. Each Contract Worker completing a report in relation to an Incident must complete it independently of any other Contract Worker who may be preparing a report on the same Incident.
- (c) The Contractor acknowledges that Incident reports are an integral part of Prison operations and that the Department places considerable emphasis on the need for accuracy and clarity in their preparation.
- (d) In accordance with the Department's requirements, the Contractor must ensure that incident reports are written by Contract Workers in the format required by the Departmental System and Departmental Policies.
- (e) Through training and monitoring the Contractor must ensure that Contract Workers:
 - (i) state all essential facts in a chronological order and ensure that the report is complete and accurate;
 - (ii) include the names of all persons involved (including Contract Workers and Prisoners) in the Incident, what happened and how it happened, any quotations of what was said during the Incident and wherever possible identify the speaker;

- (iii) include details of anything that occurred prior to or immediately after the Incident if it is relevant to the actual Incident and the report writer has first hand knowledge of such an event. This will, for example, include an order given by a senior Contract Worker to the report writer to assist other Contract Workers in managing a Prisoner; and
 - (iv) state what action was taken to control or manage the situation or Incident. If mechanical restraints or chemical agent was used during the Incident, this will be reported including, where relevant, any decontamination procedures with which the report writer was involved.
- (f) In all reports the Contract Worker must:
 - (i) be concise, clear and truthful;
 - (ii) be objective and use words that are easily understood and descriptive; and
 - (iii) make recommendations (e.g. for information, forward to prosecutor, loss of privileges etc).
- (g) The Contractor must ensure that all reports by Contract Workers are checked by the person's supervisor to ensure that the minimum requirements for an Incident report have been met before the report is submitted, although this check will not be able to attest to the accuracy or truthfulness of the report.
- (h) The Contractor must ensure a member of the Contractor's senior management team reviews all Incident statistics, providing regular assurance that the Contractor is accurately reporting Incidents.
- (i) The Contractor must ensure that all alleged assaults, assaults and other criminal offences against Prisoners and Contract Workers must be reported to the Western Australia Police Force and relevant Government Agency in accordance with Departmental Policies.
- (j) The Contractor must include in the Prison Operating Manual details of the Contractor's process for management of Incident reporting.

5.5 Information Management - Records Management

- (a) The Contractor must maintain Records in accordance with this section 5.5 or as otherwise notified by the State from time to time.
- (b) The Contractor must establish and maintain true, up to date and complete Records relating to all aspects of the provision of the Services and compliance with the Contractor's Obligations.
- (c) The Records must incorporate the detail and meet the standards reasonably required by the State, as notified to the Contractor from time to time.
- (d) The Contractor must maintain all Records required to be maintained in whatever form, including electronic form, paper registers, reports, journals and log books to the highest order.
- (e) The Contractor must maintain Records in a digital format wherever possible and in a digital format that is compatible with Departmental Systems.

- (f) The Contractor must create and maintain Records in accordance with, and otherwise comply with, the Department's Records Keeping Policy and in a manner consistent with the Department's Records management procedures.
- (g) The Contractor must develop in consultation with the Department's Records area, a process which is included in the Prison Operating Manual, for the regular transfer of Records back to the Department.
- (h) The Contractor acknowledges the Department's obligations with regard to record keeping as a Government Agency.
- (i) The Contractor must maintain and dispose of Records in compliance with the policies, standards, disposal authorities and guidelines of the State Records Office and State Records Commission, where applicable, including the State Records Commission Standard 6 - Outsourcing.
- (j) The Contractor must ensure that information is stored in a logical format, with appropriate metadata identifying the Prisoner, and in an appropriate repository, not in electronic mail boxes.
- (k) The Contractor acknowledges that the Department's Record Keeping Policy applies to:
 - (i) its employees, contractors and consultants;
 - (ii) organisations performing outsourced services on behalf of the Department; and
 - (iii) its metropolitan and regional offices.
- (l) The Contractor must maintain all those financial and financial planning Records that would be expected of a private operator of prisons and those financial and financial planning Records must incorporate the detail and meet the standards, reasonably required by the State, as notified to the Contractor from time to time.
- (m) The Contractor must manage medical Records in accordance with applicable Legislative Requirements and Departmental Policies.
- (n) In respect of medical Records the Contractor must:
 - (i) maintain up to date and comprehensive medical Records, including a confidential medical file for each Prisoner that forms a record of all significant contacts between each Prisoner and health services staff;
 - (ii) utilise the Departmental System for electronic medical Records, where required;
 - (iii) comply with ethical and legal standards of documentation and Departmental standards recognising that all patient Records are legal documents;
 - (iv) ensure that documentation is accurate and contemporaneous;
 - (v) use the common integrated medical record that is maintained and used by all professional staff;
 - (vi) recognise that medical Records are the property of the Department and release them in accordance with applicable Legislative Requirements and Departmental Policies and to authorised personnel;

- (vii) recognise that medical Records must be routinely transferred back to the Department in accordance with a current retention and disposal schedule for medical Records;
- (viii) recognise that medical Records are deemed confidential information;
- (ix) note that Prisoners transferred to the Prison will be accompanied by their medical Records file;
- (x) ensure that the medical Records of Prisoners transferred from one prison to another are placed in a sealed envelope with a 'Private & Confidential - Medical in Confidence' denotation and that the envelope is taken to Prisoner reception and accompanies the Prisoner to his destination;
- (xi) ensure that when a Prisoner is released to freedom, hard copy medical Records are placed in a sealed bag and returned immediately to the Department's medical Records area;
- (xii) ensure that the medical record of 'death in custody' Prisoners will be seized by the Superintendent and held in a secure place until handed over to the Western Australia Police Force and that no other entry is permitted to be made in the record, following death being declared other than the doctor recording 'life extinct';
- (xiii) ensure that the health centre returning the record updates the tracking system accordingly; and
- (xiv) ensure that all attending health professionals clearly and accurately document medical history, assessment and treatment to facilitate continuity of care.

5.6 Information Management - Prisoner Information

- (a) The Contractor must ensure that:
 - (i) Prisoners can readily and easily access Prison procedures that pertain to them;
 - (ii) Prisoners can readily book social visits in accordance with their visits status; and
 - (iii) Prisoners can readily make transactions against their personal funds.
- (b) The Contractor must assist Prisoners to access the information required by them and in the most suitable formats. The Contractor must develop packages of information to suit Prisoner requirements and to ensure Prisoners are both aware of them and have access to them.
- (c) The Contractor must review the information provided on a regular basis, identifying when the last review was completed, in order to ensure that no changes have occurred which would necessitate the information being altered. If alteration is required, this will be undertaken quickly.
- (d) The Contractor must continue to develop its information processes and packages and to seek Prisoner involvement and feedback where appropriate.
- (e) The Contractor acknowledges that the requirements of this section 5.6 apply in addition to the requirements of clause 16.

5.7 Operational Matters - Hazardous Materials Management

- (a) The Contractor must ensure the safety of Contract Workers and the community, and the safety and security of Prisoners by correct management of hazardous materials, including by ensuring that:
 - (i) hazardous materials when used in workshops are only issued to the extent that they will be used in a day's work in the workshop;
 - (ii) appropriate and significant signage is used to warn of the presence of any hazardous materials; and
 - (iii) qualified workshop instructors train Prisoners in the use and storage of hazardous materials.
- (b) The Contractor must comply with applicable Legislative Requirements and Departmental Policies regarding the management of hazardous materials.

5.8 Operational Matters - Official Correspondence

- (a) The Contractor must ensure that information requested by any external agency specified in applicable Legislative Requirements and Departmental Policies is provided in a timely and accurate manner and in the form required by the external agency.
- (b) The Contractor must operate a system by which such requests are recorded, their validity checked, the information collated, and the response dispatched, with the process subject to agreed timings.

5.9 Operational Matters - Western Australia Police Force

The Contractor must:

- (a) ensure the continuation of the liaison that currently exists with the Western Australia Police Force and seek to improve that liaison in consultation with the Western Australia Police Force to explore all potential avenues for mutual cooperation and the sharing of intelligence;
- (b) develop procedures which provide that where a criminal offence (not covered by the Prisons Act) is committed at the Prison, the Western Australia Police Force are requested to investigate the crime;
- (c) establish procedures to notify the Western Australia Police Force promptly of complaints from Prisoners which they have requested be referred to the Western Australia Police Force;
- (d) ensure Contract Workers are aware of the requirements of the Western Australia Police Force;
- (e) establish procedures to ensure that the Western Australia Police Force are notified promptly in the event of an assault, or other criminal offence;
- (f) establish procedures to ensure that the Western Australia Police Force are notified promptly in the event of an Escape;
- (g) establish procedures to enable the exchange of information with the Western Australia Police Force with respect to any person introducing, or attempting to introduce, drugs, weapons or other contraband into the Prison or planning to commit an offence either

within the Prison or in the community and information which may assist the Western Australia Police Force in solving a crime;

- (h) cooperate with and assist the Western Australia Police Force in the investigation of criminal offences committed outside the Prison where interviews with Prisoners or other Prison based inquiries are required;
- (i) work closely with the Western Australia Police Force in the areas of managing trafficking of contraband, Escapes, assaults by, or on Prisoners, and other matters that might normally be referred to the Western Australia Police Force;
- (j) cooperate fully with the Department in terms of its relationship with the Western Australia Police Force and consult with the Department regarding the Contractor's reciprocal arrangements with the Western Australia Police Force to ensure that these comply with Departmental requirements; and
- (k) ensure that Contract Workers receive training regarding the role of, and contact details of the Western Australia Police Force.

5.10 Operational Matters - Prison as Part of the Community

- (a) The Contractor must:
 - (i) deal with enquiries from the community promptly and courteously while respecting the entitlement of Prisoners to privacy; and
 - (ii) ensure that the local community is aware of the role and function of the Prison and volunteer groups are encouraged to participate in service delivery where appropriate.
- (b) The Contractor must ensure that it engages organisations from the functional community of which the Prison is a part as a member of the corrections family.
- (c) The Contractor must actively engage community and volunteer organisations in the life of the Prison both on a sub-contractual and informal basis. In particular the formation of constructive community linkages through this input will be a key facet in the resettlement process assisting in complementary, seamless and overlapping delivery of community re-entry strategies for Prisoners.
- (d) The Contractor must place a priority on engaging with the local community and maintaining constructive relationships with local government and community organisations. Where possible, the Contractor must contribute to the work of local organisations and do its business locally.
- (e) Community and volunteer representatives' input must be carefully coordinated and focussed so that maximum value is gained from their commitment.
- (f) The Contractor must provide individuals entering the Prison with all necessary training and support to enable them to operate safely at the Prison.
- (g) The Contractor must actively encourage the participation of community and volunteer organisations in contributing to Prisoner rehabilitation, physical, emotional and spiritual wellbeing, and recreational activities within the context of sensible security considerations. All individuals participating in activities within the Prison must be provided with a comprehensive orientation security and safety briefing.

- (h) The Contractor acknowledges that the requirements of this section 5.10 apply in addition to the requirements of clauses 7.10, 7.11 and 10.

5.11 Operational Matters - Prisoner Computers

- (a) The Contractor must:
 - (i) ensure the security of all Prisoner computers;
 - (ii) ensure that Prisoners do not access any form of external communication via Prisoner computers;
 - (iii) ensure that only approved hardware and software, as described in applicable Legislative Requirements and Departmental Policies, is used on Prisoner computers; and
 - (iv) allow the Department to conduct audits of Prisoner computers and augment these audits with its own internal systems and inspection regime.
- (b) The Contractor must ensure Prisoners do not have access to the Contractor Computer, the Departmental System or any external system.
- (c) The Contractor must provide approved Prisoners with computers in their possession for the purpose of aiding in their legal defence and must ensure that the computers, security and software applications are in accordance with all applicable Legislative Requirements and Departmental Policies. The Contractor must:
 - (i) procure all computer hardware and software and manage equipment, warranty and repairs through the Department and/or approved suppliers, unless otherwise agreed to by the State;
 - (ii) ensure that each Prisoner who is approved to have a computer in their possession is the subject of increased search activity and this is communicated to, and understood by, the Prisoner as being a pre-requisite of having a computer in their possession;
 - (iii) ensure any Prisoner whose activities cause concern may have the computer in their possession removed on a precautionary basis, for subsequent investigation. Any contravention of rules will result in removal of the computer in their possession. The Contractor must ensure that the Prisoner is mindful of the breach of trust involved and the possibility that his actions may result in the facility being withdrawn in its entirety;
 - (iv) ensure Contract Workers contact the Contractor's Security Manager if a Prisoner requests a variation to the computer in their possession and software applications prior to the variation being approved; and
 - (v) prevent the use of wireless technologies by Prisoners and ensure that no transmitting or receiving device of any form or function is allowed in the possession of any Prisoner.
- (d) The Contractor must provide enrolled Prisoner students with sufficient access to computers and/or personal devices for educational purposes. The Contractor must also provide enrolled Prisoner students who are approved with access to computers and/or personal devices in their Cell for educational purposes and must ensure that the

computers, security and software applications are in accordance with Departmental Policies and specifications. The Contractor must:

- (i) procure all computer and/or personal devices hardware/software and manage equipment, warranty and repairs through the Department and/or approved suppliers, unless otherwise agreed to by the State;
- (ii) ensure computers and/or personal devices are configured to limit functionality and restrict access to unauthorised hardware/software and updated periodically to allow for changes in technology.

5.12 Operational Matters - Prisoner Personal Funds, Gratuities and Purchases

- (a) The Contractor is responsible for the payment and management of Prisoner gratuities, personal funds and purchases in accordance with all applicable Legislative Requirements and Departmental Policies.
- (b) The Contractor must inform Prisoners of the items available through External Prisoner Purchases and any limitations that may apply.
- (c) The Contractor must:
 - (i) set out procedures and times for access to the Prison Canteen Service (including after hours access for late receivals) in the Prison Operating Manual;
 - (ii) ensure that eligible Prisoners receive access to the Prison Canteen Service including after hours if necessary;
 - (iii) develop procedures for special purchases and requests and make those procedures available to Prisoners;
 - (iv) ensure that information regarding the scope and availability of the Prison Canteen Service is made available to all Prisoners upon reception at the Prison;
 - (v) ensure that each Prisoner's Induction and Orientation Process contains information pertaining to the Prisoner Canteen Service and External Prisoner Purchases; and
 - (vi) ensure that all monies spent on the Prison Canteen Service and External Prisoner Purchases are recorded on TOMS.
- (d) On the release of a Prisoner, all Prisoner property and any accumulated unspent money must be returned to the Prisoner.
- (e) The Contractor must use the Prisoner Forum as created in section 2.27(n), for the development of the Prison Canteen Service and External Prisoner Purchases.

5.13 Operational Matters - Contractors Performance Management Systems

- (a) The Contractor must implement performance improvement systems to enable it to self monitor compliance effectively, evaluate the quality of its performance in all areas and identify self-improvement strategies. These systems must incorporate strategies to evaluate performance on all aspects including areas such as correctional culture and correctional philosophy. The Contractor must advise the Department as required of the outcomes of the self monitoring and evaluation processes.

- (b) The Contractor's systems must demonstrate organisational and cultural fit with those used by the Department, ensuring that key metrics are easily accessible and require no translation from one system to the other.
- (c) The Contractor's systems must provide an audit trail by which independent evaluation, inspection and audit can provide assurance that results and conclusions are accurate, complete and confident.
- (d) The Contractor's performance management systems must be intrinsically linked to quality assurance processes and accreditation.

5.14 Operational Matters - Risk Management

- (a) The Contractor must implement risk management systems to enable it to self monitor compliance and evaluate its performance in risk areas. These systems must incorporate strategies to evaluate performance on all aspects including areas such as correctional culture and correctional philosophy. The Contractor must advise the Department as required of the outcomes of the self monitoring and evaluation processes.
- (b) The Contractor must provide an accessible and applicable risk management system that manages all risks under a common umbrella including compliance, community safety, Contract Worker safety and Prisoner security.
- (c) The Contractor's system must complement those used by the Department and other key partners, in terms of both systems and strategies and enable an effective interchange of information to the mutual benefit of all partners.
- (d) In terms of ensuring and demonstrating compliance with all functions of the Prison, the Contractor's risk management system is applied during the planning process and later through monitoring of operations in accordance with the Contractor's internal process.
- (e) The Contractor must ensure that each Prison function is risk assessed as an initial task, and appropriate mitigations identified. These must be integrated into the Contractor's multi-level governing documentation, modifying the initial planned function as is necessary to minimise risk. This provides an on-going risk management system. The result is the Prison function as delivered, which is monitored and risk assessed both formally and in the light of operational experience.

5.15 General – Maintaining Effective Relationships With The Department

- (a) The Contractor must maintain effective relationships at all levels with the Department and participate actively in processes to establish and maintain effective relationships.
- (b) The Contractor must work collaboratively with the Department and through them, and directly, build collaborative links with all elements of the Western Australian justice system.
- (c) The Contractor must, wherever possible, inform, involve and integrate the Department and relevant stakeholders in its work. These actions will include collaborative working, joint strategies, shared knowledge, joint projects, bi-lateral meetings, workshops, information provision, reporting, developmental activities and mutual assistance.

5.16 General – Resources

The Contractor must:

- (a) maximise the effective and efficient use of all the facilities available at the Prison;
- (b) ensure that sufficient furniture and equipment is available at the Prison to enable the simultaneous delivery of several programs without diminution of service quality or quantity; and
- (c) ensure that the furniture and equipment in all activity areas are available and functional to allow delivery of activities to take place.

5.17 General – Subcontractors

- (a) The Contractor must ensure that:
 - (i) all Subcontractors are appropriately chosen for their capacity to perform the work;
 - (ii) all Subcontractors are able to operate with the Department's interests in mind; and
 - (iii) all Subcontractors are able to integrate with the Department's functions by attending and participating in meetings and workshops.
- (b) The Contractor must ensure that any proposed Subcontractor has the appropriate financial capacity to perform its obligations under the proposed Subcontract.
- (c) The Contractor acknowledges that the requirements of this section 5.17 apply in addition to the requirements of clause 39.

5.18 General – Video Conferencing

- (a) The Contractor must provide video conferencing facilities for Prisoner court appearances utilising the State's video conferencing link.
- (b) The Contractor must facilitate video conferencing for the purpose of social visits including communication for Prisoners from remote areas of the State and overseas and for other services as approved by the State.
- (c) The Contractor must advise the State how the video conferencing facilities will be managed and the uses envisaged for it.
- (d) The Contractor must ensure any additional video conferencing facilities must be approved by the State and capable of integration with the Department's existing video conferencing facilities.

5.19 General – Radio System

- (a) The Contractor must utilise the State's radio system in the provision of the Services. The State's radio system is a State Maintained State Resource and forms part of the Departmental Systems.
- (b) The Contractor:
 - (i) must ensure all Contract Workers who operate the State's radio system (including hand held radios) are trained in equipment use and voice procedures to the State's required standards;

- (ii) must immediately notify the State of any misplaced or stolen equipment which forms part of the State's radio system;
- (iii) acknowledges that it is the responsibility of the State to arrange for the repair or replacement of the State's radio system equipment;
- (iv) must indemnify the State for the cost of repairing and replacement of any equipment which forms part of the State's radio system that is damaged, broken or lost as a result of an act or omission of the Contractor, any Contract Worker or Subcontractor in accordance with clause 32.2; and
- (v) acknowledges that all licensing and coordination activities involved with respect to the State's radio system are managed by the State.

6. Human Resources and Occupational Health and Safety

6.1 Processes - Human Resources Systems

- (a) The Contractor must develop, and submit to the State for its approval, within 3 months after the Operations Commencement Date, a code of conduct for the behaviour of Contract Workers, while they are working and off duty (**Code of Conduct**). The Code of Conduct will be included in the Prison Operating Manual developed pursuant to clause 7.8 and will be a code for the purpose of clause 10.3(d).
- (b) The Contractor must ensure that human resource systems are in place:
 - (i) to enable effective appraisals of the performance of Contract Workers;
 - (ii) to ensure that the behaviour of Contract Workers is of the highest standard even when off duty and is in accordance with the Code of Conduct;
 - (iii) to provide mentoring for new Contract Workers;
 - (iv) to enable the Prison to operate safely, securely and with extensive support networking for Contract Workers; and
 - (v) subject to clauses 10.2(d) and (e), to foster and support gender and ethnicity mix, reflecting the community and, where appropriate, the Prison population.
- (c) The Contractor must implement and maintain effective occupational health and safety standards and ensure that all Contract Workers comply with them.
- (d) In addition to the requirements set out in clause 10, the Contractor must formulate and disseminate a comprehensive suite of human resource management policies to all Contract Workers that supports the operational strategy for the Prison. This will include policies dealing with performance management, occupational health, safety and rehabilitation, security, equal opportunity, anti-discrimination, victimisation, bullying, employee support and assistance. The Contractor must ensure that management and supervisory staff are well versed in human resource policies and trained in carrying out all human resource management processes.
- (e) The Contractor must ensure that roles are clearly defined and agreed with employees and that effective performance appraisals are conducted consistent with the Contractor's Performance Management System.

- (f) The Contractor must provide, as part of its Training Programs, comprehensive personal safety and security training for all Contract Workers pertinent to undertaking a role within a secure working environment.

6.2 Processes - Local Industrial Relations

- (a) The Contractor must:
 - (i) work closely with employee organisations, and with workplace representatives, to address operational matters in a proactive and co-operative environment, to minimise the number of disputes and work together toward a timely and satisfactory resolution;
 - (ii) maintain accurate Records of meetings with employee organisations; and
 - (iii) manage industrial issues in a proactive manner.
- (b) The Contractor must establish appropriate consultative mechanisms, including a formal consultative committee, the membership of which will include elected employee representatives and management representatives.
- (c) The Contractor must hold regular meetings with union officials to keep lines of communication well maintained so that potential problems may be dealt with at an early stage and that opportunities to work together may be realised. Accurate Records must be kept of consultative committee meetings and meetings with union officials and made available to all parties.
- (d) The Contractor must develop a process to manage employee grievances and ensure that employee grievances are dealt with promptly.
- (e) With respect to the industrial arrangements to be applied at the Prison, for custodial and related operations employees, the Contractor must use reasonable endeavours to negotiate a collective agreement with the union parties that currently represent the industrial interests of employees at the Prison.
- (f) The Contractor acknowledges that the requirements of this section 6.2 apply in addition to the requirements of clause 11.

6.3 Personnel - Recruitment

- (a) The Contractor must fully and appropriately resource the delivery of the Services and the performance of the Contractor's Obligations by developing and implementing comprehensive and robust strategies:
 - (i) in respect of the recruitment of Contract Workers, to ensure that any vacant position is filled by an appropriate person in a timely manner and to timescales agreed with the Department; and
 - (ii) in respect of the retention of Contractor Workers, including by providing incentive schemes for Contract Workers and workplace practices that inspire loyalty.
- (b) The Contractor must plan for the recruitment of Contract Workers against the background of operational requirements, projected organisation structure, and the future direction of the Prison.

- (c) The Contractor must ensure that its human resources function carries primary responsibility for developing and maintaining reliable channels for sourcing candidates in all areas of employment, for the timely management of recruitment, and for verifying the quality of candidates for selection in accordance with clause 10.2.
- (d) The Contractor's recruitment and retention strategies must focus on attracting and retaining appropriate people and giving them the appropriate training, support and developmental opportunities.

6.4 Personnel - Deployment

- (a) Without limiting the Contractor's obligations under clause 10.1(b), the Contractor must ensure that:
 - (i) a workforce model document (e.g. staffing plan) is developed to meet the requirements of this Agreement that details:
 - (A) the roles and responsibilities of the teams (including subcontractors) that will be delivering the services;
 - (B) the numbers of Contract Workers and their qualifications and the number of subcontractor employees;
 - (C) demonstrates the appropriateness of the workforce model and numbers of staff (including subcontractor staff), demonstrating that relevant risks have been considered and addressed;

and is consistent with the requirements of the Minimum Staffing Tables in relation to Custodial Officers and Unit Managers;
 - (ii) the workforce model document (e.g. staffing plan) is provided to the Department at their request;
 - (iii) rostering is managed in an effective manner and management processes are developed to manage short term vacancies such as those resulting from short term sick leave, and also to compensate for longer term vacancies, to ensure the daily attendance of sufficient numbers of Contract Workers;
 - (iv) without derogating from the Contractor's staffing obligations, "stepped closures" planning will be used to ensure the safety of the community and Contract Workers, and the security of the Prison during any shortages of Contract Workers.

6.5 Personnel - Training and Development

- (a) In this section 6.5:

Certificate III means the training and qualification to the minimum Australian industry qualification applicable for Custodial Functions at AQF III level, from the National Correctional Services Training Package, which at the Signature Date is CSC30119 Certificate III in Correctional Practice including any units of competency as required by the State and any revision of it; and

Certificate IV means the training and qualification to the Australian industry qualification for Custodial Functions at AQF IV level, from the National Correctional Services Training Package which at the Signature Date is CSC40115 Certificate IV in

Correctional Practice including any units of competency as required by the State and any revision of it.

- (b) The Contractor must not permit any Contract Worker to:
 - (i) perform Custodial Functions without a Certificate III:
 - (A) for more than six months after the Operations Commencement Date in the case of a Contract Worker who was engaged by the Incumbent Provider (or its subcontractor) to perform Custodial Functions at the Prison for a period of 3 months or longer; or
 - (B) for more than 9 months in any other case;
 - (ii) perform the functions of a supervisor of other Contract Workers performing Custodial Functions:
 - (C) without a Certificate III; and
 - (D) for more than 24 months in aggregate without a Certificate IV; or
 - (iii) perform the functions of a supervisor of other Contract Workers performing administrative functions for more than 24 months after the Operations Commencement Date without the Australian industry qualification for correctional services at AQF IV level which, at the Signature Date is CSC40115 Certificate IV in Correctional Practice.
- (c) In designing the Pre-Service Induction Program for Contract Workers performing Custodial Functions the Contractor must comply with the National Correctional Services Training Package, and provide additional emphasis on:
 - (i) highly developed interpersonal skills, linked to the pro-social model of interaction;
 - (ii) understanding of the principles and practice of dynamic security;
 - (iii) cross cultural training with a particular focus on Aboriginal cultural issues;
 - (iv) suicide prevention, response, and “listening” skills; and
 - (v) case management and the role of Contract Workers performing Custodial Functions in supporting the achievement of IMP goals.

6.6 Personnel - Staff Performance Management Systems

- (a) The Contractor's performance management system must be structured around the following components:
 - (i) Clear lines of responsibility and reporting – The Contractor must ensure that there are clear lines of responsibility for the outcomes of each section and division and the Contractor as a whole and must avoid complex structures and the potential risks of unclear reporting lines.
 - (ii) Role Definition – The Contractor must implement clearly articulated position descriptions that set out reporting relationships, accountabilities/responsibilities and the competencies required for satisfactory performance in the position.
 - (iii) Key Performance Indicators – The Contractor must establish a process for the agreement between a manager his/her direct reports to prospective corporate targets, business unit specific targets/KPI's and a personal objectives and

development plan. The process should be participative and allow employees to monitor their own performance against agreed objectives as the performance management year progresses.

- (iv) Performance Reviews – The Contractor must conduct a major annual performance review. Performance reviews must:
 - (A) provide a formal opportunity for two-way communication between a manager and his/her direct reports about immediate past performance against agreed targets, the content of the position and the employee's future development; and
 - (B) involve the refining of objectives, setting new objectives, succession planning and adjustment of the accountabilities and responsibilities expected of the position.

6.7 Personnel – Interface with State

- (a) The Contractor must ensure that the Contract Manager and relevant State's Associates have open access to the Prison, all Records and activities in the Prison including meeting with staff and committees.
- (b) The Contractor must keep the Contract Manager fully informed of all significant developments and progress on issues with staff and meetings.

SCHEDULE 3 FACILITY MANAGEMENT SERVICES

Acacia Prison Services Agreement

Schedule 3 – Facility Management Services

Part A Definitions and Overview

1 Definitions

The following definitions apply in this Schedule 3 unless the context requires otherwise:

Accommodation Unit means each of the areas in the Prison used for accommodation of Prisoners, including Cells.

Additional Preventative Maintenance Costs means additional costs incurred by the Contractor in delivering Preventative Maintenance to the Relevant Asset where such costs are attributable to the Relevant Asset being beyond End of Asset Life and do not include the costs of continuing to deliver a Preventative Maintenance regime to the Relevant Asset in accordance with historical practice and the requirements of the Maintenance Service Plan.

Asset Management Plan means the plan of that name prepared by the Contractor in accordance with section 5 of Part B.

Asset Replacement Fee has the meaning given in section 5.6(a)(i) of Part B.

Asset Replacement Quote has the meaning given in section 5.6(a) of Part B.

Asset Replacement Work has the meaning given in section 5.6(a) of Part B.

Attendance means the maximum time taken for the Contractor, or if applicable a Subcontractor, to attend, either physically or via phone, the Prison to ascertain a suitable course of action for resolution of the failure, commencing from the earlier of the time the failure was Responded to, or if not Responded to prior to the Response Time, the Response Time.

Bed means a single bed or double bunk within a Cell.

BMS means the building management systems in the Prison, including control panels and human machine interface.

Building Fabric means internal and external walls, roofs, roof plumbing, ceilings, slabs, bunding, fire escapes, walkway, safety barriers, handrails, balconies, awnings and eaves.

Communication Systems means network and communications equipment, including for the local area network, communications racks and servers, radios, aerials and masts, amplifiers, intercoms (including the cell call system) and public announcement speakers.

Completion means the maximum time to rectify a failure event as set out in section 7 of Part B, so that the item of Prison Infrastructure, Prison Equipment or Contractor Maintained State Resources can continue to meet the Service Standards, commencing from the earlier of the time the failure was Responded to, or if not Responded to prior to the Response Time, the Response Time.

Contractor Maintained State Resources means all State Resources which are not State Maintained State Resources.

Corrective Maintenance the performance of repair, rectification or replacement that is required in relation to any Prison Infrastructure, Prison Equipment or item of Contractor Maintained State Resources that has functionally failed, is no longer Fit for Purpose or does not meet the Service Standards, to ensure that the Prison Infrastructure, Prison Equipment or item of Contractor Maintained State Resources is Fit for Purpose, in proper working order and meets the Service Standards, but excludes any Preventative Maintenance.

Doors and Windows means all doors, including security, non-security and roller doors, doorframes, door furnishings, door furniture including locks and hold open devices, windows, window frames and sills and window furnishings.

DWER means the Department of Water and Environmental Regulation.

Economic Repair means the cost of repairing a Relevant Asset and the ongoing maintenance of the repaired item is less than the cost of replacement or Upgrade and future maintenance over the expected life of the replaced or Upgraded Relevant Asset.

Electrical Power and Other Cabled Systems means high and low voltage electrical switchboards and cables, transformers, distribution boards, mechanical services switchboards, uninterrupted power supplies, data and communication cables (including the cabling for the PTS), and all protection devices, switches and connection points (e.g. general power outlets), data points and lightning protection.

Emergency Power Supply Systems means equipment for the provision of power should the grid connection fail including diesel generators, switchboards and synchronisers, fuel supply (including storage tanks) and air filtration.

End of Asset Life has the meaning given in section 5.1 of Part B.

Equivalent Replacement has the meaning given in section 5.4(f) of Part B.

Finishes means all decorative finishes including paintwork, fabric and special finishes applied to floors, walls (internal and external), ceilings, roof, staircases and other visible elements.

Fire Fighting Water Supply Systems means systems for the provision of water for fire fighting including storage tanks, ring-main pipes, valves, hydrants and booster pumps.

Fire Protection Equipment means equipment for the detection of and the fighting of fires including detectors, indicator panels, extinguishers, suppression units, blankets, hoses and hose reels.

Gas Piping and Valving means all pipes and valves for the distribution of gas from the Gas Storage Facility to locations on the Site where gas is required.

Gas Storage Facility means the tank located on the Site for storage of gas.

Heating, Air Conditioning and Mechanical Ventilation Systems means all heating, air conditioning and mechanical ventilation systems including fans, fan motors, filters, evaporative, heating cooling ventilation systems, split systems, package and variable refrigerant flow units, cooling towers, ventilation ducting and plenums.

Internal and External Lighting means all light fittings, columns/ towers, emergency and security lighting, and switching equipment.

Irrigation Systems means all pipes, valves, spray-heads and controllers used for the irrigation of all lawn and garden, areas including the ovals and the Tree Farm.

Maintenance Cost Cap means the amount of \$3,000 (excluding GST) indexed annually by the Indexation Factor as defined in section 1 of Schedule 4.

Non-Equivalent Replacement has the meaning given in section 5.4(f) of Part B.

Other Equipment means

- (a) all Prison Equipment not specifically identified in sections 2.2(a) to 2.2(e) of Part B; and
- (b) all Contractor Maintained State Resources.

Outbuildings and Covered Ways means sheds, pergolas, shade sails and covered walkways.

Potable Water Systems means all pipes, mains, valves, pumps, control equipment, storage tanks, backflow prevention and valve pit/ manholes for the distribution of potable water.

Preventative Maintenance means scheduled maintenance activities performed in relation to Prison Infrastructure, Prison Equipment and Contractor Maintained State Resources for the purposes of preventing functional or service failure of that Prison Infrastructure, Prison Equipment and Contractor Maintained State Resources and to ensure that the Prison Infrastructure, Prison Equipment and Contractor Maintained State Resources continue to be Fit for Purpose and the Service Standards are met. These activities include:

- (a) inspections, testing, measuring, servicing, replacing damaged, worn or aged parts and consumables; and
- (b) obtaining information to continually improve maintenance strategies and plans.

Relevant Asset means an individual asset, being:

- (a) each line item in the Unit Asset Register Tab of the Asset Register (where the line item encompasses only a single item, unit or asset); or
- (b) each individual item, unit or asset contemplated within the relevant line item in the Unit Asset Register Tab of the Asset Register (where the line item encompasses multiple items, units or assets).

Relevant Asset Maintenance has the meaning given in section 4.1(a) of Part B.

Relevant Asset Maintenance Business Case has the meaning given in section 4.2(a) of Part B.

Relevant Asset Maintenance Fee has the meaning given in section 4.2(a)(i) of Part B.

Relevant Fields means the fields in the Live Asset Register being the fields which are specified as mandatory in the Baseline Asset Register.

Response means the maximum time taken to log the failure and the action required to resolve the issue, commencing from the time that the failure occurs.

Response Time means the response times set out in section 7.1(b) of Part B.

Roads, Footpaths and Paved Areas means road, road seal, road marking, carparks, access tracks, footpaths, paving and kerbing and signage and includes the road from Great Eastern Highway to the secure perimeter of the Prison.

Sanitary Fitments means sinks, showers, baths, toilet pans and cisterns, piping and valves.

Security Systems means all electronic security systems incorporated into the Prison, including cameras and monitoring equipment, alarms, intruder detection units, passive infra-red motion detectors, mobile distress alarm system units, hydraulic bollards, metal detector and x-ray machine, locksets (manual and electronic) and fingerprint scanners.

Service Standards means the sets of service standards set out in sections 1.2 and 2.2 of Part B and sections 2.2, 3.2, 4.2, 5.2 and 6.2 of Part C.

State Maintained State Resources means those State Resources which are expressly designated as being maintained by the State in the Asset Register.

Storm Water and Drainage means channels, swales, culverts, pipes and the dam for the removal and collection of storm water on and from the Site.

Street Furniture and Signage means benches, guard rails and signs.

Treated Water Irrigation and Nutrient Management Plan means the plan prepared by the entity that operates and maintains the WWTP.

Tree Farm means the plantations of trees and related fencing, access tracks and soft landscaping on the Site.

Upgrade means:

- (a) a program of works undertaken in respect of a Relevant Asset as an alternative to replacing that Relevant Asset which refreshes and refurbishes the Relevant Asset and extends its working life; and
- (b) excludes any works required to be undertaken in delivering Preventative Maintenance to the Relevant Asset (noting for the avoidance of doubt that the Contractor is not prevented from performing work properly characterised as Preventative Maintenance at the same time as it undertakes an Upgrade, but must not seek to recover the cost of such Preventative Maintenance from the State).

Walls, Fencing & Gates means fences, security fences, gates (perimeter and internal) and retaining walls.

Wastewater Systems means all pipes, mains, valves, pumps, control equipment, backflow prevention and valve pit/ manholes for the collection and removal of wastewater, but excluding that part of the WWTP which is not located on the Site.

Whole of Life Cost means the total costs (including costs borne by the Contractor and costs borne by the State) directly related to the item of Prison Infrastructure, Prison Equipment or Contractor Maintained State Resources including design, acquisition, commissioning, maintenance (including Preventative Maintenance and Corrective Maintenance) and disposal, based on the assumption that the item of Prison Infrastructure, Prison Equipment or Contractor Maintained State Resources has been used in accordance with the manufacturer's specifications and its intended purpose.

2 Structure of this Schedule

This Schedule comprises the following Parts:

- (a) this Part A – Definitions and overview;
- (b) Part B – Maintenance Services; and
- (c) Part C – Soft Facility Management Services.

3 Overview

3.1 Overview of Facility Management Services

From the Operations Commencement Date and throughout the Operation Period, the Contractor must maintain, repair and replace (as required) everything on and within the Prison (save for the State Maintained State Resources) in accordance with the Maintenance Services Plan, the Soft Facility Management Services Plan and this Agreement to ensure that:

- (a) the standards and objectives in section 3.2 of this Part A are met; and
- (b) the Prison is maintained in at least the same state of repair and condition as at the Operations Commencement Date as detailed in the Baseline Asset Register, subject to fair wear and tear, except for any Prison Infrastructure, Prison Equipment or Contractor Maintained State Resources that are Upgraded or replaced in accordance with this Agreement, which will be required to be maintained to the same state of repair and condition as at the time of the Upgrade or replacement, subject to fair wear and tear.

3.2 Facility Management Services standards and objectives

- (a) The Contractor must perform the Facility Management Services in a manner that is consistent with Best Industry Practice and in accordance with the Maintenance Services Plan, the Soft Facility Management Service Plan and this Agreement.
- (b) The key objectives of the Facility Management Services are to:
 - (i) ensure the integrity and functionality of the Prison, including Prison Infrastructure, Prison Equipment and Contractor Maintained State Resources;
 - (ii) support and facilitate the performance of the specific services set out in this Agreement and the Operation Service Requirements, including to ensure the welfare of the Prisoners, Contract Workers and Visitors and the reparation and rehabilitation of the Prisoners;
 - (iii) ensure the Prison is safe, Fit for Purpose and in good working order to enable the Prison to be used as a prison for male prisoners 24 hours a day 365 days a year (366 days in a leap year);
 - (iv) ensure the security of the Prison; and
 - (v) ensure that the number of Beds required by the State are available for use as and when required, including meeting the Cell condition requirements in clause 14.4.
- (c) In delivering the Facility Management Services, the Contractor must ensure continuous compliance by the Contractor, the Contractor's Associates, Contract

Workers and Subcontractors with Legislative Requirements and relevant Australian or International Standards.

- (d) The Contractor must not make or permit to be made any alterations or additions to the Prison, the Prison Infrastructure, the Prison Equipment or the State Resources, without the State's prior written consent.
- (e) All Facility Management Services conducted by Subcontractors within the Prison must be carried out under escort provided by the Contractor and in accordance with Legislative Requirements.
- (f) The Contractor must maintain adequate records of all Facility Management Services, including:
 - (i) date, time and costs;
 - (ii) details of the problem, cause and remedy for each failure; and
 - (iii) details of inspection, testing and tagging conducted in accordance with all Legislative Requirements and Departmental Policies.
- (g) The Contractor acknowledges that:
 - (i) the State is entitled to use the road from Great Eastern Highway to the secure perimeter of the Prison, for access to land adjacent to the roadway; and
 - (ii) the use of the road from the Great Eastern Highway to the secure perimeter of the Prison by the State will not in any way limit or otherwise affect the maintenance obligation of the Contractor under this Agreement in respect of that road.

3.3 Interface with Waste Water Treatment Plant

- (a) The Contractor must undertake the Facility Management Services so as to not adversely impact on the WWTP or the WWTP Contractor's ability to undertake the operation and maintenance of the WWTP and must:
 - (i) work collaboratively with the WWTP Contractor to resolve any failures or interface issues that relate to the Maintenance Services and the operation and maintenance of the WWTP; and
 - (ii) provide reasonable assistance to the WWTP Contractor in dealing with DWER, including providing reasonable assistance in preparing any reports required pursuant to licensing conditions relating to the WWTP or the treated waste water.
- (b) The Contractor acknowledges and agrees that:
 - (i) the WWTP produces treated waste water at times and in volumes that are outside of the State's control;
 - (ii) the treated waste water is stored until used in a storage pond of finite capacity;
 - (iii) the treated waste water from the storage pond is used to irrigate certain vegetated areas within the Prison (including the Tree Farm);

- (iv) in order to manage environmental and health issues, the treated waste water is subject to certain licencing and other constraints concerning how and when it can be used; and
- (v) the WWTP Contractor is responsible for liaising with DWER in respect of licensing matters concerning the WWTP and the treated waste water on behalf of the State.

Part B Maintenance Services

1 Prison Infrastructure Maintenance Services

1.1 Scope of Prison Infrastructure Maintenance Services

- (a) The Contractor must, subject to section 4 of this Part B, at its cost:
- (i) undertake Preventative Maintenance and Corrective Maintenance in relation to the Prison Infrastructure, including:
- A all Roads, Footpaths and Paved Areas, in accordance with section 1.2(a) of this Part B;
 - B all Outbuildings and Covered Ways in accordance with section 1.2(b) of this Part B;
 - C all Storm Water and Drainage in accordance with section 1.2(c) of this Part B;
 - D all Street Furniture and Signage in accordance with section 1.2(d) of this Part B;
 - E all Walls, Fencing & Gates in accordance with section 1.2(e) of this Part B;
 - F all Building Fabric in accordance with section 1.2(f) of this Part B;
 - G all Beds in accordance with section 1.2(g) of this Part B;
 - H all Finishes in accordance with section 1.2(h) of this Part B;
 - I all Doors and Windows in accordance with section 1.2(i) of this Part B;
 - J all Fire Fighting Water Supply Systems in accordance with section 1.2(j) of this Part B;
 - K all Potable Water Systems and Wastewater Systems in accordance with section 1.2(k) of this Part B;
 - L all Irrigation Systems in accordance with section 1.2(l) of this Part B;
 - M all Sanitary Fitments in accordance with section 1.2(m) of this Part B;
 - N all Gas Piping and Valving in accordance with section 1.2(n) of this Part B;
 - O all Internal and External Lighting in accordance with section 1.2(o) of this Part B;
 - P Electrical Power and Other Cabled Systems in accordance with section 1.2(p) of this Part B; and
 - Q the Tree Farm in accordance with section 1.2(q) of this Part B,

including to:

- R minimise the Whole of Life Cost of the Prison Infrastructure; and
 - S ensure that every item of the Prison Infrastructure functions and performs in accordance with the manufacturer's specifications (if applicable) and its intended purpose; and
- (ii) undertake regular inspection, maintenance and servicing of each item of Prison Infrastructure in accordance with the approved Maintenance Services Plan,

(the **Prison Infrastructure Maintenance Services**).

- (b) The Contractor must provide the Prison Infrastructure Maintenance Services:
- (i) to meet the standards and objectives in section 3.2 of Part A;
 - (ii) to meet the Service Standards set out in section 1.2 of this Part B;
 - (iii) to actively and demonstrably reduce the risk of the failure of Prison Infrastructure; and
 - (iv) in accordance with the Maintenance Services Plan.

1.2 Service Standards for Prison Infrastructure Maintenance Services

(a) Roads, Footpaths and Paved Areas

The Contractor must ensure that all Roads, Footpaths and Paved Areas:

- (i) are sound, safe and have an even surface with no potholes, subsidence or trip hazards;
- (ii) are at all times accessible and suitable for disabled and elderly access;
- (iii) are free from graffiti and/or vandalism;
- (iv) have no loose kerbs or edgings or paving stones;
- (v) have line markings and signage that are clear and complete;
- (vi) are free from debris, loose gravel and rubble;
- (vii) are well drained; and
- (viii) are reasonably free of flood water.

(b) Outbuildings and Covered Ways

The Contractor must ensure that all Outbuildings and Covered Walkways:

- (i) are functional and operational;
- (ii) sound, secure and weatherproof where appropriate;
- (iii) free from damage, structural cracks and/or deflection;
- (iv) free from damp;

- (v) free from debris and moss growth; and
- (vi) are reasonably free of flood water.

(c) **Storm Water and Drainage**

The Contractor must ensure that all Storm Water and Drainage systems:

- (i) function as intended, with no impairment of designed hydraulic capacity and minimise erosion; and
- (ii) are structurally sound and safe to operate around.

(d) **Street Furniture and Signage**

The Contractor must ensure that all Street Furniture and Signage:

- (i) are structurally sound and safe to use;
- (ii) are clearly visible and provide relevant information; and
- (iii) comply, where necessary, with Legislative Requirements, in relation to size, colour, content and visibility.

(e) **Walls, Fencing & Gates**

The Contractor must ensure that Walls, Fencing & Gates:

- (i) are structurally sound and safe to use;
- (ii) provide required level of security as defined by its intended purpose; and
- (iii) provide required level of privacy as defined by its intended purpose.

(f) **Building Fabric**

The Contractor must ensure that all elements of the Building Fabric are:

- (i) functional and operational;
- (ii) sound, secure and weatherproof where appropriate;
- (iii) free from damage, structural cracks and/or deflection or subsidence;
- (iv) free from damp;
- (v) free from debris and moss growth; and
- (vi) reasonably clean of splashing or staining from mud.

(g) **Beds**

The Contractor must ensure that Beds are:

- (i) safe and available for use
- (ii) are fastened securely to their intended points of anchorage;
- (iii) free from damage; and
- (iv) function as intended.

(h) Finishes

The Contractor must ensure that:

- (i) Finishes are complete and are fully fixed/bonded to the Building Fabric so as not to cause a health and safety hazard;
- (ii) Finishes are free from tears, scoring, cracks or any other damage that could cause a health and safety hazard;
- (iii) floor Finishes are maintained in such a way as to provide a suitable uniform surface, with minimal resistance, for wheeled trolleys, wheelchairs and any other wheeled vehicle or equipment in use;
- (iv) Finishes prevent water damage to the Building Fabric and enable adequate drainage where necessary;
- (v) paint Finishes are:
 - A free from all but minor surface blemishes; and
 - B free from cracks, or any other surface degradation consistent with a building maintained in accordance with Best Industry Practice;
- (vi) walls, ceilings and floors of the Accommodation Units, including Cells, are painted within the first 2 years after the Operations Commencement Date and at intervals of 5 years thereafter; and
- (vii) all other parts of the Prison excluding the walls, ceilings and floors of the Accommodation Units, which have at any time previously been painted, are to be painted no later than 7 years and 14 years from the Operations Commencement Date:
 - A with not less than two coats of high quality paint;
 - B by an appropriately experienced and trained person;
 - C in accordance with Best Industry Practice; and
 - D in colours approved by the State.

(i) Doors and Windows

The Contractor must ensure that all Doors and Windows:

- (i) operate as intended, in a safe way, without making undue noise and without binding, rubbing or catching in any way;
- (ii) are sound, secure and weatherproof where appropriate;
- (iii) have reliable and functional opening and locking mechanisms; and
- (iv) comply with Legislative Requirements and Departmental Policies.

(j) Fire Fighting Water Supply Systems

The Contractor must ensure that all Fire Fighting Water Supply Systems;

- (i) operate as intended, in a safe way, without making undue noise or vibration;
- (ii) have no weeps or leaks;
- (iii) supply the required pressure and flow throughout the system; and
- (iv) meet all, and are tested in accordance with, all Legislative Requirements.

(k) Potable Water Systems and Wastewater Systems

(i) The Contractor must ensure that for all Potable Water Systems:

- A the hot and cold water systems are operational and deliver water at appropriate temperatures and flow rates without undue noise and vibration;
- B pipework and fittings for the hot and cold water systems are fastened securely to their intended points of anchorage; and
- C there are no drips or leaks of water from pipework, mains, taps, valves and/or fittings.

(ii) The Contractor must ensure that for all Wastewater Systems:

- A they function as intended, without undue noise and vibration;
- B the hydraulic capacity is maintained;
- C all pipework and fittings are fastened securely to their intended points of anchorage; and
- D there is no leakage of waste or foul water.

(l) Irrigation systems

The Contractor must ensure that all Irrigation Systems operate as intended and:

- (i) are free from leaks;
- (ii) have no flow restrictions;
- (iii) that valves are operating correctly;
- (iv) have no blocked spray-heads;
- (v) that spray coverages are adequate; and
- (vi) use (or otherwise dispose of) water from the WWTP in order to meet the requirements of the Department of Health, the DWER licence and condition requirements, the Treated Water Irrigation and Nutrient Management Plan and other Legislative Requirements.

(m) Sanitary Fitments

The Contractor must ensure that all Sanitary Fitments:

- (i) function as intended and are adjusted for water efficiency;

- (ii) defects are rectified before the defect becomes too severe to repair e.g. sealant issues are rectified before further water damage occurs to other assets;
- (iii) have no drips or leaks of water from pipework, taps, valves and/or fittings; and
- (iv) comply with the Cell condition requirements in clause 14.4.

(n) Gas Piping and Valving

The Contractor must ensure that all Gas Piping and Valving:

- (i) is operational and functions as intended without undue noise or vibration; and
- (ii) is safe to operate.

(o) Internal and External Lighting

The Contractor must ensure all Internal and External Lighting:

- (i) provide the required amount of lighting to meet the functional requirements of the space, whilst maximising energy efficiency; and
- (ii) are safe to operate.

(p) Electrical Power and Other Cabled Systems

The Contractor must ensure all Electrical Power and Other Cabled Systems:

- (i) are operational and function as intended without undue noise or vibration;
- (ii) wiring, fittings, fixtures, controls and safety devices are properly housed and fastened securely to their intended point of anchorage and labelled;
- (iii) have appropriately insulated conductors and connection points;
- (iv) relevant interfaces to the Security Systems are operating correctly;
- (v) are safe to operate and for people to be in their vicinity; and
- (vi) meet all relevant legislative requirements including regarding testing and tagging.

(q) Tree Farm

The Contractor must ensure the Tree Farm:

- (i) is safe for use and for people to be in the vicinity;
- (ii) is operational and functions as intended;
- (iii) meets the Department of Health requirements and the Department Water & Environmental Regulation licence and condition requirements and the Treated Water Irrigation and Nutrient Management Plan;
- (iv) is free from undergrowth, fallen branches or trees, and does not contain trees or bushes obstructing access or movement on site; and
- (v) does not contain trees or bushes that are damaging other assets such as fences or irrigation.

2 Prison Equipment and State Resources Maintenance Services

2.1 Scope of Prison Equipment and State Resources Maintenance Services

- (a) Subject to section 4 of this Part B, the Contractor must, at its cost:
- (i) undertake Preventative Maintenance and Corrective Maintenance in relation to all Prison Equipment and all Contractor Maintained State Resources including:
 - A all Heating, Air Conditioning and Mechanical Ventilation Systems in accordance with section 2.2(a) of this Part B
 - B all Fire Protection Equipment in accordance with section 2.2(b) of this Part B;
 - C all Security Systems in accordance with section 2.2(c) of this Part B;
 - D all BMS and Communications Systems in accordance with section 2.2(d) of this Part B;
 - E all Emergency Power Supply Systems in accordance with section 2.2(e) of this Part B; and
 - F Other Equipment in accordance with section 2.2(f) of this Part B, including to:
 - G minimise the Whole of Life Cost of the Prison Equipment and the Contractor Maintained State Resources; and
 - H ensure that every item of Prison Equipment and Contractor Maintained State Resources functions and performs in accordance with the manufacturer's specifications and is Fit for Purpose; and
 - (ii) undertake regular inspection, maintenance and servicing of each item of Prison Equipment and Contractor Maintained State Resources in accordance with the approved Maintenance Services Plan.
- (the Prison Equipment and State Resources Maintenance Services).**
- (b) The Contractor must provide the Prison Equipment and State Resources Maintenance Services to:
- (i) meet the standards and objectives in section 3.2 of Part A;
 - (ii) meet the Service Standards set out in section 2.2 of this Part B; and
 - (iii) to actively and demonstrably reduce the risk of the failure of Prison Equipment and Contractor Maintained State Resources.

2.2 Service Standards for Prison Equipment and State Resources Maintenance Services

(a) Prison Equipment - Heating, Air Conditioning and Mechanical Ventilation Systems

The Contractor must ensure that:

- (i) all air conditioning and ventilation systems and associated plant components function as intended and without undue noise or vibration;
- (ii) ductwork, fittings and pipework are securely fastened to their intended points of anchorage;
- (iii) there are no leaks of water (or other heating/cooling medium) or air from ventilation systems;
- (iv) refrigerant use to be managed and recorded in accordance with Legislative Requirements;
- (v) the Heating, Air Conditioning and Mechanical Ventilation Systems are:
 - A not able to be accessed by Prisoners and can be accessed by authorised personnel only;
 - B are free from corrosion, erosion, dust/lint and organic growth; and
 - C comply with all public health measures for Legionella.

(b) Prison Equipment – Fire Protection

The Contractor must ensure that Fire Protection Equipment:

- (i) is fully operational and available for use;
- (ii) is of suitable type and quantity for the hazards present within their vicinity;
- (iii) is sound, secure and fixed to their intended point of anchorage;
- (iv) locations are appropriately sign-posted;
- (v) hydrants, sprinklers and hoses are at correct operating pressure and flow rates;
- (vi) pipework is free from corrosion, leaks and drips when in use and in standby; and
- (vii) is tested and maintained in accordance with all Legislative Requirements and appropriate records are maintained.

(c) Prison Equipment – Security Systems

The Contractor must ensure that Security Systems:

- (i) are always operational and functioning as intended;
- (ii) are properly housed and fastened securely to their intended point of anchorage and labelled;
- (iii) always have emergency power supplies available;

- (iv) are clean and free from dirt, dust, cobwebs and the like that may adversely affect vision or operation; and
- (v) have sufficient capacity to record and maintain data in accordance with Legislative Requirements and Departmental Policies,

and data recordings are made, including recordings from all closed circuit television cameras, and are retained in digital format for at least 30 days, are of appropriate quality for such data and are routinely backed up in accordance with Best Industry Practice.

(d) Prison Equipment - BMS and Communications Systems:

- (i) The Contractor must maintain the BMS so that:
 - A the BMS is operational at all times,
 - B the BMS is capable of reliably and continuous monitoring of utilities and system meters with trending capabilities, and
 - C the BMS is capable of reliable initiating alarms in accordance with criteria established in its design and the site alarm management philosophy.
- (ii) The Contractor must ensure that the Communication Systems:
 - A are operational and functioning as intended;
 - B available at all times;
 - C are safe to operate;
 - D are properly housed and fastened securely to their intended point of anchorage and labelled; and
 - E are maintained in accordance with Legislative Requirements and Departmental Policies.

(e) Prison Equipment – Emergency Power Supply Systems

The Contractor must ensure that Emergency Power Supply Systems:

- (i) are operational and available at all times;
- (ii) have adequate fuel to sustain longer than an average outage duration at maximum load; and
- (iii) are frequently tested and run on load to ensure reliability.

(f) Other Equipment

The Contractor must ensure that Other Equipment:

- (i) is fully operational and available for use;
- (ii) is safe to operate and fully secure;
- (iii) is free from leaks and undue noise and vibration; and
- (iv) is maintained in accordance with Legislative Requirements.

3 Live Asset Register

- (a) The Contractor must maintain and update the Live Asset Register in accordance with this section 3.
- (b) The Contractor must keep all the Relevant Fields in the Live Asset Register up to date with:
 - (i) the current details of the assets identified in the Live Asset Register; and
 - (ii) if an asset in the Live Asset Register is replaced, details of the replacement including details of any warranties or licences for replacement assets.
- (c) The Contractor must provide an up to date Live Asset Register to the State within 24 hours of a request by the State, updated from the last quarterly update to the date of the request.
- (d) The Contractor must provide an up to date version of the Live Asset Register to the State each Operation Quarter in accordance with clause 16.5(c).
- (e) If the State procures any asset to be included in the Live Asset Register, the State will provide the information to be inserted in the Relevant Fields to the Contractor to update the Live Asset Register accordingly.
- (f) In maintaining the Live Asset Register:
 - (i) subject to paragraph (f)(iii) below, the Contractor must not add any State Asset to, or remove any State Asset from, the Live Asset Register without the prior written consent of the State;
 - (ii) the Contractor must not change the characterisation of any State Asset (including re-characterising any Contractor Maintained State Resources as State Maintained State Resources, or vice versa) without the prior written consent of the State; and
 - (iii) the Contractor must, when a State Asset is replaced (irrespective of whether the replacement cost exceeds the Maintenance Cost Cap):
 - A include the replacement asset on the Live Asset Register; and
 - B characterise the replacement asset on the Live Asset Register in the same manner as the replaced asset.

4 Additional Payment for Corrective Maintenance

4.1 Cost of Corrective Maintenance

- (a) Subject to sections 4.1(c), 4.1(d) and 4.1(e), if a single instance of Corrective Maintenance in relation to a Relevant Asset by way of either:
 - (i) repair; or
 - (ii) if the Relevant Asset is not capable of repair or is not capable of Economic Repair, replacement,

(Relevant Asset Maintenance) exceeds the Maintenance Cost Cap, the Contractor must immediately notify the State and the process in this section 4 of this Part B applies.

- (b) For the purposes of this section 4 of this Part B, when determining whether the Relevant Asset Maintenance exceeds the Maintenance Cost Cap:
 - (i) only individual instances of failures, proposed repairs or replacements for Relevant Assets will be considered, regardless of the root cause of the failure; and
 - (ii) only direct costs for labour, parts and materials will be taken into account, excluding overheads, margins, costs incurred in relation to the use of the Contractor's employees, and other internal costs of the Contractor.
- (c) If any part of the Prison Infrastructure or any Prison Equipment is lost, damaged or destroyed as a result of an act or omission of the Contractor, any Contractor's Associate, any Contract Worker, any Subcontractor or any Prisoner, unless otherwise directed by the State, the Contractor must rectify that loss, damage or destruction at its cost.
- (d) To the extent that the State or any State's Associate causes or contributes to any loss, damage or destruction to any part of the Prison Infrastructure or any Prison Equipment, if the State directs the Contractor to rectify the loss, damage or destruction, the State will pay for the cost of the rectification.
- (e) If a Relevant Asset is lost, damaged or destroyed as a result of a Force Majeure Event, if the State directs the Contractor to rectify the loss, damage or destruction and the cost to rectify the loss, damage or destruction of a Relevant Asset falls below the Maintenance Cost Cap, the State will make available to the Contractor any insurance proceeds received by the State for the purpose of repairing or reinstating the relevant loss or damage to the Relevant Asset.

4.2 Business Case

- (a) Subject to sections 4.2(f) and 4.3 of this Part B, as soon as possible in order to meet the relevant Response Time, but in any event no later than 2 Business Days of notifying the State in accordance with section 4.1 of this Part B, the Contractor must prepare and submit for the approval of the State a notice entitled 'Relevant Asset Maintenance Business Case' (**Relevant Asset Maintenance Business Case**) which must detail:
 - (i) the cost of the Relevant Asset Maintenance calculated on an open book basis with the breakdown of goods, services, labour, equipment, materials and Subcontract costs (excluding any overheads, margin, costs incurred in relation to the use of the Contractor's employees, and other internal costs of the Contractor) clearly set out and available for review by the State (the **Relevant Asset Maintenance Fee**);
 - (ii) evidence demonstrating that all Preventative Maintenance on the Relevant Asset, material to the condition of that Asset, has been performed effectively and in accordance with the Maintenance Services Plan;
 - (iii) confirmation from the Contractor that section 4.1(c) of this Part B does not apply;

- (iv) that there are no other cost effective options to maintain the function of the Relevant Asset to provide the services required;
 - (v) an estimate of the time to complete the proposed Relevant Asset Maintenance;
 - (vi) any actions required to ensure the Contractor can continue to deliver the Operational Services to ensure and enable the continued use of the Prison;
 - (vii) details of any Subcontractors proposed to be engaged to implement the Relevant Asset Maintenance; and
 - (viii) any other particulars reasonably requested by the State.
- (b) Within a reasonable time of receiving a Relevant Asset Maintenance Business Case, the State must advise the Contractor whether the Relevant Asset Maintenance Business Case is approved or rejected by the State or whether the State requires additional information.
- (c) If the State rejects the Relevant Asset Maintenance Business Case then the State may:
- (i) elect not to proceed with the proposed Relevant Asset Maintenance;
 - (ii) proceed to implement the Upgrade or replacement itself or engage a third party to carry out the required Upgrade or replacement, in which case the Upgrade or replacement will not be Relevant Asset Maintenance; or
 - (iii) take such other course of action it considers necessary in the circumstances.
- (d) If the State approves the Relevant Asset Maintenance Business Case, the Contractor must carry out the Relevant Asset Maintenance in accordance with the Relevant Asset Maintenance Business Case for the Asset Replacement Fee and the State will pay the Contractor the Relevant Asset Maintenance Fee in accordance with section 6 of Schedule 4.
- (e) The Contractor must not commence any work or incur any cost, and will not have any entitlement to make any Claim in connection with any proposed Relevant Asset Maintenance, unless a Relevant Asset Maintenance Business Case has been approved in accordance with section 4.2(d) of this Part B.
- (f) For the avoidance of doubt, if the cost of a single instance of Relevant Asset Maintenance does not exceed the Maintenance Cost Cap, the Contractor must perform such Relevant Asset Maintenance at its cost, and is not required to submit a Relevant Asset Maintenance Business Case for State approval prior to undertaking such Relevant Asset Maintenance.

4.3 Priority 0 Failures and Priority 1 Failures

- (a) If the Relevant Asset Maintenance constitutes a Priority 0 or a Priority 1 Failure in accordance with section 7 of this Part B then the Contractor must notify the State in accordance with section 4.1(a) of Part B and must provide the State with an estimate of the cost to complete the Relevant Asset Maintenance but is not required to submit a Relevant Asset Maintenance Business Case prior to undertaking the Relevant Asset Maintenance.
- (b) Subject to section 4.3(d), once the Contractor has completed the Relevant Asset Maintenance, the Contractor must provide the State with evidence of the direct costs

actually and necessarily incurred by the Contractor in completing the Relevant Asset Maintenance on an open book basis for approval by the State.

- (c) Subject to section 4.3(d), the State may:
 - (i) approve the direct costs incurred by the Contractor to complete the Relevant Asset Maintenance in which case those costs will be paid by the State as the Relevant Asset Maintenance Fee in accordance with section 6 of Schedule 4; or
 - (ii) refer the matter to dispute in accordance with clause 37.
- (d) For the avoidance of doubt, if the Relevant Asset Maintenance constitutes a Priority 0 or a Priority 1 Failure in accordance with section 7 of this Part B, and the cost of performing the Relevant Asset Maintenance does not exceed the Maintenance Cost Cap:
 - (i) the Contractor must provide the State with the notification and information contemplated in section 4.3(a) above;
 - (ii) the Contractor must undertake the Relevant Asset Maintenance at its own cost and in accordance with the requirements of this Schedule 3;
 - (iii) the Contractor is not required to provide the State with the information contemplated in section 4.3(b) above; and
 - (iv) section 4.3(c) above will not be applicable.

5 Asset Management Plan

5.1 The End of Asset Life test

For the purposes of this section 5 of this Part B, a Relevant Asset has reached End of Asset Life in the following circumstances:

- (a) the Whole of Life Cost of the Relevant Asset (including all costs incurred in Upgrading or replacing the Relevant Asset) is minimised by Upgrading or replacing the Relevant Asset at the proposed point in time (as compared to continuing to maintain the Relevant Asset beyond that point in time); or
- (b) the Relevant Asset has ceased to be Fit for Purpose, or will cease to be Fit for Purpose during the coming Operation Year, and has become or will become during the coming Operation Year incapable of being maintained in or restored to a Fit for Purpose condition through the undertaking of Preventative Maintenance or Corrective Maintenance (including by reason of unavailability of essential parts or technical support).

5.2 Proposed Asset Management Plan

- (a) The Contractor must, 3 months prior to the commencement of each Operation Year during the Operation Period, prepare and submit to the State, for approval in accordance with the Review Procedures, an Asset Management Plan.
- (b) The Contractor is not required to prepare or submit an Asset Management Plan in relation to the 2021/2022 Operation Year.

5.3 Five Year Overview

- (a) The Asset Management Plan must contain a high level overview of the Relevant Assets (other than the State Maintained State Resources) that the Contractor considers will need to be replaced or Upgraded in the coming 5 Operation Years.
- (b) This overview is for indicative planning and budgeting purposes only, and does not impose legal obligations on either Party.

5.4 Detailed Asset Replacement Proposal

- (a) The Asset Management Plan must contain a detailed proposal for replacement or Upgrade of Relevant Assets (other than the State Maintained State Resources) over the coming Operation Year, including:
 - (i) in respect of each Upgrade or replacement proposed by reason of the Relevant Asset reaching End of Asset Life:
 - A the applicable limb of section 5.1 of this Part B relied upon;
 - B supporting data and analysis demonstrating the Relevant Asset has reached, or will during the coming Operation Year reach, End of Asset Life;
 - C confirmation that the Contractor is not responsible for loss, damage or destruction of the Relevant Asset under section 4.1(c) of this Part B; and
 - D evidence demonstrating that all Preventative Maintenance on the Relevant Asset, material to the condition of that Asset, has been performed in accordance with the Maintenance Services Plan;
 - (ii) in respect of each Upgrade or replacement proposed by reason of the Relevant Asset reaching End of Asset Life pursuant to section 5.1 of this Part B, any material risks including to the delivery of the Services if the Relevant Asset is not Upgraded or replaced;
 - (iii) an explanation as to why Upgrade or replacement (as applicable) is proposed;
 - (iv) where replacement is proposed:
 - A the specific replacement asset proposed;
 - B why that specific replacement asset is proposed; and
 - C whether the Contractor considers the replacement asset to be an Equivalent Replacement or a Non-Equivalent Replacement for the purposes of section 5.4(f) of this Part B;
 - (v) the estimated cost of replacement or Upgrade and whether it exceeds the Maintenance Cost Cap;
 - (vi) how the Contractor plans to reasonably mitigate any detrimental effect on the delivery of the Operational Services whilst the Upgrade or replacement is undertaken; and
 - (vii) how value for money for the Upgrade or replacement will be achieved.

- (b) The Contractor must ensure that the Asset Management Plan identifies the significance of the proposed replacement or Upgrade of the Relevant Assets having regard to:
 - (i) the consequences of non-Upgrade or replacement on the Contractor's ability to deliver the Services in accordance with and to the standards required by the Agreement;
 - (ii) costs the Contractor considers are likely to be incurred by the State pursuant to section 5.7(b) if the Relevant Asset is not Upgraded or replaced; and
 - (iii) the failure categories set out in section 7 of this Part B.
- (c) The Contractor may propose Upgrades or replacements of Relevant Assets that have not reached End of Asset Life. The State may accept or reject such proposals in its absolute discretion.
- (d) The Contractor may propose replacing Relevant Assets with a Non-Equivalent Replacements provided that, subject to section 5.4(e) the State may accept or reject such proposals in its absolute discretion.
- (e) If the Contractor proposes replacing a Relevant Asset with a Non-Equivalent Replacement and:
 - (i) the Relevant Asset has reached End of Asset Life;
 - (ii) there is no reasonably available and practical Equivalent Replacement;
 - (iii) the proposed Non-Equivalent Replacement is as close as is as practicable to being an Equivalent Replacement (having regard to the criteria in section 5.4(f)); and
 - (iv) the State elects not to approve the Non-Equivalent Replacement,
 section 5.7 of this Part B will apply.
- (f) For the purposes of section 5 of this Part B a proposed replacement asset will be:
 - (i) an Equivalent Replacement where:
 - A the replacement asset is of materially similar functionality, quality and price point as the Relevant Asset being replaced; and
 - B a more equivalent replacement asset (having regard to functionality, quality and price point) is not available on the market; and
 - (ii) a Non-Equivalent Replacement where the criteria set out in paragraph (i) are not satisfied.

5.5 State review of Asset Management Plan

- (a) The State must review the Asset Management Plan within 60 Business Days of receipt (or such longer period as the Parties acting reasonably may agree). For the avoidance of doubt, approval by the State of the Asset Management Plan in a qualified manner pursuant to section 5.5(c)(vii) will discharge the State's obligations under this section 5.5(a).

- (b) The following provisions of the Review Procedures will apply to the review of the Asset Management Plan:
 - (i) clause 36.2 (provided, in respect of clause 36.2(a)(iii), that the State acknowledges it will be bound by the Asset Management Plan once agreed);
 - (ii) clause 36.3;
 - (iii) clause 36.5;
 - (iv) clauses 36.8(a) and (c); and
 - (v) clause 36.10.
- (c) Without limiting the State's rights under section 36.5 of the Review Procedures, the State may do one or more of the following:
 - (i) dispute whether a Relevant Asset has reached End of Asset Life;
 - (ii) in respect of any Relevant Assets asserted to have reached End of Asset Life pursuant to section 5.1(a) and in respect of which replacement or Upgrade costs will exceed the Maintenance Cost Cap, require the Contractor to provide analysis (with transparent assumptions) demonstrating Whole of Life Costs are minimised by Upgrading or replacing the Relevant Asset at the proposed point in time;
 - (iii) dispute the Contractor's characterisation of a proposed replacement asset as an Equivalent Replacement;
 - (iv) dispute whether the conditions in section 5.4(e) are satisfied;
 - (v) elect, in its absolute discretion, which Relevant Assets are approved for replacement or Upgrade (and for the avoidance of doubt, the State may elect not to approve the Upgrade or replacement of a Relevant Asset which has reached End of Asset Life);
 - (vi) require the Contractor to replace a Relevant Asset instead of Upgrading such asset;
 - (vii) approve the Asset Management Plan in a qualified manner, such that the Contractor may proceed with agreed and approved Upgrades or replacements of Relevant Assets, while the Parties resolve Disputes in relation to replacements or Upgrades that the State has not agreed; or
 - (viii) approve the content of the Asset Management Plan in its entirety.
- (d) In respect of each Relevant Asset proposed for Upgrade or replacement under the Asset Management Plan, the State must after receiving from the Contractor all information reasonably required by the State to facilitate its decision making, do one of the following:
 - (i) approve the relevant replacement or Upgrade;
 - (ii) elect not to approve the relevant Upgrade or replacement, while acknowledging the criteria in section 5.7(a) are satisfied and section 5.7 applies; or

- (iii) elect not to approve the relevant Upgrade or replacement, and indicate the criteria in section 5.7(a) are not satisfied and section 5.7 does not apply (giving reasons for that conclusion).
- (e) If the State gives notice pursuant to section 5.5(d)(iii), the Contractor will be entitled to initiate a Dispute and may (subject to the outcomes of that Dispute) be entitled to the relief set out in section 5.7 but will have no other remedy under this Agreement.

5.6 Asset Upgrade and Replacement

- (a) Prior to undertaking the replacement or Upgrade of any Relevant Asset in accordance with the approved Asset Management Plan (the **Asset Replacement Work**), the Contractor must, where the cost of such replacement or Upgrade is likely to exceed the Maintenance Cost Cap, prepare and submit for the approval of the State a notice entitled 'Asset Replacement Quote' (**Asset Replacement Quote**) which sets out:
 - (i) the cost of the Asset Replacement Work calculated on an open book basis with the breakdown of goods, services, labour, equipment, materials, Subcontract costs clearly set out and available for review by the State (the **Asset Replacement Fee**);
 - (ii) an estimate of the time to complete the proposed Asset Replacement Work;
 - (iii) details of any Subcontractors proposed to be engaged to implement the Asset Replacement Work; and
 - (iv) any other particulars reasonably requested by the State,

provided that the Contractor must not include any overhead, margin, costs incurred in relation to the use of the Contractor's employees, or other internal costs of the Contractor, within the Asset Replacement Fee.
- (b) Within a reasonable time of receiving an Asset Replacement Quote, the State must advise the Contractor whether the Asset Replacement Quote is approved or rejected or disputed by the State.
- (c) If the State rejects the Asset Replacement Quote then the State may:
 - (i) elect not to proceed with the proposed Asset Replacement Work;
 - (ii) proceed to implement the Upgrade or replacement itself or engage a third party to carry out the required Upgrade or replacement, in which case the Upgrade or replacement will not be Asset Replacement Work; or
 - (iii) take such other course of action it considers necessary in the circumstances,

in which case section 5.7(a) may apply if the Asset is not replaced or the work performed by the State or third parties is not of the standard required by this Agreement and if the requirements of section 5.7 are satisfied.
- (d) If the State approves the Asset Replacement Quote, the Contractor must carry out the Asset Replacement Work for the Asset Replacement Fee included in the relevant Asset Replacement Quote and otherwise in accordance with the Asset Management Plan and the State will pay the Contractor the Asset Replacement Fee in accordance with section 6 of Schedule 4.

- (e) The Contractor must not commence any work or incur any cost, and will not have any entitlement to make any Claim in connection with any proposed Asset Replacement Work, unless an Asset Replacement Quote has been approved in accordance with section 5.6(d) of this Part B.
- (f) For the avoidance of doubt, where the approved Asset Management Plan provides for the Upgrade or replacement of a Relevant Asset and the cost of such Upgrade or replacement does not exceed the Maintenance Cost Cap, the Contractor:
 - (i) must Upgrade or replace the Relevant Asset in accordance with the Asset Management Plan at its own cost; and
 - (ii) need not submit an Asset Replacement Quote for State approval in respect of such Upgrade or replacement.
- (g) For the avoidance of doubt, where multiple individual items of the same type of Relevant Asset are Upgraded or replaced at the same time, the Upgrade or replacement of each individual Relevant Asset will be treated as a distinct instance of Asset Replacement Work for the purposes of comparison against the Maintenance Cost Cap. By way of example, if 100 identical batteries each costing \$200 were replaced pursuant to a replacement program contemplated under the Asset Management Plan, this would be treated as 100 distinct instances of Asset Replacement Work, and as none of these 100 instances would exceed the Maintenance Cost Cap, the Contractor would bear the cost of the replacements.
- (h) For the avoidance of doubt, where an Upgrade to an individual Relevant Asset involves the replacement of multiple components or the undertaking of multiple activities, the cost of such components and activities may only be aggregated for the purposes of comparison against the Maintenance Cost Cap where each of the following conditions are satisfied:
 - (i) all relevant maintenance activities, and the timing thereof, are reflective of Best Industry Practice and the maintenance program relating to the Relevant Asset has been designed in a manner that minimises Whole of Life Cost;
 - (ii) maintenance activities have not unnecessarily or unreasonably been undertaken, bought forward or deferred; and
 - (iii) the State (acting reasonably) is satisfied the timing and content of the maintenance activities is driven by the considerations in paragraph (h)(i) above, and not by commercial considerations involving the Maintenance Cost Cap.

5.7 Cost and performance relief if Relevant Assets are not upgraded or replaced at End of Asset Life

- (a) If the State elects not to approve the Upgrade or replacement of a Relevant Asset that has reached End of Asset Life in circumstances where the Contractor has proposed:
 - (i) an Equivalent Replacement;
 - (ii) a Non-Equivalent Replacement in the circumstances contemplated at section 5.4(e)); or
 - (iii) an Upgrade (subject to section 5.5(c)(vi) of this Part B),

this section 5.7 will apply.

- (b) If section 5.7(a) applies in respect of a Relevant Asset, the State must pay all reasonably and properly incurred Additional Preventative Maintenance Costs and Corrective Maintenance costs (including where such costs fall below the Maintenance Cost Cap) in relation to the Relevant Asset assessed on an open book basis.
- (c) If section 5.7(a) applies in respect of a Relevant Asset, and the Relevant Asset has in fact ceased to be Fit for Purpose, the Contractor will be entitled to relief from such obligations under the Agreement (including under the Performance Regime) that the Contractor is actually and demonstrably prevented from discharging by reason of the Relevant Asset not being Fit for Purpose provided that:
 - (i) the Contractor has taken all reasonable steps to minimise, mitigate or work around the Asset ceasing to be Fit for Purpose; and
 - (ii) the Contractor has complied with the notice details at section 5.7(d) below.
- (d) If the Contractor considers section 5.7(c) applies, the Contractor must, within 20 Business Days of first being prevented from discharging the relevant obligation, provide notice to the State identifying:
 - (i) the Relevant Asset that has ceased to be Fit for Purpose;
 - (ii) the specific obligations under the Agreement the Contractor is prevented from discharging by reason of the Relevant Asset not being Fit for Purpose;
 - (iii) the linkage between the Relevant Asset not being Fit for Purpose and the Contractor being prevented from discharging the specific obligations; and
 - (iv) the steps the Contractor has taken to minimise, mitigate or work around the Asset ceasing to be Fit for Purpose.
- (e) The State (acting reasonably) must assess the notice received under section 5.7(d) above within 15 Business Days of receipt and must, by written notice to the Contractor, suspend the obligations the Contractor is unable to discharge by reason of the Relevant Asset not being Fit for Purpose.
- (f) The State may, at any time by notice in writing to the Contractor, retract its decision not to approve an Upgrade or replacement claimed by the Contractor. If the State retracts its decision:
 - (i) the Contractor must as soon as reasonably practicable Upgrade or replace the Relevant Asset in accordance with the provision of this section 5; and
 - (ii) relief under this section 5.7 will cease to apply on completion of the relevant Upgrade or replacement.

5.8 Dispute resolution

- (a) Without limiting the general ability of the Parties to initiate a Dispute under clause 37 of the Agreement, either Party may initiate a Dispute in respect of:
 - (i) whether a Relevant Asset has reached End of Asset Life;
 - (ii) whether a proposed replacement of a Relevant Asset is an Equivalent Replacement or a Non-Equivalent Replacement;
 - (iii) whether the conditions in section 5.4(e) are satisfied;
 - (iv) the quantum payable to the Contractor pursuant to sections 5.7(b);
 - (v) whether a Relevant Asset is in fact Fit for Purpose for the purposes of section 5.7(c); or
 - (vi) the quantum of a proposed Relevant Asset Maintenance Fee or Asset Replacement Fee.
- (b) The Dispute resolution process under clause 37 applies to disputes contemplated in clause 5.8(a), subject to the following modifications:
 - (i) if negotiation between senior representatives under clause 37.3 of the Agreement fails to resolve the Dispute within the time period contemplated in clause 37.4 of the Agreement, either Party may refer to Dispute to expert determination under clause 37.5 of the Agreement; and
 - (ii) the independent expert will be selected pursuant to clause 37.5(b) of the Agreement, provided that the independent expert's primary field of expertise must be asset management.

6 Maintenance Services Plan

6.1 Proposed Maintenance Services Plan

At least 3 months prior to the Planned Operations Commencement Date, and 1 month prior to the start of each financial year during the Operation Period, the Contractor must prepare and submit to the State, for approval in accordance with the Review Procedures, a Maintenance Services Plan.

6.2 Content of Maintenance Services Plan

The Contractor's Maintenance Services Plan must include details regarding:

- (a) procedures to ensure that the Maintenance Services are undertaken in accordance with Best Industry Practice and the standards and objectives set out in section 3.2 of Part A and the Service Standards;
- (b) processes for meeting all requirements with regard to the Maintenance Services;
- (c) a detailed programme for the:
 - (i) regular testing and inspection of the Prison Infrastructure, Prison Equipment and Contractor Maintained State Resources;

- (ii) the specific activities and tasks for regular Preventative Maintenance and servicing of the Prison Infrastructure, Prison Equipment and Contractor Maintained State Resources;
- (d) approach to Corrective Maintenance, including how the effectiveness of repairs will be demonstrated and approach to addressing failures and meeting the requirements of section 7 of Part B; and
- (e) approach to collecting and maintaining information and records.

7 Priority Failures

7.1 Failure Categories and Response Times

The Contractor is required to comply with the priority system and related Response, Attendance and Completion times to address unscheduled breakdown and repairs of Prison Infrastructure, Prison Equipment and Contractor Maintained State Resources as detailed in the tables below:

(a) Failure Categories

Priority 0 – any failure event that:	- Is an emergency or security breakdowns including closed circuit television, perimeter detection (internal & external), perimeter lighting, fire detection systems, cell call systems, mobile distress alarm systems and any item deemed as essential security works; - Is life threatening or if not remedied immediately will be potentially life threatening; - Poses, or has the potential to pose, an infection or health and safety risk to Prison users or Prisoners if not remedied immediately; - May result in a partial or total lockdown if not remedied immediately; or - Is otherwise deemed by the Contract Manager or Contractor as requiring a Priority 0 Failure response in order to ensure the safety and security of the Prison.
Priority 1 – Any failure event which:	- Impacts health, safety, security and essential building functions including major plumbing/sewerage, secure locks (Cell, gatehouse & unit control locks), closed circuit television camera (other than perimeter security), Cell window repairs, main control room and gatehouse works etc; - Is interrupting, or if not remedied within the applicable rectification time has the potential to interrupt, the performance by the Contractor in carrying out of Operational Services; or - May develop into a Priority 0 Failure if not remedied within the applicable rectification time.
Priority 2 – Any failure event which:	- Is a general breakdown not of a security nature that does not require attention the same day including minor plumbing, glazing, air conditioning, electrical and carpentry works; - Does not pose an immediate risk (health, safety or otherwise) to the Prison or Prison users or Prisoners and is

	not likely to pose an immediate risk if not remedied within 3 calendar days; or Causes no more than minor disruption or inconvenience to Prison operators, users or Prisoners.
Priority 3 – Any failure event which:	- Is considered to be non-essential building functions and preservation of the asset including general housekeeping maintenance etc; - Does not pose an immediate risk (health, safety or otherwise) to the Prison, Prison users or Prisoners and is not likely to pose an immediate risk if not remedied within 24 hours; or - Causes no more than very minor disruption, inconvenience or loss of amenity to the Prison operator, Prison users or Prisoners.

(b) **Response Times**

Priority	Response	Attendance	Completion
0	No later than 1 hour and as soon as possible	2 hrs	4 hrs
1	No later than 2 hours and as soon as possible	1 calendar day	1 calendar day
2	1 calendar day	3 calendar days	3 calendar days
3	1 calendar day	7 calendar days	7 calendar days

7.2 Reporting

The Contractor is required to report all Priority 0 Failures to the Contract Manager as soon as possible and in any event no later than 1 hour following the failure occurring.

The Contractor is required to report all Priority 1 Failures to the Contract Manager as soon as possible and in any event no later than 2 hours following the failure event occurring.

Part C Soft Facility Management Services

1 Overview

The Contractor must undertake the Soft Facility Management Services, being:

- (a) Cleaning, in accordance with section 2 of this Part C;
- (b) Laundry in accordance with section 3 of this Part C ;
- (c) Waste management in accordance with section 4 of this Part C;
- (d) Grounds maintenance in accordance with section 5 of this Part C; and
- (e) Pest and vermin control in accordance with section 6 of this Part C.

2 Cleaning

2.1 Scope

The Contractor must:

- (a) ensure that Prisoners are able to maintain the cleanliness of their Accommodation Units;
- (b) provide cleaning implements and associated cleaning products to maintain the cleanliness of the Prison;
- (c) provide adequate training and equipment for Prisoners to undertake cleaning of all Prisoner areas, including use of chemicals and equipment, the cleaning of biohazards, blood spills and at heights of over 2m;
- (d) manage the cleaning of all Prisoner areas of the Prison;
- (e) regularly inspect the quality of Prisoner cleaning and undertake deep cleaning as required;
- (f) undertake cleaning of all non-Prisoner areas in accordance with the Soft Facility Management Services Plan; and
- (g) meet the standards and objectives in section 3.2 of Part A and the Service Standards set out in section 2.2 of this Part C.

2.2 Service Standards

The Contractor must ensure that all elements of the Prison are cleaned periodically so that the Prison is in a clean and hygienic state. To achieve this, the Contractor must take all steps reasonably practicable to ensure that:

- (a) all external features, fire exits, handrails and stair wells are clean and free of dust, grit, dirt, cobwebs and rubbish;
- (b) all walls, skirtings and ceilings are clean and free of marks, dust, grit, dirt, cobwebs and rubbish;
- (c) all external and internal glass, flyscreens and windows are clean and free of marks and spots;

- (d) all doors are clean and free of marks, dust, grit, dirt, cobwebs and rubbish;
- (e) all hard floors are clean and free of dust, grit, dirt, stains, water, other liquids and rubbish. If floors are polished or buffed, the Contractor must ensure that the floors are polished regularly so that they are scuff free and maintain their lustre;
- (f) all soft floors are clean and free of dust, grit, dirt, stains, water, other liquids and rubbish;
- (g) all ducts, grilles and vents are unblocked, clean and free of dust, grit, dirt cobwebs and rubbish;
- (h) all electrical fixtures and appliances are clean, hygienic and free of dust, grease, grit, dirt, stains, water, other liquids and rubbish;
- (i) all furnishings and fixtures are clean and free of marks, dust, grit, dirt, stains, cobwebs and rubbish;
- (j) all pantry/kitchenette fixtures and appliances are clean and free of dust, grit, dirt, stains, water, other liquids and rubbish;
- (k) all toilets and bathroom fixtures are clean, hygienic and free of smudges, smears, streaks, soap build up, dust, grit, dirt, stains, water, other liquids, cobwebs and rubbish;
- (l) all equipment free from soil, smudges, dust, fingerprints, grease and spillages; and
- (m) general tidiness is maintained including:
 - (i) the area appears tidy and uncluttered;
 - (ii) floor space is clear, only occupied by furniture and fittings designed to sit on the floor; and
 - (iii) fire access and exit doors are left clear and unhindered.

3 Laundry

3.1 Scope

The Contractor must manage all laundry at the Prison including:

- (a) implementing a process for the laundering of all items including:
 - (i) Prisoner clothing;
 - (ii) personal clothing;
 - (iii) Prisoner bedding and other linen including towels;
 - (iv) hazardous and/or infectious materials; and
 - (v) other items as required;
- (b) maintaining all laundry equipment in full working order; and
- (c) to meet the standards and objectives in section 3.2 of Part A and the Service Standards set out in section 3.2 of this Part C.

3.2 Service Standard

The Contractor is to ensure at a minimum compliance with sections 2.4 and 2.8 of Schedule 2 and the relevant Legislative Requirements, so as to achieve an acceptable standard of cleanliness with regard to laundering.

4 Waste Management and Removal

4.1 Scope

The Contractor must manage all aspects of waste on the Site, including:

- (a) maintaining the Site and environs in a clean and rubbish free manner;
- (b) managing waste in non-Prisoner areas, especially where confidential waste is generated and for removal of waste from the Site;
- (c) managing sanitary and nappy waste;
- (d) providing appropriate systems, including bins and equipment for rubbish collection;
- (e) adopting environmentally sustainable practices regarding waste management including by maximising recycling and minimising waste to landfill;
- (f) sponsoring robust recycling and environmental awareness to staff and Prisoners and to encourage Prisoner employment and education;
- (g) providing for removal of all waste from the Site at regular and frequent intervals; and
- (h) to meet the standards and objectives in section 3.2 of Part A and the Service Standards set out in section 4.2 of this Part C.

4.2 Service Standard

The Contractor must:

- (a) use reasonable endeavours to ensure there is no odour that is distasteful or unpleasant or risk to hygiene as a result of the generation or storage of waste;
- (b) ensure waste is stored so as to minimise the risk of pests;
- (c) develop and implement waste minimisation strategies and increasing opportunities for recycling and reductions in waste generation; and
- (d) ensure that waste collection, removal and disposal is undertaken in a manner required or approved by the State and all Government Agencies having control over the disposal of waste matter and is in accordance with all Legislative Requirements, including all relevant Environmental Laws.

5 Grounds and Garden Maintenance

5.1 Scope

The Contractor must manage and maintain all grounds and gardens both internal and external to the fence, including:

- (a) irrigated grassed areas;

- (b) non-irrigated grassed areas;
- (c) hard landscaping;
- (d) fire breaks;
- (e) flower and garden beds;
- (f) trees, shrubs and hedges; and
- (g) circulation routes,

within the Site to meet the standards and objectives in section 3.2 of Part A and the Service Standards set out in section 5.2 of this Part C.

5.2 Service Standard

The Contractor must provide the grounds and garden maintenance service so that the grounds and gardens, including both soft and hard landscaping, are safe and are maintained to a level that is functional, neat and tidy and enhances the Prison, including:

- (a) ensuring any trees and shrubs are healthy, trimmed where required and replaced if dead or dying;
- (b) ensuring garden beds include live and healthy plants that are replaced as required and are free from weeds or foreign materials;
- (c) ensuring grassed areas are healthy, free of any disease, weeds or foreign materials and regularly mowed;
- (d) maintain the grounds and the fire breaks on the site in accordance with Legislative Requirements regarding fire prevention and in a manner consistent with the Emergency Management Plan; and
- (e) where appropriate provide tools and materials for Prisoners to maintain the soft and hard landscaping.

6 Pest and Vermin Control

6.1 Scope

The Contractor must:

- (a) provide a comprehensive pest control service, which includes the prevention, management and elimination of all pests and vermin on the Site;
- (b) provide, maintain, store, clean and replace and dispose of all pest control equipment in accordance with the relevant manufacturer's instructions and Best Industry Practice;
- (c) ensure all treatment programs are managed safely, do not adversely impact the local environment and do not adversely impact animals that are not pests; and
- (d) meet the standards and objectives in section 3.2 of Part A and the Service Standards set out in section 6.2 of this Part C.

6.2 Service Standard

The Contractor must implement pest and vermin control processes that minimise pests and vermin at the Prison and that meet relevant industry codes of practice including to those developed by the Australian Environmental Pest Managers Association. Pest and vermin control processes must be managed in conjunction with the cleaning service detailed in section 2 of this Part C.

7 Soft Facility Management Services Plan

7.1 Proposed Soft Facility Management Services Plan

At least 3 months prior to the Planned Operations Commencement Date, and once Services have commenced, 1 month prior to the start of each financial year during the Operation Period, the Contractor must prepare and submit to the State for approval in accordance with the Review Procedures, a Soft Facility Management Services Plan which sets out a detailed programme for the performance of the Soft Facility Management Services, to enable the Contractor's compliance with the requirements of this Agreement.

7.2 Content of Soft Facility Management Services Plan

The Contractor's Soft Facility Management Services Plan must specify in detail:

- (a) procedures to ensure that the Soft Facility Management Services are undertaken in accordance with Best Industry Practice and the Service Standards;
- (b) mechanisms for meeting all requirements with regard to the Soft Facility Management Services; and
- (c) the basis of the undertaking of the Soft Facility Management Services, including tests and procedures to ensure that the Soft Facility Management Services have been undertaken in accordance with the provisions of this Agreement, and in particular, that regular audits of the Soft Facility Management Services are undertaken.

SCHEDULE 4 PAYMENT SCHEDULE

Acacia Prison Services Agreement

Schedule 4 – Payment Schedule

1. Definitions

The following definitions apply in this Schedule 4 unless the context requires otherwise.

CPI means the Perth All Groups Consumer Price Index as published in the Consumer Price Index, Australia (Australian Bureau of Statistics Catalogue 6401.0, Series ID A2325826V) on a quarterly basis by the Australian Bureau of Statistics.

CPI Adjustment means, for any Review Date, the figure calculated in accordance with the following formula:

$$\text{CPIA} = \frac{\text{NCPI}}{\text{OCPI}}$$

Where:

CPIA means the CPI Adjustment;

NCPI means the CPI Index Number for the Operation Quarter ending 31 March in the calendar year in which the Review Date occurs rounded to the nearest four decimal points; and

OCPI means the CPI Index Number for the quarter ending 31 March 2020 rounded to the nearest four decimal points.

CPI Index Number means the index number compiled and published by the Australian Bureau of Statistics for the CPI for and in respect of a particular quarter.

DAP means the daily average population being the daily average number of Prisoners at the Prison during an Operation Month which, for the purposes of this Agreement, is the total number of Prisoners at the Prison at 12:01AM (Australian Western Standard Time) on each day of the Operation Month divided by the number of days in that Operation Month.

Indexation Factor means the indexation factor calculated in accordance with the following formula:

$$\text{IF} = \text{CPIA} \times \text{CPIW} + \text{WPIA} \times \text{WPIW}$$

Where:

IF means the Indexation Factor for the Operation Month.

CPIA mean the CPI Adjustment applicable to the most recent Review Date prior to the commencement of the Operation Month.

CPIW is 25% which represents the proportion of the Operating Sum that is escalated by the CPI Adjustment.

WPIA means the WPI Adjustment applicable to the most recent Review Date prior to the commencement of the Operation Month.

WPIW is 75% which represents the proportion of the Operating Sum that is escalated by the WPI Adjustment.

Insurance Adjustment has the meaning given in section 5(a) of this Schedule 4.

Insurance Adjustment Date has the meaning given in section 5(e)(iii) of this Schedule 4.

Insurance Adjustment Order has the meaning given in section 5(h) of this Schedule 4.

Insurance Adjustment Request has the meaning given in section 5(d) of this Schedule 4.

Review Date in the case of the Monthly Service Payment and all other reviews, means 30 June 2021 and each subsequent yearly anniversary of that date.

WPI means the Western Australia, Public, All Industries, Wage Price Index as published in the Wage Price Index, Australia (Australian Bureau of Statistics Catalogue 6345.0, Series ID A2607979R) on a quarterly basis by the Australian Bureau of Statistics.

WPI Adjustment means, for any Review Date, the figure calculated in accordance with the following formula:

$$\text{WPIA} = \frac{\text{NWPI}}{\text{OWPI}}$$

Where:

WPIA means the WPI Adjustment;

NWPI means the WPI Index Number for the Operation Quarter ending 31 March in the calendar year in which the Review Date occurs rounded to the nearest four decimal points; and

OWPI means the WPI Index Number for the quarter ending 31 March 2020 rounded to the nearest four decimal points.

WPI Index Number means the index number compiled and published by the Australian Bureau of Statistics for the WPI for and in respect of a particular quarter.

2. Monthly Service Payment

- (a) The Monthly Service Payment payable in respect of each Operation Month will be calculated according to the following formula:

$$\text{MSP} = (\text{BOS} - \text{PA} + \text{IA}) \times (\text{OMD} / \text{CMD}) + \text{AF} + \text{PEP} - \text{AA} - \text{PTP} + \text{PP}$$

Where:

MSP means the Monthly Service Payment for the Operation Month.

BOS means the Base Operating Sum for the Operation Month calculated in accordance with section 3 of this Schedule 4.

PA means the Performance Adjustment calculated in accordance with section 4 of this Schedule 4.

IA means any Insurance Adjustment for the Operation Month determined in accordance with section 5 of this Schedule 4.

OMD means the number of days in the Operation Month.

CMD means the number of days in the calendar month in which the Operation Month falls.

AF means the Asset Fees for the Operation Month calculated in accordance with section 6 of this Schedule 4.

PEP means the Prisoner Escort Payment calculated in accordance with section 7 of this Schedule 4.

PTP means the Contractor Pass Through Payment calculated in accordance with section 8 of this Schedule 4.

AA means the sum of all Abatement Amounts for Specified Events that occurred for the Operation Month, calculated in accordance with section 9 of this Schedule 4.

PP means the amounts payable to the Contractor with respect to the Performance Linked Fee as determined by the State in accordance with section 2.4 of Schedule 5 and the Correction Payment as determined by the State in accordance with section 4.5 of Schedule 5 for the Operation Month (if any).

- (b) The Monthly Service Payment cannot be a negative amount. If for an Operation Month the Monthly Service Payment is calculated to be negative amount, the Monthly Service Payment is deemed to be zero for that Operation Month.
- (c) The Monthly Services Payment for the first Operation Month and the second Operation Month following the Operations Commencement Date will be calculated and paid together as a single payment following the second Operation Month.

3. Base Operating Sum

The Base Operating Sum for each Operation Month will be calculated as follows:

$$\mathbf{BOS = OS \times IF}$$

Where:

BOS means the Base Operating Sum for the Operation Month.

OS means the Operating Sum which is the amount set out in Column B of Table 1 in section 10 of this Schedule 4 which corresponds to the DAP for that Operation Month as set out in Column A of Table 1 in section 10 of this Schedule 4.

IF means the Indexation Factor calculated in accordance with the formula set out in the definition of Indexation Factor in section 1 of this Schedule 4.

4. Performance Adjustment

The Performance Adjustment for each Operation Month will be calculated as follows:

$$\mathbf{PA = WPLF \times IF}$$

Where:

PA means the Performance Adjustment for the Operation Month.

WPLF means the amount set out in Column C of Table 1 in section 10 of this Schedule 4 which corresponds to the DAP for the Operation Month as set out in Column A of Table 1 in section 10 of this Schedule 4 which represents the amount withheld from the Monthly Service Payment for the purpose of the determining the Performance Linked Fee in accordance with Schedule 5.

IF mean the Indexation Factor calculated in accordance with the formula set out in the definition of Indexation Factor in section 1 of this Schedule 4.

5. Insurance Adjustment

- (a) The Contractor may apply to the State to adjust the Monthly Service Payment following a change to the cost of maintaining an Insurance under this Agreement (**Insurance Adjustment**) in accordance with this section 5 of this Schedule 4.
- (b) The Contractor must calculate a proposed Insurance Adjustment in accordance with the following formula:

$$\text{IA} = \text{BIC} \times \text{IAF}$$

Where:

BIC means the Baseline Insurance Cost for an Insurance being the more recent of:

- (i) the cost of maintaining an Insurance that applied immediately prior to date that the Revised Insurance Cost for that Insurance became effective; and
- (ii) the cost of maintaining an Insurance at the Signature Date as shown in Column B of Table 3 and corresponds to the applicable Insurance listed in Column A of Table 3 of section 10 of this Schedule 4,

expressed on a per Operation Month basis.

IAF has the meaning given in section 5(c) of this Schedule 4.

- (c) The Insurance Adjustment Factor must be calculated in accordance with the following formula:

$$\text{IAF} = (\text{RIC}/\text{BIC}) - \text{CPI Factor}$$

Where:

IAF means the Insurance Adjustment Factor that applies when calculating a proposed Insurance Adjustment.

RIC means the Revised Insurance Cost which is the cost of maintaining an Insurance following the Contractor's renewal (or otherwise) of that Insurance expressed on a per Operation Month basis.

BIC has the meaning given in section 5(b) of this Schedule 4.

CPI Factor means the increase in the CPI expressed as a numerical factor and calculated in accordance with the following formula:

$$\text{CPI Factor} = \text{CPI}_R / \text{CPI}_B$$

Where:

CPI_R means the CPI Index Number reported for the Operation Quarter that applied immediately prior to the date that the Revised Insurance Cost became effective.

CPI_B means the CPI Index Number reported for the Operation Quarter that applied immediately prior to the date that the Baseline Insurance Cost became effective.

- (d) The Contractor must submit a request for an Insurance Adjustment to the State within 60 Business Days of a change in the cost of maintaining an Insurance for which the Contractor intends to claim an Insurance Adjustment under this section 5 of this Schedule 4 or within 10

Business Days if clauses 30.3(c), 30.9(b)(ii), 30.9(d)(i) or 30.10(b) of the Agreement apply **(Insurance Adjustment Request)**.

- (e) The Contractor's Insurance Adjustment Request must provide a sufficient level of detail and supporting evidence to enable the State to verify the Insurance Adjustment Request, including the following information as a minimum:
 - (i) the proposed Insurance Adjustment that is required to the Monthly Service Payment;
 - (ii) detailed particulars of how the proposed Insurance Adjustment was calculated in accordance with this section 5;
 - (iii) the date from which the Insurance Adjustment will apply, which must not be earlier than the date the Insurance the subject of the Insurance Adjustment Request became effective (the **Insurance Adjustment Date**);
 - (iv) the policy documents for the Insurance that applied before and after the renewal of the applicable Insurance;
 - (v) a declaration from an authorised officer of the Contractor:
 - (A) that the change in insurance premium costs is due to reasons outside the Contractor's control and that the increase in the cost of maintaining the Insurance was not caused or contributed to by any act or omission of the Contractor, any Contract Worker or any Subcontractor; and
 - (B) of the cost of maintaining the applicable Insurance both before and after the renewal (or otherwise) of the applicable Insurance;
 - (vi) evidence prepared by a suitably qualified and independent third party that demonstrates that the change in the cost of maintaining the Insurance is consistent with movements in premium costs in insurance of the same, or a materially similar, risk profile and level of cover as the applicable Insurance;
 - (vii) if the proposed Insurance Adjustment relates to an Insurance which is a global insurance policy of the Contractor, evidence that demonstrates that the change in the cost of maintaining the Insurance has been allocated across the Contractor's business generally and that the proposed Insurance Adjustment the subject of the Insurance Adjustment Request only relates to a proportion of the total change in the cost; and
 - (viii) provide any further information requested by the State acting reasonably in connection with the change in the cost of maintaining the Insurances.
- (f) At the State's election, the Contractor must make available to the State its insurance broker or insurer to explain the change in the cost of maintaining the applicable Insurance.
- (g) In order to be entitled to claim an Insurance Adjustment, the Contractor must satisfy each of the following conditions:
 - (i) the Contractor has calculated the Insurance Adjustment in accordance with this section 5 of this Schedule 4;
 - (ii) the proposed Insurance Adjustment must be greater than, or equal to, \$2,000 when aggregated over a 12 month period;

- (iii) the Contractor has submitted to the State an Insurance Adjustment Request in accordance with the requirements set out at sections 5(d) and 5(e) of this Schedule 4;
 - (iv) if applicable, the Contractor has complied with the requirement under section 5(f) of this Schedule 4; and
 - (v) the Contractor has complied with its obligations under clause 30 of the Agreement.
- (h) If the State determines, acting reasonably, that the Contractor has satisfied the requirements of this section 5, it must notify the Contractor that it accepts the Contractor's Insurance Adjustment Request (**Insurance Adjustment Order**).
- (i) If the State issues an Insurance Adjustment Order, all Monthly Service Payments after the Insurance Adjustment Date must include the Insurance Adjustment set out in the Contractor's Insurance Adjustment Request. The first Monthly Service Payment after the date of the Insurance Adjustment Order must include the aggregate of all Insurance Adjustments for all Operation Months after the Insurance Adjustment Date.
- (j) If the State determines, acting reasonably, that the Contractor has not satisfied the requirements of this section 5, it must notify the Contractor that it rejects the Contractor's Insurance Adjustment Request. If the Contractor does not agree with the State's determination to reject the Insurance Adjustment Request, the Contractor may seek resolution by the Joint Management Board and, if not resolved, may refer the Dispute to resolution pursuant to clause 37 of the Agreement.

6. Asset Fees

The Asset Fees for each Operation Month will be calculated as follows:

$$AF = RAMF + ARF + MWP + AMC$$

Where:

AF means the Asset Fees for the Operation Month.

RAMF means the Relevant Asset Maintenance Fees that have been actually and reasonably incurred by the Contractor and which are set out in a Tax Invoice prepared and submitted to the State in accordance with clause 18.4 of the Agreement for the Operation Month, and which have been approved by the State under section 4.2 or section 4.3 of Part B of Schedule 3.

ARF means the Asset Replacement Fees that have been actually and reasonably incurred by the Contractor in accordance with the Agreement and which are set out in a Tax Invoice prepared and submitted to the State in accordance with clause 18.4 of the Agreement for the Operation Month, and which are the subject of an approved Asset Replacement Quote in accordance with section 5.6(d) of Part B of Schedule 3.

MWP means the Minor Works Prices that have been actually and reasonably incurred by the Contractor in accordance with the Agreement and which are set out in a Tax Invoice prepared and submitted to the State in accordance with clause 18.4 of the Agreement for the Operation Month, and which are the subject of a Minor Works Order issued by the State pursuant to clause 20.2(h) of the Agreement.

AMC means the Additional Preventative Maintenance Costs and Corrective Maintenance costs that become due and payable by the State to the Contractor in accordance with section 5.7(b) of Part B of Schedule 3 of this Agreement (if any) and which are set out in a Tax Invoice prepared and submitted to the State in accordance with clause 18.4 of the Agreement for the Operation Month.

7. Prisoner Escort Payment

- (a) The Contractor will be paid the Prisoner Escort Payment when it is required to escort Prisoners out of the Prison in accordance with section 1.8 of Schedule 2.
- (b) The Prisoner Escort Payment will be calculated as follows:

$$\text{PEP} = \Sigma \text{PEF}$$

Where:

PEP means the Prisoner Escort Payment being the total amount payable to the Contractor for the provision of Prisoner escorts for the Operation Month, and which equates to the sum of all Prisoner Escort Fees for the Operation Month.

PEF means the Prisoner Escort Fee that is chargeable for each individual Prisoner escort provided by the Contractor in accordance with the Agreement during the Operation Month, calculated in accordance with the following formula:

$$\text{PEF} = \text{PR} \times \text{CW} \times \text{PEH} \times \text{WPIA}$$

Where:

PR mean Prisoner Escort Rate as set out at Table 2 of section 10 of this Schedule 4.

CW means the total number of Contract Workers required to perform an individual Prisoner escort subject to section 7(d)(i).

PEH means the total number of hours spent by each Contract Worker performing an individual Prisoner escort subject to section 7(d)(ii).

WPIA is the WPI Adjustment applicable to the most recent Review Date prior to the commencement of the Operation Month.

- (c) As a condition precedent to its entitlement to receive the Prisoner Escort Payment for the Operation Month the Contractor must:
 - (i) have complied with its obligation concerning the performance of Prisoner escorts in accordance with the Agreement; and
 - (ii) provide evidence to the satisfaction of the State concerning:
 - (A) the date, time and duration for each individual Prisoner escort during the Operation Month;
 - (B) whether an individual Prisoner escort during the Operation Month was planned or unplanned, and in the case of an unplanned Prisoner escort provide details as to the nature of the emergency or incident giving rise to the unplanned Prisoner escort;

- (C) the number of Contract Workers required to perform each individual Prisoner escort during the Operation Month;
 - (D) details of any replacement Contract Workers that attended and performed duties at the Prison as a direct result of the individual Prisoner escort for the Operation Month, including:
 - (1) the number of replacement Contract Workers required to perform duties at the Prison as a result of the individual Prisoner escort;
 - (2) the date and time any replacement Contract Worker commenced replacement duties at the Prison; and
 - (3) the date and time a replacement Contract Worker ceased to perform replacement duties at the Prison;
 - (E) if applicable, the date and time the Contract Workers performing the individual Prisoner escort completed the handover of the Prisoner into the care and custody of the State or the State's Associates during the Operation Month; and
 - (F) any other information reasonably requested by the State.
- (d) The following interpretations will apply to determine a Prisoner Escort Fee:
- (i) for the purposes of sections 7(c)(ii)(C) and sections 7(c)(ii)(D), the number of Contract Workers is calculated by reference to the number of replacement Contract Workers required to perform replacement duties at the Prison as a direct result of the individual Prisoner escort, which cannot be greater than the total number of Contract Workers that performed the individual Prisoner escort; and
 - (ii) for the purpose of calculating the number of hours spent by each Contract Worker performing an individual Prisoner escort, the time will not commence until such time as the replacement Contract Worker has arrived and commenced replacement duties at the Prison.
- (e) If an individual Prisoner escort commences in an Operation Month but is not completed until the next Operation Month, then the relevant individual Prisoner escort will be reported and assessed as part of the Monthly Services Payment for the next Operation Month.

8. Contractor Pass Through Payment

- (a) In accordance with section 2(a) of this Schedule 4, the Contractor must deduct from the Monthly Service Payment an amount equal to the Pass Through Payment for the preceding Operation Month.
- (b) The Contractor must calculate the Pass Through Payment in accordance with the following formula:

$$\text{PTP} = \text{PTSI} + \text{OMS} \pm \text{APT}$$

Where:

PTP means the Pass Through Payment for the Operation Month.

PTSI means the total income collected by the Contractor from Prisoners for PTS calls at the Prison in accordance with section 2.5(b) of Schedule 2 for the preceding Operation Month.

OMS is the amount payable by the Contractor to the State on a cost recovery basis for the on-call medical practitioner services provided to Prisoners at the Prison for the preceding Operation Month as contemplated at section 2.10(a)(vi) of Schedule 2.

APT means any other pass through costs agreed to by the State and the Contractor from time to time.

- (c) The Contractor must provide sufficient evidence to enable the State to determine the PTSI for the preceding Operating Month. The State may request additional information from the Contractor in order to substantiate the PTSI for the preceding Operation Month. The State will determine, acting reasonably, the PTSI for the preceding Operation Month.

9. Abatement Amount

- (a) The Contractor acknowledges that the State's agreement to make the Monthly Service Payments is subject to the Contractor operating the Prison, and providing the Services, in such a way as to avoid the occurrence of any Specified Event. In the event of the occurrence of a Specified Event the State may deduct from the Monthly Service Payments an amount equal to the Abatement Amount in respect of that Specified Event as set out in section 9(b). The State must notify the Contractor of the occurrence of a Specified Event and the Abatement Amount that will be deducted in respect of that Specified Event as soon as reasonably practicable after the occurrence of the Specified Event.
- (b) The Abatement Amount for each Specified Event is as follows.
 - (i) An Escape: **\$250,000**
 - (ii) A Loss of Control: **\$250,000**
 - (iii) A death in custody other than from natural causes: **\$250,000**
 - (iv) Unlawful release of a Prisoner: **\$25,000**
 - (v) Unlawful detention of a Prisoner (when a Prisoner should not be detained but, due to the wrongful act or omission of the Contractor, is): **\$10,000 per event and first day of unlawful detention plus \$1,000 for every subsequent day of unlawful detention**
 - (vi) a breach of the Contractor's Obligations to report or provide information in accordance with this Agreement, or where the Contractor provides a report or information to the State which is misleading or inaccurate, including by omission: **\$40,000**
 - (vii) a failure to comply with a Performance Improvement Notice on the first occurrence: **\$40,000**
- (c) The Abatement Amounts for the Specified Events in sections 9(b)(vi) and 9(b)(vii) is the maximum amount payable as a result of the occurrence of an event described in those sections. Upon the occurrence of such an event, the State will determine a reasonable Abatement Amount for the event by reference to the nature of the breach, which amount may be less than or equal to those specified in 9(b)(vi) and 9(b)(vii).
- (d) If a Specified Event in section 9(b)(i) to 9(b)(vii) (inclusive) occurs, and then within 12 Months of that first instance a second instance of that Specified Event occurs as a result of the same root cause as the first instance then the Abatement Amount for each such Specified Event is as follows:

- (i) An Escape: **\$375,000**
- (ii) A Loss of Control: **\$375,000**
- (iii) A death in custody other than from natural causes: **\$375,000**
- (iv) Unlawful release of a Prisoner: **\$37,500**
- (v) Unlawful detention of a Prisoner (when a Prisoner should not be detained but, due to the wrongful act or omission of the Contractor, is): **\$15,000 per event and first day of unlawful detention plus \$1,500 for every subsequent day of unlawful detention**
- (vi) a breach of the Contractor's Obligations to report or provide information, or the provision of a report or information which is misleading or inaccurate, including by omission: **\$60,000**
- (vii) a failure to comply with a Performance Improvement Notice: **\$60,000**
- (e) The Contractor acknowledges that that the Abatement Amount for each Specified Event:
 - (i) has been determined by the State in good faith;
 - (ii) is a genuine pre-estimate of the reduction in value of the Services as a result of the occurrence of any Specified Event;
 - (iii) has been designed to avoid the difficulties of proof of damages in connection with the occurrence of a Specified Event; and
 - (iv) is reasonable and not intended to operate as a penalty.
- (f) On each Review Date the Abatement Amounts under section 9(b) and section 9(d) will be adjusted according to the following formula:

$$\mathbf{AAN = AAP \times IF}$$

Where:

AAN means the Abatement Amount to apply from and after the Review Date.

AAP means the Abatement Amount set out above.

IF is the Indexation Factor calculated in accordance with the formula set out in the definition of Indexation Factor in section 1 of this Schedule 4.

10. Payment Tables

All amounts in this section 10 are exclusive of GST.

Table 1 – Pricing Table

Column A	Column B	Column C
DAP for Operation Month	Monthly OS	Monthly WPLF
0 - 1200	\$6,253,653.00	\$312,682.65
1201 – 1250	\$6,469,669.02	\$323,483.45
1251 – 1300	\$6,662,558.11	\$333,127.91
1301 – 1350	\$6,842,423.71	\$342,121.19
1351 – 1400	\$7,032,219.64	\$351,610.98
1401 – 1450	\$7,106,442.62	\$355,322.13
1451 – 1500	\$7,157,015.35	\$357,850.77
1501 – 1525	\$7,171,406.75	\$358,570.34

Table 2 – Prisoner Escort Rates

Prisoner Escort Rate (per hour)
\$122.10

Table 3 – Baseline Insurance Costs as at the Signature Date

Column A	Column B
Insurance	Baseline Insurance Costs per Operation Month as at the Signature Date
Workers' compensation insurance	\$140,584.55
Motor vehicle insurance	\$2,500.00
Public and products liability insurance	\$5,435.00
Professional indemnity insurance	\$8,255.00
Industrial special risks insurance	\$966.00
Medical malpractice insurance	\$8,063.00

SCHEDULE 5 PERFORMANCE REGIME

Acacia Prison Services Agreement

Schedule 5 – Performance Regime

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply in this Schedule 5 unless the context requires otherwise.

Assault means an act of physical violence, including where a person strikes, touches, moves, or otherwise applies force of any kind to any other person at the Prison without their consent, resulting in direct or indirect physical harm or injury to that person, including:

- (a) an act of physical violence resulting in direct or indirect physical harm or injury where a person's consent:
 - (i) is given as a result of intimidation or fraud; or
 - (ii) could not be given freely and voluntarily (for example if the victim was unconscious or intoxicated);
- (b) where a person administers a drug or drugs to another person with an intent to cause physical harm or injury; or
- (c) where a person makes a genuine allegation that they have been subjected to an act of physical violence resulting in direct or indirect physical harm or injury which is subsequently reported to the Contractor.

Attempted Suicide means an act performed by a Prisoner where the circumstances indicate the intent of the act was to take their own life through:

- (a) self-inflicted injury;
- (b) self-asphyxiation or hanging;
- (c) intentional self-poisoning (including drug overdose); or
- (d) other intentional acts intended to take one's own life.

Correction Payment has the meaning given in section 4.5 of this Schedule 5.

Critical Incident means an Incident which is classified as being a critical incident under the relevant Departmental Policy, which as at the Signature Date is COPP 13.1 Incident Notifications, Reporting and Communications.

Critical Incident Report mean the report that is required to be submitted by the Contractor to the State with respect to a Critical Incident in accordance with the relevant Departmental Policy, which as at the Signature Date is COPP 13.1 Incident Notifications, Reporting and Communications.

Fixed Percentage means the applicable percentage for each Performance Measure as set out in the Performance Measurement Tables used to calculate the Individual Performance Linked Fees under section 2.2 of this Schedule 5.

Incident Reports means Critical Incident Reports and Non-Critical Incident Reports.

Individual Management Plan has the meaning given in Schedule 2.

Individual Performance Linked Fee means the individual contribution to the Performance Linked Fee for each Performance Measure calculated in accordance with section 2.2 of this Schedule 5.

Intervening Event means each of the following events:

- (a) an act or omission by the WWTP Contractor, the Department or the State in its capacity as a contracting party to this Agreement which prevents, hinders or disrupts the Contractor in achieving a Progressive Target for a Performance Measure over an applicable measurement period that it would otherwise have achieved, excluding an act or omission:
 - (i) which is authorised or permitted under this Agreement or which is a reasonably foreseeable consequence of undertaking the acts or omissions permitted under this Agreement; or
 - (ii) which is caused by an act or omission of the Contractor, a Subcontractor or a Contract Worker (other than an act or omission of the Contractor authorised or permitted under this Agreement);
- (b) a Force Majeure Event;
- (c) statutory intervention or suspension under clause 24 of this Agreement by the to the extent that such event has not been caused or contributed to by an act or omission of the Contractor, a Subcontractor or a Contract Worker; or
- (d) the State in its absolute discretion agrees that an event has occurred which is beyond the reasonable control of the Contractor that prevents, hinders or disrupts the Contractor in achieving a Progressive Target for a Performance Measure to the extent that such event has not been caused or contributed to by an act or omission of the Contractor, a Subcontractor or a Contract Worker and which is not otherwise captured by paragraphs (a) to (c) above.

Mitigation Claim has the meaning given in section 4.1(a) of this Schedule 5.

Maximum Performance Linked Fee has the meaning given in section 2.3 of this Schedule 5.

Non-Critical Incident means an Incident which is not a Critical Incident.

Non-Critical Incident Report means the report that is required to be submitted by the Contractor to the State with respect to a Non-Critical Incident in accordance with the relevant Department Policy, which as at the Signature Date is COPP 13.1 Incident Notifications, Reporting and Communications.

Offender Program has the meaning given in Schedule 2.

Performance Adjustment has the meaning given in section 4 of Schedule 4.

Performance Linked Fee means, for any Operation Year, the dollar amount for that Operation Year as determined by the State in accordance with section 2.4 of this Schedule 5 based on the Contractor's performance against the Performance Measures.

Performance Measure means each of the performance measures identified in the Performance Measurement Tables.

Performance Measurement Tables means the tables set out in section 5 of this Schedule 5.

Positive Urine Sample Test Result has the meaning given in Schedule 2.

Preventative Maintenance has the meaning given in Schedule 3.

Progressive Target means, with respect to a Performance Measure, each of the target levels of service provision for that Performance Measure as set out in the Performance Measurement Tables.

PRAG means the Prisoner Risk Assessment Group whose functions are set out in the Department's ARMS Manual.

RUT has the meaning given in Schedule 2.

RUT List has the meaning given in Schedule 2.

Self-harm means an act of self-injury that is deliberately performed by a Prisoner on his own body, including as self-laceration, self-battering or deliberate recklessness, but does not include a threat to commit an act of self-injury.

Serious Assault means:

- (a) an Assault against a Prisoner or any other person at the Prison that requires medical treatment involving:
 - (i) overnight hospitalisation (which includes being admitted to as an in-patient) at a medical facility such as a prison clinic, infirmary or a public or private hospital (where overnight is considered as being from one day to another); or
 - (ii) ongoing medical treatment by a medical practitioner on multiple occasions (where medical treatment does not include medical assessment only); or
- (b) any act of Sexual Assault against a Prisoner or any other person at the Prison; or
- (c) any Assault on a Contract Worker, Subcontractor, volunteer or Visitor regardless of severity, injury or if external medical assessment and/or treatment was required; or
- (d) any Assault on a Prisoner or any other person at the Prison where a weapon is used in the Assault.

Sentence Planning Documents has the meaning given in Schedule 2.

Serious Self-harm means an incident of Self-harm that requires medical treatment involving:

- (a) overnight hospitalisation (which includes being admitted as an in-patient) at a medical facility such as a prison clinic, infirmary or a public or private hospital (where overnight is considered as being from one day to another); or
- (b) ongoing medical treatment by a medical practitioner on multiple occasions (where medical treatment does not include medical assessment only).

Sexual Assault means an actual, or attempted, act of sexual violence against a person, including sexual penetration without consent, the touching of another person's body in a

sexual manner (including kissing or inappropriately touching another person's breasts, buttocks or genitals) without the other person's consent including:

- (a) an actual, or attempted, act of sexual violence against a person where consent:
 - (i) is given as a result of intimidation or fraud;
 - (ii) cannot lawfully be given, for reasons including the person is legally deemed incapable of giving consent because of youth, mental incapacity or otherwise; or
 - (iii) could not be given freely and voluntarily (for example if the victim was unconscious or intoxicated); and
- (b) a person makes a genuine allegation that they have been subjected to an actual, or attempted, act of sexual violence which is subsequently reported to the Contractor, or there is clear evidence of such an assault having occurred.

1.2 Interpretations

- (a) **(Rounding Method for Progressive Target Results)** For the purposes of the State determining the Contractor's performance against a Progressive Target:
 - (i) where a calculation results in a number or percentage (as the case may be) containing a decimal less than 0.5, then the result will be rounded down to the nearest integer (for example if the result of a calculation is 94.4% the result will be rounded down to 94%); and
 - (ii) where a calculation results in a number or percentage (as the case may be) containing a decimal equal to or greater than 0.5 then the result will be rounded up to the nearest integer (for example if the result of the calculation is 89.5% the result will be rounded up to 90%).
- (b) **(Rounding method for Sample Sizes)** Where a Performance Measure requires the Contractor to undertake sampling based on a percentage of a population or the percentage of a total number which results in a decimal number, then for the purpose of the determining the required sample size the decimal number will be rounded up to the nearest integer.
- (c) **(Mitigation)** Where the Contractor has submitted a Mitigation Claim which is accepted by the State, then the affected activity will be removed from the calculation of the Contractor's performance against a Progressive Target for the applicable reporting period (for example in relation to Performance Measure 5: Sentence Management, if 60 IMPs must be reviewed and as a result of an Intervening Event the Contractor is unable to complete the review of two Prisoners' IMPs, the Progressive Target result will be calculated on 58 total IMPs for the affected Operation Month).

2. Performance Linked Fee

2.1 Performance Linked Fee

A Performance Linked Fee will be calculated and payable for each Operation Year by reference to the Contractor's performance against the Progressive Targets during that Operation Year.

2.2 Formula for Calculation of Performance Linked Fee

- (a) The State will calculate the Performance Linked Fee by aggregating the Individual Performance Linked Fees for each Performance Measure for that Operation Year in accordance with the following formula:

$$PLF = \Sigma IPLF_Y + \Sigma IPLF_Q + \Sigma IPLF_M$$

where:

PLF is the Performance Linked Fee for the Operation Year.

IPLF is the Individual Performance Linked Fee for the Performance Measure for the Operation Month, Operation Quarter or Operation Year (as the case may be).

$\Sigma IPLF_Y$ means the sum of all $IPLF_Y$ as calculated in accordance with section 2.2(b) for the Operation Year;

$\Sigma IPLF_Q$ means the sum of all $IPLF_Q$ as calculated in accordance with section 2.2(c)(ii) for the Operating Year; and

$\Sigma IPLF_M$ means the sum of all $IPLF_M$ as calculated in accordance with section 2.2(d)(ii) for the Operating Year.

- (b) **(Yearly Individual Performance Linked Fees)** In the case of Performance Measures 1, 2 and 4:

- (i) the Contractor must report its performance against the Progressive Targets at the end of each Operation Month to the State; and
- (ii) the Individual Performance Linked Fee for each Performance Measure will be calculated at the end of the Operation Year in accordance with the following formula:

$$IPLF_Y = MPLF \times FP \times PBP$$

where:

$IPLF_Y$ is the Individual Performance Linked Fee for each Performance Measure 1, 2, and 4 for the Operation Year;

MPLF is the Maximum Performance Linked Fee as calculated in accordance with section 2.3;

FP is the Fixed Percentage for each applicable Performance Measure as set out in the Performance Measurement Tables; and

PBP is the applicable Performance Based Percentage set out in the Performance Measurement Tables as determined by the State with

reference to the Contractor's performance during that Operation Year against the Progressive Targets for that Performance Measure.

(c) **(Quarterly Individual Performance Linked Fees)** In the case of Performance Measure 7, 8, 10, 11, 12 and 18:

- (i) the Contractor must report its performance against the Progressive Targets to the State at the end of each Operation Quarter, and the State will measure the Contractor's performance against the Performance Targets at the end of each Operation Quarter;
- (ii) the Individual Performance Linked Fee for each Performance Measure will be calculated at the end of each Operation Year in accordance with the following formula:

$$IPLF_Q = \sum QIPLF$$

where

IPLF_Q is the Individual Performance Linked Fee for each of Performance Measure 7, 8, 10, 11, 12 and 18 for the Operation Year; and

QIPLF is the amount calculated in accordance with this section 2.2(c)(iii) each Operation Quarter in relation to Performance Measures 7, 8, 10, 11, 12 and 18;

and,

- (iii) QIPLF is calculated in accordance with the following formula:

$$QIPLF = PA_Q \times FP \times PBP$$

where:

PA_Q is the sum of the Performance Adjustments as determine in accordance with section 4 of Schedule 4 for the applicable Operation Quarter;

FP is the Fixed Percentage for each applicable Performance Measure as set out in the Performance Measurement Tables; and

PBP is the applicable Performance Based Percentage set out in the Performance Measurement Tables as determined by the State with reference to the Contractor's performance during that Operation Quarter against the Progressive Targets for that Performance Measure.

(d) **(Monthly Individual Performance Linked Fees)** In the case of Performance Measures 3, 5, 6, 9, 13, 14, 15, 16, and 17:

- (i) the Contractor must report its performance against the Progressive Targets to the State at the end of each Operation Month, and the State will measure the Contractor's performance against the Performance Targets at the end of each Operation Month;
- (ii) the Individual Performance Linked Fee for each applicable Performance Measures will be calculated at the end of the Operation Year in accordance with the following formula:

$$IPLF_M = \sum MIPLF$$

where

IPLF_M is the Individual Performance Linked Fee for Performance Measures 3, 5, 6, 9, 13, 14, 15, 16, and 17 for the Operation Year; and

MIPLF is the amount calculated in accordance with this section 2.2(d)(iii) each Operation Month in relation to Performance Measures 3, 5, 6, 9, 13, 14, 15, 16 and 17 ,

and,

- (iii) MIPLF is calculated in accordance with the following formula:

$$MIPLF = PA_M \times FP \times PBP$$

where:

PA_M is the Performance Adjustment determined in accordance with section 4 of Schedule 4 for the applicable Operation Month.

FP means the Fixed Percentage for each applicable Performance Measure as set out in the Performance Measurement Tables.

PBP is the applicable Performance Based Percentage set out in the Performance Measurement Tables as determined by the State with reference to the Contractor's performance during that Operation Month against the Progressive Targets for that Performance Measure.

2.3 Calculation of Maximum Performance Linked Fee

A Maximum Performance Linked Fee is the maximum amount the Performance Linked Payment can be for an Operation Year, and is calculated by aggregating all Performance Adjustments for an applicable Operation Year.

2.4 Determination and Payment of Performance Linked Fee

Subject to section 2.5:

- (a) within one month after the end of each Operation Year, the State must:
 - (i) calculate and determine the Performance Linked Fee payable to the Contractor for the preceding Operation Year in accordance with section 2.2; and
 - (ii) give notice to the Contractor of the amount of the Performance Linked Fee, setting out in reasonable detail the calculation of the Performance Linked Fee; and
- (b) the State must pay the Performance Linked Fee to the Contractor as part of the next Monthly Services Payment which becomes payable following the date on which the State notified the Contractor under section 2.4(a)(ii).

2.5 First Operation Year

The first Operation Year (ending 30 June 2021) and the second Operation Year (ending 30 June 2022) will be combined for the purpose of calculating the Performance Linked Fee. The Performance Linked Fee for those Operation Years will be calculated, notified and paid after the end of the second Operation Year.

3. Systems and Records

3.1 Systems for Performance Assessment

The State and the Contractor agree that the Performance Linked Fee will be determined by applying the processes, procedures and counting rules set out in this Schedule and by reference to:

- (a) data collected and recorded in TOMS;
- (b) any other Departmental Systems;
- (c) on-site monitoring; and
- (d) any other processes, information, data, records and reports available to the State, or which the State may reasonably require the Contractor to provide, from time to time.

3.2 Records and data integrity

- (a) The Contractor must collect, and record in TOMS and any other Departmental Systems, accurate and reliable data in a format determined by the State from time to time and in accordance with processes and evidence prescribed by the State to enable the State to assess the Contractor's performance against the Performance Measures and to calculate the Performance Linked Fee.
- (b) The Contractor must use its own internal measures and audit processes to ensure achievement of the Progressive Targets. Such processes should include the analysis of event data so that incident levels and types are monitored, analysed and managed effectively.

3.3 Cooperation

The Contractor must cooperate with the State, and provide any information reasonably requested by the State, to assist the State in calculating the Performance Linked Fee.

3.4 Access for verification

The Contractor must ensure that the State has access to the Contractor's data, records, systems and Contract Workers to enable the State to verify the accuracy and integrity of the Contractor's recording and reporting of data for the purposes of assessment of the Contractor's performance and the calculation of the Performance Linked Fee.

3.5 System Failure

If as a result of any fault in TOMS or any other Departmental System or a failure to accurately record any relevant information, the Performance Linked Fee cannot be determined, the State may determine the Performance Linked Fee on the basis of any recorded manual information and other available sources.

4. Mitigation

4.1 Mitigation Claim

- (a) The Contractor may seek relief from the State with respect to the assessment of its performance against a Performance Measure in circumstances where the Contractor's performance has been adversely affected by an Intervening Event and as a direct result of the Intervening Event the Contractor has failed to achieve a Progressive Target for a Performance Measure over an applicable measurement period that it would otherwise have achieved but for the Intervening Event (a ***Mitigation Claim***).
- (b) A Mitigation Claim must be supported and corroborated with evidence of the Intervening Event as reasonably required by the State

4.2 Timing and content of Mitigation Claim

A Mitigation Claim must be notified to the State as soon as the Contractor becomes aware that its performance has been adversely affected by the Intervening Event, and in any event, no later than 10 Business Days after the end of the Operation Month in which the Contractor's performance was affected. The Mitigation Claim must be accompanied by:

- (a) evidence of the Intervening Event which has adversely effected the Contractor's ability to achieve a Progressive Target for a Performance Measure that it would otherwise have achieved but for the Intervening Event during that Operation Month;
- (b) an explanation as to why those circumstances constitute an Intervening Event; and
- (c) a description of the steps taken by the Contractor to mitigate the effect of the Intervening Event on its performance.

4.3 Consideration of Mitigation Claim

The State must consider the Mitigation Claim and any evidence which accompanies it and may request any additional information to consider the merits of the Mitigation Claim. All Mitigation Claims will be discussed at the monthly meetings referred to in clause 16.4.

4.4 Determination

The State must, acting reasonably, decide whether or not to adjust the assessment of the Contractor's performance against the relevant Performance Measure in response to the Contractor's Mitigation Claim and must notify the Contractor of its decision as soon as practicable and, in any event, within 10 Business Days after the monthly meeting referred to in section 4.3.

4.5 Payment of Performance Linked Fee pending determination

- (a) Pending determination of a Mitigation Claim by the State, the Performance Linked Fee for that Operation Year will be paid without adjustment in accordance with section 2.4.
- (b) If the State's determination under section 4.4 of this Schedule 5 occurs after the State has paid the Contractor the Performance Linked Fee for the Operating Year in which the Intervening Event occurred, then the State will adjust the amount paid to the Contractor to correct for the impact of the Intervening Event on the applicable Performance Linked Fee as part of the next Monthly Service Payment following the State's determination under section 4.4 (**Correction Payment**).

5. Performance Measures

The Performance Measurement Tables 1 to 18 below set out each Performance Measure and details for measurement and calculation, including the frequency of measurement and the Progressive Targets for each Performance Measure and the effective date for commencement of monitoring against the Performance Measure.

Table 1 – Performance Measure 1 – Serious Assaults

Performance Measure 01	SERIOUS ASSAULTS Number of Serious Assaults within an Operation Year.	
Intent	To ensure strategies, processes and procedures are in place to reduce the likelihood and occurrence of Serious Assaults.	
Progressive Targets	Result	PBP
	Less than 9	100%
	9 – 10	80%
	11 – 14	50%
	Greater than 14	0%
Fixed Percentage	11%	
Reporting / Measurement Frequency	Operation Month	
Calculation Frequency	Operation Year	
Data Source	• TOMS; • COPP 13.1 Incident Notifications, Reporting and Communications; • compliance report prepared by the Department's operational compliance team; and • other processes, information, data, records and reports available to the State or which the State may reasonably require the Contractor to provide.	
General Reporting (Methodology)	The Contractor must provide information in a standard coversheet on all Assaults occurring in the Operation Month, identifying those Assaults that were Serious Assaults (including allegations). The State to analyse the data provided by the Contractor against recorded information on TOMS and the Performance Measure requirements. The Contractor to submit mitigation and evidence for sexual assault allegations which were not substantiated.	
Calculation / Formula	Count the total number of Serious Assaults for the Operation Year, including any sexual allegations that are substantiated either by Western Australian Police Force or by a prison investigation. For the purpose of calculating this Performance Measure, all assaults on Contract Workers, Subcontractors, volunteers or Visitors that do not require external medical assessment and/or treatment will not be counted as a Serious Assault.	
Effective Date	Operations Commencement Date	

Table 2 – Performance Measure 2 - Serious Self-harm / Attempted Suicide

Performance Measure 02	SERIOUS SELF-HARM / ATTEMPTED SUICIDE Number of acts of Serious Self-harm and the number of acts of Attempted Suicide committed by Prisoners within an Operation Year.	
Intent	To ensure the effective management of Prisoners at risk of Serious Self-harm and Attempted Suicide.	
Progressive Targets	Result	PBP
	Less than 9	100%
	9 – 10	80%
	11 – 14	50%
	Greater than 14	0%
Fixed Percentage	11%	
Reporting / Measurement Frequency	Operation Month	
Calculation Frequency	Operation Year	
Data Source	• TOMS; • COPP 13.1 Incident Notifications, Reporting and Communications; • compliance report prepared by the Department's operational compliance team; and • other processes, information, data, records and reports available to the State or which the State may reasonably require the Contractor to provide.	
General Reporting (Methodology)	The Contractor must provide information in a standard coversheet on all acts of Serious Self-harm and all acts of Attempted Suicide committed by a Prisoner occurring in the Operation Month. For the avoidance of doubt, where an act of Attempted Suicide also constitutes an act of Serious Self-harm, then that act will be counted once for the purpose of calculating this Performance Measure. The State to analyse the data provided by the Contractor against recorded information on TOMS and the Performance Measure requirements.	
Calculation / Formula	Count the number of acts of Serious Self-harm committed and acts of Attempted Suicide committed by Prisoners for the Operation Year.	
Effective Date	Operations Commencement Date	

Table 3 – Performance Measure 3 – Management of Prisoners at Risk (ARMS)

Performance Measure 03	ARMS Percentage of Prisoners identified as At Risk that are managed in accordance with the Department's At Risk Management System's (ARMS) Manual.	
Intent	To ensure that those Prisoners identified as At Risk are managed in accordance with the Department's ARMS Manual.	
Progressive Targets	Result	PBP
	97.0% or Greater	100%
	92.0% – 96.9%	80%
	91.9% or Less	0%
Fixed Percentage	9%	
Reporting / Measurement Frequency	Operation Month	
Calculation Frequency	Operation Month	
Data Source	• TOMS; • ARMS module within TOMS; • ARMS Manual; and • other processes, information, data, records and reports available to the State or which the State may reasonably require the Contractor to provide.	
General Reporting (Methodology)	The State to randomly select 50% of At Risk Prisoners, subject to ARMS monitoring at any time during the Operation Month, from a report generated by TOMS. The State will analyse the data in the following key areas of ARMS: 1. <i>Interim Management Plans:</i> • Reviewed within 24 hours (Monday to Friday) PRAG; • Select at least one option regarding prisoner management 2. <i>Observations:</i> • Complied with the requirements stipulated in the ARMS Manual; and 3. <i>PRAG meeting</i> • Minutes reflect the current, perceived well-being of the Prisoner; • Meeting attendance is multi-disciplinary; and • Meeting(s) are completed in accordance with risk levels (high, moderate, and low) – no meetings required on weekends or public holidays.	
Calculation / Formula	Each At Risk Prisoner will receive a point for each of the applicable, three key areas of ARMS. Divide the number of points achieved in the key areas, which Contractor was compliant with, by the total number of points available (maximum of three points per prisoner) for all At Risk Prisoners reviewed, then multiply by 100.	
Effective Date	Operations Commencement Date	

Table 4 - Performance Measure 4 – Random Urine Testing

Performance Measure 04	RANDOM URINE TESTING Percentage of RUTs identified as a Positive Urine Sample Test Result.	
Intent	To ensure strategies, processes and procedures are in place to minimise the supply of and demand for illicit substances in the Prison.	
Progressive Targets	Result	PBP
	3.0% or Less	100%
	3.1% – 4.0%	80%
	4.1% – 5.0%	50%
	5.1% or Greater	0%
Fixed Percentage	8%	
Reporting / Measurement Frequency	Operation Month	
Calculation Frequency	Operation Year	
Data Source	• TOMS; • accredited laboratory reports in accordance with Schedule 2, section 2.20; and • other processes, information, data, records and reports available to the State or which the State may reasonably require the Contractor to provide.	
General Reporting (Methodology)	The State will generate the RUT List at the beginning of each Operation Month. The State will provide the Contractor with at least two Prisoner names from the applicable RUT List for testing each day until 5% of the previous Operation Month's population has been tested. The Contractor is to provide details of the Positive Urine Sample Test Results for the Operation Month including any mitigating evidence. If a Prisoner produces a diluted sample as part of the random testing and following a re-test produces a positive result this will be counted as a positive test for this Performance Measure. The State will analyse the data provided by the Contractor against recorded information on TOMS and the Performance Measure requirements.	
Calculation / Formula	The total number of Positive Urine Sample Test Results divided by the total number of RUTs taken for the Operation Month multiplied by 100.	
Effective Date	Operations Commencement Date	

Table 5 – Performance Measure 5 - Sentence Management

Performance Measure 05	SENTENCE MANAGEMENT Percentage of Prisoners' Sentence Planning Documents reviewed and approved in accordance with the Department's requirement(s).	
Intent	To ensure the required level of sentence management by Contractor.	
Progressive Targets	Result	PBP
	97.0% or Greater	100%
	92.0% – 96.9%	80%
	91.9% or Less	0%
Fixed Percentage	6%	
Reporting / Measurement Frequency	Operation Month	
Calculation Frequency	Operation Month	
Data Source	• TOMS; • Assessment and Case Management (ACM) checklists within TOMS; • Contractor spreadsheet that is maintained containing all necessary information for the assessment of the performance measure in accordance with this Table 5; and • other processes, information, data, records and reports available to the State or which the State may reasonably require the Contractor to provide.	
General Reporting (Methodology)	The Contractor must provide the number of Sentence Planning Documents that were due and completed by the scheduled review date as set out in TOMS for the Operation Month. The Sentence Planning Documents that comprise this assessment are: (1) the Offender Review Schedule, "IMP Review" (2) the Offender Review Schedule, "If Not Paroled" The following circumstances do not require a review being completed: • the schedule review date is within three months of the Prisoner's Earliest Eligibility Date for parole (EED) or Earliest Date of Release (EDR); • where the Prisoner has a court date in the three months following their scheduled review date; and • where the Prisoner has a parole hearing in the three months following their scheduled review date, unless parole is denied,	

	then the review must be commenced within four weeks of the review date. An IMP will be assessed as complete using the decision date from TOMS which is generated as showing "<i>approved</i>". The State will randomly select 60 Prisoners to analyse the data provided against recorded information on TOMS and the Performance Measure requirements.
Calculation / Formula	Perform the calculation for each category 'If Not Paroled' and 'IMP Review.' Divide the total number of completed reviews by the total number of Prisoners requiring review.
Effective Date	Operations Commencement Date

Table 6 – Performance Measure 6 - Education, Training & Employment

Performance Measure 06	EDUCATION, TRAINING & EMPLOYMENT Percentage of activity positions filled.	
Intent	To provide the maximum number of Prisoners with the opportunity to work or learn in order to provide skills and job readiness to reduce the chances of reoffending on release.	
Progressive Targets	Result	PBP
	95.0% or Greater	100%
	90.0% – 94.9%	80%
	85.0% – 89.9%	50%
	84.9% or Less	0%
Fixed Percentage	6%	
Reporting / Measurement Frequency	Operation Month	
Calculation Frequency	Operation Month	
Data Source	• TOMS; • Prisoner education attendance sheets that are maintained by the Contractor at the Prison; • Contractor spreadsheet containing all necessary information for the assessment of the performance measure in accordance with this Table 6; and • other processes, information, data, records and reports available to the State or which the State may reasonably require the Contractor to provide.	
General Reporting (Methodology)	The State and Contractor will agree an appropriate number of activity positions quarterly, relative to the Prison population and replicating as close as possible community standards. The composition of activities within the agreed number will be at the discretion of the State An agreed number of activity positions will be input on TOMS (and updated from time to time within the agreed number). As at the Operations Commencement Date the agreed number is 1,150 positions. Performance will be measured by taking a sample of five consecutive days in an Operation Month. Reporting will be based on reconciliation from TOMS on Prisoners allocated to positions as well as job attendance sheets.	
Calculation / Formula	Proportion of agreed positions filled, which is calculated from the number of positions filled divided by the number of agreed positions available at the Prison, then multiply by 100.	
Effective Date	Operations Commencement Date	

Table 7 – Performance Measure 7 – Clinical Programs – Delivery

Performance Measure 07	CLINICAL PROGRAMS - DELIVERY	
	Percentage of agreed Offender Program positions filled at the commencement of the program in accordance within the agreed contract schedule.	
Intent	To provide specific clinical intervention programs as agreed in the schedule and to ensure maximum utilisation of these programs.	
Progressive Targets	Result	PBP
	95.0% or Greater	100%
	90.0% – 94.9%	50%
	89.9% or Less	0%
Fixed Percentage	4%	
Reporting / Measurement Frequency	Operation Quarter	
Calculation Frequency	Operation Quarter	
Data Source	• TOMS; • Assessment and Case Management (ACM) checklists within TOMS; • treatment and education and vocational training assessment outcomes tab within TOMS; and • other processes, information, data, records and reports available to the State or which the State may reasonably require the Contractor to provide.	
General Reporting (Methodology)	The Contractor must provide the names and attendance lists of Prisoners who have commenced programs in the Operation Quarter in line with their IMP requirements, and any mitigating evidence. State to analyse the data against recorded information on TOMS and the Performance Measure requirements.	
Calculation / Formula	Divide the total number of Prisoners who commenced the programs in the quarter by the total capacity of programs available at the commencement of quarter. Multiply the result by 100.	
Effective Date	Operations Commencement Date	

Table 8 – Performance Measure 8 – Clinical Programs – Treatment Reports

Performance Measure 08	CLINICAL PROGRAMS - TREATMENT REPORTS Percentage of agreed program treatment reports finalised within four weeks of the course completion and/or non-completion.	
Intent	To ensure completion of treatment reports within the required timeframe for consideration by the Prisoners Review Board, and in accordance with the Department's requirements.	
Progressive Targets	Result	PBP
	95.0% or Greater	100%
	90.0% – 94.9%	50%
	89.9% or Less	0%
Fixed Percentage	4%	
Reporting / Measurement Frequency	Operation Quarter	
Calculation Frequency	Operation Quarter	
Data Source	• TOMS; • Assessment and Case Management (ACM) checklists within TOMS; • treatment and education and vocational training assessment outcomes tab within TOMS; • Contractor's emailed evidence (including all required attachments) to the Department confirming the program treatment report/s were finalised and sent to the Department within required timeframe; and • other processes, information, data, records and reports available to the State or which the State may reasonably require the Contractor to provide.	
General Reporting (Methodology)	Contractor to provide State with a list of completed programs for the period with the corresponding list of participants and the date on which their treatment reports (completion or non-completion) was completed – noting that it is required to be finalised within four weeks of course completion. Non-completion reports need to be completed within four weeks of withdrawal. State to analyse the data against recorded information on TOMS and the Performance Measure requirements.	
Calculation / Formula	Divide the number of completed treatment reports within four weeks of the course being completed by the total of Prisoners who have completed programs in line with their IMP. Multiply the results by 100.	
Effective Date	Operations Commencement Date	

**Table 9 – Performance Measure 9 - Substance Use Support & Treatment Plans (STP)
– Development**

Performance Measure 09	SUBSTANCE USE SUPPORT & TREATMENT PLANS (STP) Percentage of Prisoners who test positive to illicit substances in 12 months, and who have a 'support and treatment plan' (STP) developed within one month of testing positive to an illicit substance.	
Intent	To provide an individualised case management approach for Prisoners who have been identified as drug and illicit substance users.	
Progressive Targets	Result	PBP
	95.0% or Greater	100%
	85.0% – 94.9%	80%
	84.9% or Less	0%
Fixed Percentage	4%	
Reporting / Measurement Frequency	Operation Month	
Calculation Frequency	Operation Month	
Data Source	• TOMS; • Contractor's STP tracking spreadsheet; • Contractor's STP implementation documents; • other processes, information, data, records and reports available to the State or which the State may reasonably require the Contractor to provide.	
General Reporting (Methodology)	Contractor to provide: • a spreadsheet of Prisoners who have had a STP developed, including the date it was developed and the date of any reviews completed. The spreadsheet will also detail any follow-up interviews, including the date, with Prisoners who refuse to engage with the STP, in accordance with the mitigation below; and • STPs and review documentation. The Performance Measure applies to Prisoners who have tested positive, and been found guilty of substance misuse within a 12-month period. The STP is to be reviewed in accordance with the review schedule contained within the STP, and will operate for a period of up to six months.	

Calculation / Formula	1. Add the number of Prisoners who have STPs in place within one month of testing positive to an illicit substance within the Operation Month, to the number of reviews completed within that Operation Month. 2. Add the total numbers of STPs due to be in place within one month of testing positive to an illicit substance within the Operation Month, to the total number of reviews due within the Operation Month. 3. Divide the number in item 1 above by the number in item 2 above, then multiply by 100. $(\text{STPs completed} + \text{reviews completed}) \div (\text{STPs due} + \text{reviews due}) \times 100\%$ E.g. $(13 + 15) / (14 + 15) \times 100\% = (28/29) \times 100\% = 96.5\%$
Effective Date	Operations Commencement Date

**Table 10 – Performance Measure 10 - Substance Use Support & Treatment Plans (STP)
– Completion**

Performance Measure 10	SUBSTANCE USE SUPPORT & TREATMENT PLANS (STP) Percentage of Prisoners who complete their STP, including engagement in a minimum of one intervention.	
Intent	To ensure strategies are in place to encourage prisoner engagement and completion of their support and treatment plan.	
Progressive Targets	Result	PBP
	60.0% or Greater	100%
	40.0% – 59.9%	75%
	Less than 40.0%	0%
Fixed Percentage	4%	
Reporting / Measurement Frequency	Operation Quarter	
Calculation Frequency	Operation Quarter	
Data Source	• TOMS; • Contractor's STP tracking spreadsheet; • Contractor's STP implementation documents; • Contractor's STP review documents; and • other processes, information, data, records and reports available to the State or which the State may reasonably require the Contractor to provide.	
General Reporting (Methodology)	The Contractor must provide: • a spreadsheet of Prisoners who have had a STP developed, including the date it was developed and the date of all reviews completed. The spreadsheet will also detail any follow-up interviews, including the date, with prisoners who refuse to engage and got reoffered the STP; • STPs and STP review document as agreed; • the review documents, must be ticked and signed, specify the intervention(s) a Prisoner has commenced and/or completed in addition to Summary and Recommendations and evidence of completion of intervention attached; • details of Prisoners who decide to withdraw after agreeing to participate/engage in the STP (Performance Measure 9) – noting a Prisoner that withdraws will be deemed as not completed; • by the third STP review, Prisoner must have commenced or completed one of the agreed Alcohol and Order Drugs (AOD)	

	Programs and evidence of completion of intervention attached. The Performance Measure applies to Prisoners who have been found guilty of substance misuse and have agreed to participate/engage in the STP (Performance Measure 9). The STP is to be reviewed in accordance with the review schedule contained within the STP, completed interventions and will operate for a period of three months for the purposes of this Performance Measure 10.
Calculation / Formula	1. Add the number of Prisoners who have STPs in place within one month of being found guilty within the Operation Quarter, to the number of reviews completed within the Operation Quarter. 2. Add the total numbers of Prisoners that have completed at least one of the interventions (except by General Practitioner) by the third review. 3. Divide the number in item 1 above by the number in item 2 above, then multiply by 100.
	$(\text{STPs in place}) \div (\text{STPs completed}) \times 100\%$ E.g. $(10) / (9) \times 100\% = 90.0\%$
Effective Date	Operations Commencement Date

Table 11 – Performance Measure 11 – Adult Basic Education

Performance Measure 11	ADULT BASIC EDUCATION Percentage of Prisoner's inducted at the Prison with a literacy score of 'C' or 'D' or Level 1 and 2 Australian Core Skills Framework (ACSF) on the literacy assessments who commenced an Adult Basic Education (ABE) within three months of completing their induction at the Prison.	
Intent	To ensure that Prisoners with low literacy skills are provided with appropriate educational opportunities.	
Progressive Targets	Result	PBP
	95.0% or Greater	100%
	85.0% – 94.9%	75%
	84.9% or Less	0%
Fixed Percentage	6%	
Reporting / Measurement Frequency	Operation Quarter	
Calculation Frequency	Operation Quarter	
Data Source	• TOMS; • Departmental system Pathlore which contains course details for all courses, qualifications, units, modules and traineeships within which Prisoner students may participate while in Prison; • Contractor spreadsheet that is maintained containing all necessary information for the assessment of the performance measure in accordance with this Table 11; and • other processes, information, data, records and reports available to the State or which the State may reasonably require the Contractor to provide.	
General Reporting (Methodology)	The Contractor to provide a list of Prisoners that have a literacy score of 'C' or 'D' or Level 1 and 2 ACSF and identify the Prisoners that commenced an Adult Basic Education within three months of completing their induction at the Prison. This list must include the literacy score of the Prisoner to easily identify the Prisoners who scored a 'C' or 'D' or Level 1 and 2 ACSF. State to analyse the data supplied by the Contractor against the statistics on the Departmental Systems and the Performance Measure requirements.	
Calculation / Formula	Divide the number of Prisoners with a 'C' or 'D' or Level 1 and 2 ACSF that commenced an Adult Basic Education within three months of completing their induction at the Prison, by the number of Prisoners with C or D or Level 1 and 2 ACSF who completed induction. Multiply the result by 100.	
Effective Date	Operations Commencement Date	

Table 12 – Performance Measure 12 – Individual Operational Readiness

Performance Measure 12	INDIVIDUAL OPERATIONAL READINESS Percentage of Contract Workers who perform Custodial Functions who meet minimum training and qualification requirements.	
Intent	To ensure individual operational readiness, all Contract Workers who performs Custodial Functions are qualified and meet minimum training requirements.	
Progressive Targets	Result	PBP
	100%	100%
	90.0% – 99.9%	50%
	89.9% or Less	0%
Fixed Percentage	5%	
Reporting / Measurement Frequency	Operation Quarter	
Calculation Frequency	Operation Quarter	
Data Source	- Contractor's training and development plan; - Departmental permit database (including high security permit); - evidence of training certificates and qualification certificates; and - other processes, information, data, records and reports available to the State or which the State may reasonably require the Contractor to provide.	
General Reporting (Methodology)	The State will randomly select 10% of Contract Workers who perform Custodial Functions from the Permit Database each Operation Quarter, and forward the list of names to the Contractor for provision of the following evidence: - Certificate III in Correctional Practice (Custodial) (Exemption for Contract Workers who have performed Custodial Functions for less than nine months); - Certificate IV in Correctional Practice (Custodial) (permanent unit managers and acting unit managers with 24 or more months aggregate acting); - Senior First Aid; - Cardiopulmonary Resuscitation (CPR); - Defensive Equipment Techniques Training; and - ARMS/SAMS refresher training. The State will review the evidence provided by the Contractor to determine the Contractor's performance against this Performance Measure.	
Calculation / Formula	Divide the number of Contract Workers who perform Custodial Functions sampled who meet minimum training and qualification requirements, by the total number of Contract Workers who perform Custodial Functions sampled, then multiply by 100.	
Effective Date	Operations Commencement Date	

Table 13 – Performance Measure 13 – Incident Reporting

Performance Measure 13	INCIDENT REPORTING Percentage of Incident Reports completed in accordance with the State's requirements.	
Intent	To ensure accurate, complete and timely incident reporting.	
Progressive Targets	Result	PBP
	95.0% or Greater	100%
	90.0% – 94.9%	90%
	80.0% – 89.9%	60%
	79.9% or Less	0%
Fixed Percentage	6%	
Reporting / Measurement Frequency	Operation Month	
Calculation Frequency	Operation Month	
Data Source	• TOMS; • COPP 13.1 Incident Notifications, Reporting and Communications; and • other processes, information, data, records and reports available to the State or which the State may reasonably require the Contractor to provide.	
General Reporting (Methodology)	The State will assess a sample of 50 Incident Reports, comprising of 100% of Critical Incident Reports and the remainder randomly selected from Non-Critical Incident Reports as defined in the relevant Departmental Policy and submitted on TOMS.	
Calculation / Formula	Divide the total number of Incident Reports assessed as being accurate and complete, by the total number of Incident Reports assessed, and multiply by 100.	
Effective Date	Operations Commencement Date	

Table 14 – Performance Measure 14 – Health Services – Medical Record Assessment

Performance Measure 14	MEDICAL RECORD ASSESSMENTS The percentage of Prisoner medical Records considered and reviewed by the Contractor in accordance with section 2.10(b)(i) of Schedule 2 within 6 hours of a Prisoner's admission to the Prison.	
Intent	To ensure consideration and review of medical Records in a timely manner for Prisoner's admitted to the Prison.	
Progressive Targets	Result	PBP
	97.0% or Greater	100%
	92.0% – 96.9%	80%
	91.9% or Less	0%
Fixed Percentage	6%	
Reporting / Measurement Frequency	Operation Month	
Calculation Frequency	Operation Month	
Data Source	• TOMS; • Departmental system Electronic Health Online (ECHO); • PM01 Policy and Procedure Admission and Risk Assessment; and • other processes, information, data, records and reports available to the State or which the State may reasonably require the Contractor to provide.	
General Reporting (Methodology)	The Contractor must provide a list of names of all Prisoners received at the Prison within the Operation Month; noting those whose Medical Records have been considered and reviewed within six hours of admission to Acacia. State will analyse the data against the recorded information on TOMS and progress notes in ECHO with a diagnosis code of "Transfer In" within the six hour period.	
Calculation / Formula	Divide the number of Prisoners who had their medical Records considered and reviewed by the Contractor within 6 hours of admission to the Prison for the Operations Month by the total number of Prisoners admitted to the Prison within the Operation Month Multiply the results by 100.	
Effective Date	Operations Commencement date	

Table 15 – Performance Measure 15 – Health Services – Annual Health Reviews

Performance Measure 15	ANNUAL HEALTH REVIEWS Percentage of Prisoners who receive an annual health review in accordance with Departmental Policies within one month of the anniversary of the Prisoners anniversary date (12 months) of the Prisoner's admission to the Prison that falls due within the Operation Month.	
Intent	To ensure that Prisoners' receive timely and ongoing health reviews whilst at the Prison.	
Progressive Targets	Result	PBP
	97.0% or Greater	100%
	92.0% – 96.9%	80%
	91.9% or Less	0%
Fixed Percentage	6%	
Reporting / Measurement Frequency	Operation Month	
Calculation Frequency	Operation Month	
Data Source	• TOMS; • Departmental system Electronic Health Online (ECHO); • PM02 Procedure Annual Health Review; and • other processes, information, data, records and reports available to the State or which the State may reasonably require the Contractor to provide.	
General Reporting (Methodology)	The Contractor must provide the list of names of Prisoners that fall due for an Annual Health Review during the Operation Month. State will analyse the data against information recorded on TOMS and progress notes in ECHO with a diagnosis code of "Annual Health Assessment".	
Calculation / Formula	Divide the number of Prisoners who received an annual health review in accordance with Departmental Policies within one month of the anniversary date of the Prisoner's admission to the Prison during the Operation Month, by the total number of Prisoners who were due to receive an annual health review in accordance with the Departmental Policies during the Operation Month. Multiply the results by 100.	
Effective Date	Operations Commencement Date	

Table 16 – Performance Measure 16 – Failure Completion Time - Priority 0 and Priority 1

Performance Measure 16	FAILURE COMPLETION TIME Percentage of Priority 0 and Priority 1 failures that achieve Completion within the required Completion timeframes as set out in the table in section 7.1(b) of Part B of Schedule 3.	
Intent	To ensure that high priority failures at the Prison are fixed within the required timeframes.	
Progressive Targets	Result	PBP
	100% 99.9% or Less	100% 0%
Fixed Percentage	1%	
Reporting / Measurement Frequency	Operation Month	
Calculation Frequency	Operation Month	
Data Source	The Contractors Computerised Maintenance Management System (CMMS) database will include fields for the recording of event times. These event times will provide the data source for this indicator.	
General Reporting (Methodology)	The Contractor will report performance in table form showing: - the number of Priority 0 and 1 work orders raised; - the number Priority 0 and 1 work orders completed within the timeframe required; and - the performance score as a percentage.	
Calculation Formula	Divide the total number of Priority 0 and Priority 1 failures that are Completed within the Completion timeframe as set out in the table at section 7.1(b) of Part B of Schedule 3 by the total number of Priority 0 and Priority 1 failures that occurred during the Operation Month, and multiply by 100.	
Effective Date	Operations Commencement Date	

Table 17 – Performance Measure 17 – Failure Completion Time - Priority 2 and Priority 3

Performance Measure 17	FAILURE COMPLETION TIME Percentage of Priority 2 and Priority 3 failures that achieve Completion within the required Completion timeframes as set out in the table in section 7.1(b) of Part B of Schedule 3.	
Intent	To ensure that failures at the Prison are fixed within the applicable timeframes.	
Progressive Targets	Result	PBP
	90% or Greater 89.9% or Less	100% 0%
Fixed Percentage	1%	
Reporting / Measurement Frequency	Operation Month	
Calculation Frequency	Operation Month	
Data Source	The Contractors Computerised Maintenance Management System (CMMS) database will include fields for the recording of event times. These event times will provide the data source for this indicator.	
General Reporting (Methodology)	The Contractor will report performance in table form showing: - the number of Priority 2 and 3 work orders raised; - the number Priority 2 and 3 work orders completed within the timeframe required; and - the performance score as a percentage.	
Calculation / Formula	Divide the total number of Priority 2 and Priority 3 failures that are Completed within the Completion timeframe as set out in the table in section 7.1(b) of Part B of Schedule 3 by the total number of Priority 2 and Priority 3 failures that occurred during the Operation Month, and multiply by 100.	
Effective Date	Operations Commencement Date	

Table 18 – Performance Measure 18 – Preventative Maintenance

Performance Measure 18	PREVENTATIVE MAINTENANCE Percentage of Preventative Maintenance activities and tasks completed by the Contractor for the Operation Quarter in accordance with the timeframe, process and as otherwise required by the Maintenance Services Plan.	
Intent	To ensure that Preventative Maintenance at the Prison is undertaken in accordance with the Maintenance Services Plan and otherwise in accordance with the Agreement.	
Progressive Targets	Result	PBP
	90% or Greater 89.9% or Less	100% 0%
Fixed Percentage	2%	
Reporting / Measurement Frequency	Operation Quarter	
Calculation Frequency	Operation Quarter	
Data Source	• Maintenance Services Plan; and • other processes, information, data, records and reports available to the State or which the State may reasonably require the Contractor to provide. • The Contractors Computerised Maintenance Management System (CMMS) database will include fields for the recording of event times. These event times will provide the data source for this indicator.	
General Reporting (Methodology)	The Contractor will report performance in table form showing: • the number Preventative Maintenance tasks due; • the number Preventative Maintenance tasks completed within the timeframe required; and • the performance score as a percentage	
Calculation / Formula	Divide (i) the total number of Preventative Maintenance activities that were required and completed by the Contractor within the Operation Quarter by (ii) the total number of Preventative Maintenance activities that were required to be completed by the Contractor for the Operation Quarter in accordance with the Maintenance Services Plan, and multiply by 100.	
Effective Date	Operations Commencement Date	

SCHEDULE 6 INSURANCE

Acacia Prison Services Agreement

Schedule 6 – Insurances

Part A – Insurances from the Signature Date to the expiry of the Operation Period

From the date of the Signature Date to the expiry of the Operation Period or until seven years after the end of the Operation Period in the case of professional indemnity insurance as described in Table 4 of this Part A, the Contractor must effect and maintain or cause to be effected and maintained each of the insurances in accordance with clause 30.

At a minimum, the Contractor will be required to ensure the following insurance coverage:

- (a) workers' compensation insurance as described in Table 1 of this Part A;
- (b) motor vehicle insurance as described in Table 2 of this Part A;
- (c) public and products liability insurance as described in Table 3 of this Part A; and
- (d) professional indemnity insurance as described in Table 4 of this Part A.

Table 1: Workers' compensation insurance

Insurance element	Minimum requirement
Insured	Each of the following parties is required to procure its own workers' compensation insurance: - the Contractor; - the Subcontractors; - the State; and - the State's Associates.
Level of cover	Workers' compensation insurance in accordance with the provisions of the <i>Workers' Compensation and Injury Management Act 1981</i> (WA), including cover for common law liability for an amount of at least \$50 million for any one occurrence in respect of workers of the Insured. The Contractor's insurance policy must be extended to indemnify the State for any claims and liability that may arise under section 175(2) of the <i>Workers' Compensation and Injury Management Act 1981</i> (WA).
Risks covered	As required by Law.
Retroactive date	Not applicable.
Deductibles	As required by Law.
Annual Premium	\$1,687,015
Additional requirements	Not applicable.
Period of insurance	From the Signature Date to the expiry of the Operation Period.

Table 2: Motor vehicle insurance

Insurance element	Minimum requirement
Insured	Each party is required to procure its own motor vehicle insurance: - the Contractor, which policy must also name the State as an insured (other than the statutory motor vehicle policy); - the Subcontractors; - the State; and - the State's Associates.
Level of cover	Motor Vehicle Third Party Liability Insurance: Not less than \$30 million for any one occurrence or accident. Compulsory Third Party Motor Vehicle Insurance: As required by law.
Risks covered	Motor vehicle third party liability insurance covering legal liability for property loss or damage and bodily injury to or death of persons (other than compulsory third party motor vehicle insurance) and compulsory third party motor vehicle insurance as required under any Legislative Requirement relating to motor vehicles used in connection with the Services.
Retroactive date	Not applicable.
Deductibles	\$2,500 per claim
Annual Premium	\$30,000
Additional requirements	All motor vehicles for use on public roads must be registered currently for compulsory third party insurance as required by Law.
Period of insurance	From the Signature Date to the expiry of the Operation Period.

Table 3: Public and products liability insurance

Insurance element	Minimum requirement
Insured	- the Contractor; - all Subcontractors for their respective rights and interests; and - the State and the State's Associates.
Sum insured	Not less than \$200 million for any one occurrence and unlimited as to the number of occurrences happening during any one 12 month period of insurance except for products liability which may be limited in the aggregate to \$200 million during any one 12 month period of insurance.
Scope of cover:	Covering legal liability for loss or damage to and loss of use of any property and personal injury, death or illness to any person (other than

Insurance element	Minimum requirement
	liability required to be covered under workers' compensation law) arising out of or in connection with the Services (including such liability arising out of any act, negligence, error or omission made or done by or on behalf of the Insured and the Insured's employees).
Geographical coverage	Worldwide excluding USA and Canada.
Retroactive date	Not applicable.
Deductibles	£500,000 per claim
Annual premium	\$65,220
Additional requirements	The insurance policy is to include a cross liability clause, severability and non-imputation for the benefit of the Contractor, Subcontractors, the State and the State's Associates to ensure that each Insured is a separate legal entity for the purpose of this insurance policy. The insurance policy is to cover pollution liability including clean-up costs but only if caused by a sudden, accidental, unexpected and unintended occurrence. The insurance policy must provide coverage up to the full sum insured for damage to Prison Infrastructure, State Resources, Prison Equipment, fixtures and fittings and other improvements forming part of the Prison, notwithstanding that the Prison Infrastructure, State Resources, Prison Equipment, fixtures and fittings and other improvements forming part of the Prison may be in the care, custody or control of the Contractor. The insurance policy must not include a contractual liability exclusion.
Period of insurance	From the Signature Date to the expiry of the Operation Period.
Project specific or global policy	Global policy

Table 4: Professional indemnity insurance

Insurance element	Minimum requirement
Insured	the Contractor
Sum insured	Minimum coverage of \$10 million for any one claim and in the annual aggregate.
Scope of cover	Covering the civil liability of the Insured arising from its professional activities and duties in connection with the Services and including: (a) one automatic reinstatement of the full sum insured in any one period of insurance; (b) fraud, dishonesty, defamation, breach of confidentiality, infringement of patent, copyright, design, intellectual property and trade mark;

Insurance element	Minimum requirement
	(c) loss of or damage to documents data, software and computer programs; (d) breach of the <i>Competition and Consumer Act 2010</i> (Cth) and the <i>Fair Trading Act 2010</i> (WA) and any similar legislation in any other State or Territory in so far as they may relate to the provision of the services; and (e) the vicarious liability of the Insured arising out of the breach of professional duties of all persons engaged by the Insured in connection with the Services.
Territorial limits	Worldwide excluding USA and Canada.
Retroactive date	Unlimited.
Deductibles	£500,000 per claim
Annual Premium	\$99,060
Additional requirements	The insurance policy must be endorsed to contain a principal's indemnity extension in favour of the State, a waiver of subrogation in favour of the State and should not include an insured vs insured exclusion. Contractual clauses between the Contractor and Subcontractors must not contain provisions which preclude recovery for breach of professional duty.
Period of insurance	From the Signature Date until seven years after the end of the Operation Period.
Project specific or global policy	Global policy

Part B Operation Period

From the Operations Commencement Date, the Contractor must effect and maintain or cause to be effected and maintained each of the insurances in accordance with clause 30.

At a minimum, the Contractor will be required to ensure the following insurance coverage in relation to the Operation Period:

- (a) industrial special risks insurance as described in Table 1 of this Part B; and
- (b) medical malpractice insurance as described in Table 2 of this Part B.

Table 1: Industrial special risks

Insurance element	Minimum requirement
Insured	the Contractor
Sum insured	Full replacement value of the Contractor's Resources
Scope of cover	Coverage against physical loss, destruction or damage to the Contractor's Resources from any cause or event not otherwise excluded in accordance with usual practice for insurance of this kind.
Geographical coverage	Anywhere in the Commonwealth of Australia (and whilst in transit).
Retroactive date	Not applicable.
Deductibles	£100,000 per claim £500,000 per claim for strike, riot and civil commotion
Annual premium	\$11,592
Additional requirements	Not applicable.
Period of insurance	Duration of the Operation Period.
Project specific or global policy	Global policy

Table 2: Medical Malpractice Insurance Policy

Insurance element	Minimum requirement
Insured	the Contractor
Sum insured	Minimum coverage of \$20 million for any one claim and in the annual aggregate.
Scope of cover	Covering any legal liability in the rendering of or failure to render medical or health services arising out of or relating to the performance of the Services (including such liability arising out of any act, negligence, error or omission made or done by or on behalf of the Insured and the Contract Workers).
Geographical coverage	Anywhere in the Commonwealth of Australia.

Insurance element	Minimum requirement
Retroactive date	13 March 2006
Deductibles	\$50,000 per claim
Annual Premium	\$96,756
Additional requirements	The insurance policy must be endorsed to contain a principal's indemnity extension in favour of the State, a waiver of subrogation clause and should not include an insured vs insured exclusion. All medical practitioners and other health professionals engaged or employed by the Contractor to provide the Services and who are not indemnified under the Contractor's insurance, must at all times maintain and hold a Medical Malpractice Insurance Policy which complies with the requirements set out in this Table 2.
Period of insurance	From the Operations Commencement Date until seven years after the end of the Operation Period.
Project specific or global policy	Global policy

SCHEDULE 7 HANDOVER BANK GUARANTEE

Acacia Prison Services Agreement

Schedule 7 – Form of Handover Bank Guarantee

The Bank Guarantee must satisfy the requirements set out in this Schedule 7 unless otherwise agreed in writing by the State.

Form of Bank Guarantee

TO: (the **State**)

FOR: [**enter Contractor here**] (ACN [**insert**]) (the **Contractor**)

DATE: [**insert date**]

The Contractor has been selected by the State to operate and maintain Acacia Prison pursuant to the Acacia Prison Services Agreement entered into between the State and the Contractor (**Agreement**).

At the request of the State and in respect of the Contractor's obligations under the Agreement, [**Name of Issuer**] [**ABN**] of [] (the **Issuer**) unconditionally and irrevocably undertakes to pay to the State, on demand by the State, any sum or sums which may from time to time be demanded by the State to a maximum aggregate sum of A\$[] million (**Maximum Aggregate Sum**).

Payment or payments under this undertaking must be made by the Issuer to the State:

- 1 without reference to the Contractor, any other person (other than the Issuer) or the Agreement;
- 2 without enquiring into the performance or non-performance of the Agreement;
- 3 despite any notice by the Contractor or any other person to the Issuer not to pay the whole or any part of the Maximum Aggregate Sum;
- 4 despite anything which but for this provision may operate to release, prejudicially affect or discharge or in any way relieve the Issuer from any obligation including, without limitation:
 - (a) any variation or alteration to any contract between the State and the Contractor (including the Agreement); or
 - (b) the grant to any person of any time, waiver or other indulgence, or the discharge or release of any person; and
- 5 to an Australian Dollar account in the State of Western Australia.

This undertaking expires on the earlier of:

- 6 [**insert date**];
- 7 the date the State notifies the Issuer in writing, endorsed with the consent of the State, that this undertaking is no longer required; or
- 8 the date the Issuer has paid the Maximum Aggregate Sum to the State.

The Issuer will have no liability in respect of any claim under this undertaking after the date upon which this undertaking expires.

However, the Issuer may at any time without being required to do so pay to the State the Maximum Aggregate Sum less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the State and

thereupon the liability of the Issuer hereunder in respect of that amount paid shall immediately cease.

This undertaking is governed by and construed in accordance with the laws from time to time in force in the State of Western Australia and the Issuer irrevocably submits to the exclusive jurisdiction of the courts having jurisdiction in the State of Western Australia and the courts competent to determine appeals from those courts and any injunctions, orders or judgments issued or granted therefrom shall be enforceable, insofar as they are enforceable at law, within the State of Western Australia.

Executed and delivered as a deed.

Each attorney executing this deed states that [he/she] has no notice of revocation or suspension of [his/her] power of attorney.

[#Insert execution clause of Issuer]

SCHEDULE 8 PARENT GUARANTEE

Acacia Prison Services Agreement

Schedule 8 – Parent Guarantee

This Deed of Guarantee and Indemnity

Is made on 2020 by the following party:

[insert name of Parent Guarantor]

ABN ***[insert ABN of Parent Guarantor]***

of ***[insert address of Parent Guarantor]***

(Parent Guarantor)

Recitals

- A. On or about the date of this deed, Dr Adam Tomison in his capacity as Director General of the Department of Justice, for and on behalf of the State of Western Australia (the **State**) entered into the Acacia Prison Services Agreement with ***[enter name of Contractor]*** ACN ***[insert]*** (**Contractor**).
- B. It is a requirement under clause 31.1 of the Acacia Prison Services Agreement that the Parent Guarantor enter into, execute and deliver this deed.

This deed witnesses

that in consideration of the State accepting this deed in satisfaction of the Contractor's obligations under clause 31.1 of the Acacia Prison Services Agreement, the Parent Guarantor agrees as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed, unless the context otherwise requires, a word or phrase defined in the Acacia Prison Services Agreement has the same meaning as in this deed.

1.2 Interpretation

In this deed (including the Recitals), unless a contrary intention appears:

- (a) headings and underlinings are for convenience only and do not affect the interpretation of this deed;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association or other body corporate;
- (e) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (f) all prices and sums of money and all payments made under this deed are in Australian currency;
- (g) a reference to the word "including" means "including without limitation" and references to "includes" means "includes without limitation"; and
- (h) a reference to a document (including this deed) is that document as varied, amended, novated, ratified or replaced from time to time.

2 GUARANTEE

Subject to the State giving notice in accordance with clause 3 of this deed, the Parent Guarantor unconditionally and irrevocably guarantees to the State the due and punctual performance of the Contractor's Obligations including:

- (a) the discharge of the obligations and liabilities of the Contractor under the Acacia Prison Services Agreement; and
- (b) the payment of all debts and monetary liabilities of the Contractor to the State under the Acacia Prison Services Agreement.

3 PARENT GUARANTOR TO PERFORM

If, in the State's opinion, the Contractor fails to perform any of the Contractor's Obligations or discharge any of the Contractor's liabilities under the Acacia Prison Services Agreement which failure has not been remedied within a period of 14 days of written notice by the State requiring the Contractor to remedy such failure, the Parent Guarantor must:

- (a) upon receipt of notice from the State requiring it to do so, perform those obligations or discharge those liabilities or procure the performance of those obligations or discharge those liabilities (as the case may be) and thereafter continue to perform those obligations and discharge those liabilities (as the case may be) until the termination of the Acacia Prison Services Agreement by the passing of time or otherwise; and
- (b) upon demand, pay to the State all Losses suffered or incurred by the State arising from or connected with the Contractor's failure to perform any of the Contractor's Obligations or to discharge any of the Contractor's liabilities under the Acacia Prison Services Agreement.

4 INDEMNITY

The Parent Guarantor indemnifies the State against all Claims and Loss that the State may suffer or incur arising from or in connection with the Acacia Prison Services Agreement by reason of:

- (a) an obligation of the Contractor under the Acacia Prison Services Agreement being found to be void, voidable or unenforceable;
- (b) the Contractor being wound up (except for the purpose of reconstruction or amalgamation the terms of which have previously been approved by the State), becoming insolvent, entering into a scheme of arrangement, executing a deed of company arrangement with its creditors or having an administrator, a receiver, a receiver/manager, liquidator or any other external controller (as that term is defined in the *Corporations Act 2001* (Cth)) appointed;
- (c) any amount paid by the Contractor under the Acacia Prison Services Agreement being required to be repaid by the State under any Legislative Requirement relating to insolvency; or
- (d) any breach by the Parent Guarantor under this deed.

5 PAYMENTS

- (a) All payments which the Parent Guarantor is required to make under this deed must be made without any set-off, counterclaim, condition or deduction and must be made by the Parent Guarantor on demand by the State.
- (b) The State must not make a demand on the Parent Guarantor under clause 3(b) of this deed unless the State has taken steps to recover the payment from the Contractor under the Acacia Prison Services Agreement.

6 CERTIFICATE

A certificate signed by an authorised representative of the State, or any person authorised in writing by an authorised representative of the State, stating the amount payable under this deed is prima facie evidence of that amount.

7 REPRESENTATIONS AND WARRANTIES

- (a) The Parent Guarantor represents and warrants that:
 - (1) it has full power and authority to enter into and perform its obligations under this deed;
 - (2) it has taken all necessary action to authorise the execution, delivery and performance of this deed;
 - (3) this deed constitutes legal, valid and binding obligations;
 - (4) each of its representations and warranties contained in this deed is true, correct and not misleading when made or repeated or regarded as made or repeated; and
 - (5) all information provided to the State or any State's Associate by or on behalf of the Parent Guarantor is true and correct in all material respects and is not, whether by omission of information or otherwise, misleading.
- (b) The representations and warranties in this clause 7 of this deed survive the execution of this deed.

8 CONTINUING OBLIGATION

Subject to clause 14 of this deed, the guarantee and indemnity contained in this deed are continuing obligations of the Parent Guarantor, despite any settlement of account or the occurrence of any other thing and remain in full force and effect until all of the Contractor's Obligations under the Acacia Prison Services Agreement have been performed.

9 LIABILITY

- (a) In no circumstances will the liability of the Parent Guarantor be greater than the liability of the Contractor under the Acacia Prison Services Agreement.
- (b) The guarantee and indemnity contained in this deed are separate and independent obligations of the Parent Guarantor and neither limits the generality of the other.

10 NATURE OF PARENT GUARANTOR'S OBLIGATIONS

10.1 State obligations

The obligations of the Parent Guarantor under this deed in respect of the Acacia Prison Services Agreement are principal obligations and are not released, discharged or otherwise affected by anything which, but for this provision, might have that effect, including:

- (a) the grant to any person of any time, concession, waiver, covenant not to sue or other indulgence or release;
- (b) any arrangement made between the State and the Contractor;
- (c) any alteration, amendment or variation of the Acacia Prison Services Agreement or any schedule or annexure of the Acacia Prison Services Agreement; or

- (d) any assignment, novation, assumption or transfer of, or other dealing with, any rights or obligations under the Acacia Prison Services Agreement or any schedule or annexure of the Acacia Prison Services Agreement.

10.2 Application

Clause 10.1 of this deed applies irrespective of the consent or knowledge, or lack of consent or knowledge, of the State, the Parent Guarantor or any other person of any event described in clause 10.1 of this deed or of any Legislative Requirement to the contrary.

11 COSTS AND EXPENSES

The Parent Guarantor must pay all taxes, duties, fees, costs and reasonable expenses in relation to the negotiation, preparation, execution, delivery, stamping, registration and discharge of this deed and the enforcement or protection or attempted enforcement or protection of any rights or powers of the State under this deed, including any legal costs and expenses and any professional consultants' fees in respect of any of the above on a full indemnity basis.

12 NOTICES

12.1 How and where notices may be sent

A notice or other communication including a demand (Notice) under this deed must be in writing and delivered by hand or sent by registered post or fax to a party to this deed at the address or the fax number for that party specified in clause 12.5 of this deed or as otherwise specified by a party by Notice.

12.2 Notices sent by company

A Notice sent by a company must be signed by a duly authorised officer or representative of the sender.

12.3 Email not to be used

Email or similar electronic means of communication must not be used to give Notices under this deed.

12.4 When Notices are taken to have been given and received

- (a) A Notice sent by post is regarded as given and received on the second Business Day following the date of postage.
- (b) A fax is regarded as given and received on production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the recipient's fax number, unless the recipient informs the sender that the Notice is illegible or incomplete within 4 hours of it being transmitted.
- (c) A Notice delivered or received other than on a Business Day or after 5.00pm (recipient's time) is regarded as received at 9.00am on the following Business Day and a Notice delivered or received before 9.00am (recipient's time) is regarded as received at 9.00am.

12.5 Contact details

Any Notice must be addressed as below:

- (a) Parent Guarantor
 - Address: [insert details]
 - Attention: [insert details]
 - Facsimile: [insert details]
- (b) State
 - Address: [insert details]
 - Attention: [insert details]
 - Facsimile: [insert details]

13 GENERAL

13.1 Governing law and jurisdiction

This deed is governed by the laws of Western Australia and the Parent Guarantor irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

13.2 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this deed which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this deed which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

13.3 Waivers

Waiver of any right, power, authority, discretion or remedy arising upon default under this deed must be in writing and signed by the party granting the waiver.

14 EXPIRY AND TERMINATION

The provisions of this deed shall continue in full force and effect until a party would be barred from taking action against the other party under the relevant clause due to the application of any Legislative Requirement in respect of the expiration of time.

15 DISPUTE RESOLUTION

- (a) If any real or perceived conflict, difference of opinion, or unresolved issue in relation to this deed or the parties' rights or obligations under this deed (**Dispute**) arises between the State and the Parent Guarantor the Dispute will be dealt with under this clause 15.
- (b) If a Dispute arises, then a party may issue a Dispute Notice to the other party. The Notice must set out the nature of the Dispute and the relief being claimed.

- (c) If the Dispute is not resolved within 5 Business Days of the Dispute Notice issued under clause 15(b) of this deed (or such further period as the parties may agree), the Dispute must be referred to a senior manager (or equivalent position) of each party to be discussed and the senior managers will endeavour to resolve the Dispute.
- (d) If the Dispute is not resolved between the senior managers within 5 Business Days of referral to the senior managers under clause 15(c) of this deed (or such further period as the parties may agree), the Dispute will be referred to the managing director (or equivalent position) of each party to be discussed and the managing directors (or equivalent positions) will endeavour to resolve the Dispute.
- (e) Unless otherwise agreed in writing, all communications at or in relation to these meetings are without prejudice and confidential.
- (f) Any agreement reached under this clause 15 must be in writing and signed by both parties.
- (g) If a Dispute has not been resolved within 30 Business Days after the Dispute Notice was originally issued under clause 15(b), or such further period as the parties agree, then either party may issue proceedings to have the Dispute determined.

EXECUTED AS A DEED

Parent Guarantor

The common seal of

Parent Guarantor

is fixed to this document in the presence of

sign here ► _____
Company Secretary/Director

print name _____

sign here ► _____
Director

print name _____

SCHEDULE 9 SUBCONTRACTOR DEED OF NOVATION

Subcontractor Deed of Novation

[insert RFP number]

The State of Western Australia
(**State**)

and

[insert name of Contractor]
(**Contractor**)

and

[insert name of Subcontractor]
(**Subcontractor**)

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Subcontractor Deed of Novation

This Deed is made on [insert date]

between

[insert] in his capacity as Chief Executive Officer of the Department of Justice, of 28 Barrack Street, Perth, Western Australia, 6000, for and on behalf of the State of Western Australia (the **State**)

and

[insert name of contractor] (**Contractor**)

and

[insert name of Subcontractor] (**Subcontractor**)

and the parties agree as follows:

Recitals

- A. The State and the Contractor have entered into the Agreement for the operation and maintenance of Acacia Prison.
- B. The Contractor and the Subcontractor have entered into the Subcontract to undertake certain services in respect of the operation and maintenance of Acacia Prison.
- C. The Agreement and the Subcontract require the Subcontractor to enter into this Deed for the purpose of effecting a novation of the Subcontract from the Contractor to the State or a third party nominated by the State.

Operative Provisions

1 INTERPRETATION

1.1 Definitions

In this Deed, unless the context indicates otherwise:

Term	Meaning
<i>Agreement</i>	means the document entitled "Acacia Prison Services Agreement" entered into between the State and the Contractor on or about [insert].
<i>Business Day</i>	has the meaning given to it in the Agreement.
<i>Claim</i>	means any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity) made: (a) under or arising in connection with this Deed; (b) at Law; or (c) for specific performance, restitution, payment of money (including for damages), or any other form of relief.
<i>Deed</i>	has the meaning in clause 1.3(f).
<i>Execution Date</i>	means the date that this Deed is executed by the State.
<i>Law</i>	means:

Term	Meaning
	(a) Commonwealth, Western Australian or local government legislation, including statutes, ordinances, instruments, codes (but excluding any building codes or Australian Standards), requirements, regulations, by-laws and other subordinate legislation; (b) common law; and (c) principles of equity.
<i>Schedule</i>	means the schedule to this Deed.
<i>Services</i>	means the services the subject of the Subcontract, described in general terms in the Schedule.
<i>Subcontract</i>	means the agreement identified as such in the Schedule.

1.2 Interpretation

In this Deed unless the context otherwise requires:

- (a) **(persons)**: references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), a trust, a trustee or a partnership;
- (b) **(includes)**: the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) **(or)**: the meaning of "or" will be that of the inclusive "or", that is meaning one, some or all of a number of possibilities;
- (d) **(party)**: a reference to a "party" is to a party to this Deed;
- (e) **(other persons)**: a reference to any party or person includes each of their legal representatives, trustees, executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (f) **(Authority)**: a reference to any authority, utility company, institute, association or body is:
 - (i) if that authority, utility company, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that authority, utility company, institute, association or body are transferred to another organisation, a reference to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as applicable; and
 - (ii) if that authority, utility company, institute, association or body ceases to exist, a reference to the organisation which serves substantially the same purposes or objectives as that authority, utility company, institute, association or body;
- (g) **(this Deed)**: a reference to this Deed or to any other contract, agreement, document, instrument or guidelines includes a reference to this Deed or such other contract, agreement, document, instrument or guidelines as amended, novated, supplemented, varied or replaced from time to time;
- (h) **(legislation)**: a reference to any legislation or to any section or provision of it includes any amendment to or re-enactment of, or any statutory provision substituted for, that legislation, section or provision;
- (i) **(rights)**: a reference to a right includes any benefit, remedy, discretion, authority or power;

-
- (j) **(obligations)**: a reference to an obligation includes a warranty and a reference to a failure to observe or perform an obligation includes a breach of warranty;
 - (k) **(singular)**: words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
 - (l) **(headings)**: headings are for convenience only and do not affect the interpretation of this Deed;
 - (m) **(schedules)**: a reference to this Deed includes all Schedules;
 - (n) **(Clauses)**: a reference to:
 - (i) a clause, Schedule or Attachment is a reference to a clause, Schedule or Attachment of or to this Deed;
 - (ii) a paragraph is a reference to a paragraph in the clause in which the reference appears; and
 - (iii) a section is a reference to a section of a Schedule;
 - (o) **(defined meaning)**: where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
 - (p) **(\$)**: a reference to "\$" is to Australian currency;
 - (q) **(time)**: a reference to time is a reference to Australian Western Standard Time;
 - (r) **(form)**: writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions and communication by email;
 - (s) **(construction)**: no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward or drafted this Deed or any part;
 - (t) **(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;
 - (u) **(remedy)**: the use of the word "remedy" or any form of it in this Deed means that the event to be remedied must be cured or its effects overcome;
 - (v) **(may)**: the term "may", when used in the context of a power or right exercisable by the State or the State Representative, means that the State or the State Representative (as the case may be) can exercise that right or power in its absolute and unfettered discretion and the State or the State Representative (as applicable) has no obligation to the Contractor or the Subcontractor to do so;
 - (w) **(no double counting)**: if this Deed requires calculation of an amount payable to a party there must be no double counting in calculating that amount; and
 - (x) **(writing)**: references to a notice, request, Claim, consent, approval, record or report means that the notice, request, Claim, consent, approval, record or report must be in writing unless otherwise agreed by the Parties or expressly stated in this Deed.

1.3 Related matters

- (a) **(Provisions limiting or excluding Liability)**: 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.
- (b) **(Cost of performing obligations)**: Each party must perform its obligations in accordance with this Deed at its own cost, unless expressly provided otherwise.
- (c) **(Subcontractor obligations)**: In complying with or accepting any obligation or risk in accordance with this Deed, the Subcontractor must procure that, to the extent applicable, each subcontractor that the Subcontractor has subcontracted with is required to comply with or accept the relevant obligation or risk and not cause the Subcontractor to breach its obligations in accordance with this Deed.

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- (d) **(Business Day):** If the day on or by which any thing is to be done in accordance with this Deed is not a Business Day, that thing must be done on the next Business Day.
 - (e) **(Discretion):** Any consent or approval in accordance with this Deed from the State may be given or withheld, or may be given subject to such conditions (other than the payment of money), as the State (in its absolute discretion) thinks fit, unless this Deed provides otherwise.
 - (f) **(Deed composition):** This Deed comprises:
 - (i) clauses 1 to 11; and
 - (ii) Schedule 1 (Particulars).

1.4 This Deed prevails

To the extent of any inconsistency between this Deed, the Subcontract or any subcontract, this Deed prevails unless the Parties expressly agree otherwise.

2 OPERATION

This Deed does not come into full force and effect until the Execution Date.

3 NOVATION

From the Execution Date, subject to clause 4, the novated Subcontract will take effect:

- (a) as an agreement between the State and the Subcontractor;
- (b) as if the State had been named as the Contractor in the Subcontract;
- (c) so that each reference in the Subcontract to the Contractor is a reference to the State;
- (d) so that the rights, obligations and liabilities of the Contractor under the Subcontract become the rights, obligations and liabilities of the State;
- (e) so that the Subcontractor must comply with all of its obligations under the Subcontract for the benefit of the State; and
- (f) so that the Contractor is released from those obligations and liabilities under the Subcontract assumed by the State.

4 OBLIGATIONS PRIOR TO EXECUTION DATE

- (a) Notwithstanding clause 3:
 - (i) the State does not accept liability for any obligations that arose under the Subcontract before the Execution Date;
 - (ii) the Subcontractor will have no entitlement to make any Claim against the State for any costs, losses, expenses or damages (including consequential loss) incurred by the Subcontractor arising out of or in connection with the performance of the Services or the Subcontract prior to the Execution Date;
 - (iii) the State is entitled to all rights to which the Contractor was entitled in accordance with the Subcontract including all rights which arose prior to the Execution Date; and
 - (iv) the Contractor is entitled to rights which accrued prior to the Execution Date in connection with any liability of the Contractor in accordance with the Subcontract which is the subject of a dispute;
- (b) The Subcontractor will continue to be bound by the Subcontract as if the State was an original party to the agreement in place of the Contractor; and
- (c) The Subcontractor:
 - (i) will have the benefit of any extensions of time granted to the Subcontractor prior to the Execution Date; and

-
- (ii) is not entitled to exercise any right of set-off or counterclaim against the State if, and to the extent that, such right arose prior to the Execution Date.

5 ACKNOWLEDGMENTS

The Subcontractor acknowledges and agrees that as at, and from, the Execution Date, it will continue to diligently perform its obligations under the novated Subcontract notwithstanding that they were incurred prior to the Execution Date and notwithstanding any costs, losses, expenses or damages (including consequential loss) incurred by the Subcontractor in connection with the performance of the Services or the Subcontract prior to the Execution Date.

6 RELEASE

- (a) The Subcontractor releases the Contractor from all of its obligations in accordance with the Subcontract and all liabilities that it may have against the Contractor in connection with the Subcontract other than those obligations or liabilities which arose or relate to events occurring before the Execution Date and which are not obligations or liabilities which are assumed by the State.
- (b) The Contractor releases the Subcontractor from all its obligations in accordance with the Subcontract and all liabilities that it may have against the Subcontractor in connection with the Subcontract other than those obligations or liabilities which arose or relate to events occurring before the Execution Date and which are not obligations or liabilities which are assumed by the State.

7 ASSIGNMENT

Except as expressly contemplated by this Deed or agreed to by the State, neither the Contractor nor the Subcontractor may assign or transfer any of its rights or obligations under this Deed.

8 FURTHER ASSURANCES

The Contractor and the Subcontractor undertake, upon request by the State, to execute all documents and do all things necessary to vest in the State the Subcontract or otherwise to give effect to the terms of this Deed.

9 DISPUTE RESOLUTION

- (a) Each party may refer a dispute, despite any other provision, in accordance with this Deed to dispute resolution in accordance with this clause 9.
- (b) If a matter is referred for expert determination in accordance with this clause 9:
 - (i) any dispute or difference of opinion arising between the parties in relation to that matter must be resolved in the same manner that disputes or differences of opinion referred for expert determination in accordance with the Agreement are resolved;
 - (ii) accordingly, the provisions of clause 37 (Dispute Resolution) of the Agreement are incorporated into this Deed but as if:
 - (A) the only persons party to the Agreement, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute in accordance with this Deed; and
 - (B) the only matters for expert determination in accordance with those provisions are the matters referred for expert determination in accordance with this Deed.

10 NOTICES

- (a) **(Form of notices):** Each communication (including each notice, consent, approval, request and demand) in accordance with or in connection with this Deed (in this clause 10, "**Notices**"):
- (i) must be in writing; and
 - (ii) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party.
- (b) **(Procedure for sending notices):** All Notices must be:
- (i) delivered or posted by prepaid post to the address; or
 - (ii) sent by email in the form of a .pdf file letter (or such other form agreed by the State) to the email address,
- of the addressee set out below (or as otherwise notified by that party to each other party from time to time).
- (c) **(Date of receipt):** Subject to clause 10(d), a Notice is taken to be received by the addressee:
- (i) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
 - (ii) in the case of email, at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party sending the email from the recipient; and
 - (iii) in the case of delivery by hand, on delivery.
- (d) **(Next Business Day):** If the communication is taken to be received on a day which is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.
- (e) **(Notices sent by email):** In connection with Notices sent by email:
- (i) only the letter in .pdf format attached to the email and any attachments to such letter which are referred to in the letter, will form part of the communication in accordance with this clause 10. Any text in the body of the email or the subject line will not form part of the Notice; and
 - (ii) the Subcontractor must ensure that, in connection with any communications in accordance with or in connection with this Deed:
 - (A) its firewall and/or mail server (as applicable):
 - (1) allows messages of up to 14 MB to be received;
 - (2) does not trap any messages in the spam filter which have been sent from any State or State of Western Australia domain; and
 - (3) automatically sends a receipt notification to the sender upon receipt of a message; and
 - (B) its systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.

11 GENERAL

11.1 Relationship of the parties

- (a) Except to the extent expressly provided for in this Deed, no duty of good faith is implied on the State in connection with its relationship with the Subcontractor.

-
- (b) Neither this Deed nor the relationship created by it, is intended to create, and will not be construed as creating, any partnership or joint venture as between the parties.
 - (c) The Subcontractor must not act as or represent itself to be the servant or agent of the State.

11.2 State's rights, duties, powers and functions

- (a) **(State's own interests)**: Unless this Deed expressly provides otherwise, nothing in this Deed 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 performing any of its obligations in accordance with this Deed or the Subcontract.
- (b) **(State's powers, functions or duties)**: Notwithstanding anything contained or implied in this Deed or the Subcontract to the contrary, the parties expressly agree that the State is not obliged to exercise a power, function or duty which is granted to or within the responsibility of any other government agency or department, or to influence, over-ride or direct any government agency or department in the proper exercise and performance of its legal duties and functions.
- (c) **(No fettering)**: Nothing contained in this Deed or contemplated by this Deed has the effect of constraining the State or placing any fetter on the State's discretion to exercise or not to exercise any of its statutory rights, duties, powers or functions.
- (d) **(No Claim)**: Subject to clause 11.2(e), 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 statutory rights or duties.
- (e) **(Liability for breach)**: clauses 11.2(a) to 11.2(d) do not limit any liability of the State which the State would have had to the Subcontractor in accordance with this Deed as a result of a breach by the State of a term of this Deed but for clauses 11.2(a) to 11.2(d).

11.3 Counterparts

This Deed may be executed in any number of counterparts and all of such counterparts taken together will be deemed to constitute one and the same instrument.

11.4 Governing law

This Deed is governed by and will be construed according to the Laws of Western Australia and the parties irrevocably submit to the exclusive jurisdiction of the courts of that State and the courts competent to determine appeals from those courts.

11.5 Waiver and estoppel

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy under any Law or under this Deed by the State does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any Law or this Deed.
- (b) A waiver given by the State under this Deed is only effective and binding on the State if it is given or confirmed in writing by the State.
- (c) No waiver of a breach of a term of this Deed operates as a waiver of any other breach of that term or of a breach of any other term of this Agreement.
- (d) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power, or remedy under any Law or under this Deed by the State does not preclude, or operate as an estoppel of any form of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any Law or under this Deed.

11.6 Variations and waivers

No variation, modification or waiver of any provision in this Deed, nor consent to any departure by any party from any such provision, will be of any effect unless it is in writing and signed by

the parties or (in the case of a waiver) by the party giving it. Any such variation, modification, waiver or consent will be effective only to the extent to or for which it may be made or given.

11.7 Joint and several liability

- (a) If the Contractor consists of more than one person, then the rights and obligations of the Contractor in accordance with this Deed are joint and several as between those persons.
- (b) If the Subcontractor consists of more than one person, then the rights and obligations of the Subcontractor in accordance with this Deed are joint and several as between those persons.

11.8 Clauses to survive termination

- (a) All provisions of this Deed which expressly or by implication from their nature are intended to survive termination, completion or expiration of this Deed will survive such termination, completion or expiration.
- (b) Nothing in this clause 11.8 prevents any other provision of this Deed, as a matter of interpretation, also surviving the termination of this Deed.
- (c) No right or obligation of any party will merge on completion of any transaction in accordance with this Deed. All rights and obligations in accordance with this Deed survive the execution and delivery of any transfer or other agreement which implements any transaction in accordance with this Deed.

11.9 Costs and expenses

Except as otherwise provided in this Deed, each party must:

- (a) pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed; and
- (b) perform its obligations in accordance with this Deed at its own cost.

11.10 Further acts and documents

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

11.11 Severability of provisions

Any provision of this Deed that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Deed nor affect the validity or enforceability of that provision in any other jurisdiction.

Execution page

Executed as a deed

Executed by [insert] in his capacity as the
Chief Executive Officer of the Department of
Justice, for and on behalf of the State of
Western Australia in the presence of:

Signature of Witness

Signature

Print Full Name of Witness

Executed by [insert Contractor] (ACN [insert]) in
accordance with section 127 of the *Corporations
Act* by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Executed by [insert Subcontractor] (ACN
[insert]) in accordance with section 127 of the
Corporations Act by or in the presence of:

Signature of Director

Name of Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

Schedule 1 – Particulars

Item	Particulars
Contractor notice details	[address for notices to be inserted]
State notice details	[address for notices to be inserted]
Subcontractor notice details	[address for notices to be inserted]
Agreement	[To be inserted]
Subcontract	[To be inserted]
Services	[To be inserted]

SCHEDULE 10 SITE PLAN

Acacia Prison Services Agreement

Schedule 10 – Site Plan



SCHEDULE 11 ENABLING WORKS

Acacia Prison Services Agreement

Schedule 11 – Enabling Works

1. List of Enabling Works

Enabling Works	Area	Quantity	Performed By
Earth bonding upgrade and rectification	Site	17	State
Residual current device upgrade	Site	465	State
Replace ultra violet filter system	Site	12	State
Decommission and remove water softener & pumps	Tango	1	State
Gallagher secure management system: upgrade software from 7.05 to 8.20 in Main Control Room (MCR)	Charlie	1	State
Indigo: Upgrade software from 13.2 to 16.0 in MCR	Charlie	1	State
Replace current Cell call units	Site	185	State
Harvest and coppice the irrigation woodlots which comprise the Tree Farm and reinstate irrigation	WWTP	5	State
Upgrade existing workstations to Windows 10	Bravo	14	State
Installation of ceiling void detection	November	7	State
Replace blast chiller	Quebec	1	State
Repair vinyl flooring in common areas	Juliet	2	State
Upgrade grease trap system and trade waste agreement	Quebec	1	State
Install fire system graphics display package in MCR	Charlie	1	State
Replace uninterrupted power source units	Site	37	State
Replace heating, ventilating, and air conditioning units (heating)	Site	30	Contractor
Upgrade safe Cells to achieve ligature minimisation compliance	Foxtrot	6	Contractor
Prepare and resurface epoxy floor coatings in Cells	November & Uniform	Various	Contractor
Replace carrier comfort building management system	Hotel	1	Contractor
Upgrade internal system upgrade	Internal	1	Contractor
Replace “Edwards” hot water system	Site Accommodation Units	10	Contractor
Repair vinyl flooring in common areas	Site	Various	Contractor
Replace “APAC” package air conditioning units in MCR	Charlie	1	Contractor

Enabling Works	Area	Quantity	Performed By
Replace “APAC” package air conditioning units	Delta	1	Contractor
Replace “APAC” package air conditioning units	Echo	1	Contractor
Replace reverse recycle air conditioning units	Site	13	Contractor

SCHEDULE 12 SIGNATURE ASSET REGISTER

Refer to compact disk signed and included with this agreement

ACACIA PRISON SERVICES AGREEMENT
Executed on 16 December 2020

SCHEDULE 12 SIGNATURE ASSET REGISTER

 Government of Western Australia
Department of Justice

Signed by Dr Adam Tomison,
Director General of the Department
of Justice, for and on behalf of the
State of Western Australia



Signature

In the presence of:

Witness Signature
Jane Gallop

Print Name

serco
Signed by Serco Australia Pty Limited
ABN 44 003 677 352 in accordance
with section 127(1) of the
Corporations Act 2001 (Cth)

Director

Print Name

Director/Company Secretary

Print Name

ACACIA PRISON SERVICES AGREEMENT

Executed on 16/12/20

SCHEDULE 12 SIGNATURE ASSET REGISTER



Government of Western Australia
Department of Justice

Signed by Dr Adam Tomison,
Director General of the Department
of Justice, for and on behalf of the
State of Western Australia

Signature

in the presence of:

Witness Signature

Print Name

serco

Signed by Serco Australia Pty Limited
ABN 44 003 677 352 in accordance
with section 127(1) of the
Corporations Act 2001 (Cth)

Director

PETRA HUGO WEIRING

Print Name

Director/Company Secretary

Michael Anthony MacMahon

Print Name

ACACIA PRISON SERVICES AGREEMENT

Executed on 16/12/20

SCHEDULE 12 SIGNATURE ASSET REGISTER



Government of Western Australia
Department of Justice

Signed by Dr Adam Tomison,
Director General of the Department
of Justice, for and on behalf of the
State of Western Australia

Signature

in the presence of:

Witness Signature

Print Name

serco

Signed by Serco Australia Pty Limited
ABN 44 003 677 352 in accordance
with section 127(1) of the
Corporations Act 2001 (Cth)

Director

PETRA HUGO WEIRING

Print Name

Director/Company Secretary

Michael Anthony MacMahon

Print Name

SCHEDULE 13 INITIAL IMP REQUIREMENTS

Acacia Prison Services Agreement

Schedule 13 – Initial Individual Management Plan Requirements

The following replacement drafting of section 3.2 of Schedule 2 applies from the IMP Commencement Date specified in a notice given pursuant to clause 7.12(b):

3.2 Sentence and Case Management - Administration

(a) Sentence Management

- (i) The Contractor acknowledges that sentence management requires the administration, by the Contractor, in cooperation with the Department and any other relevant agencies, of the Sentence Planning Documents applicable in respect of each Prisoner, including the Prisoner's IMP or MAP, and that each Prisoner should already have a MAP upon the Prisoner's arrival at the Prison. In the event that a Prisoner does not have a MAP the Contractor may notify the Department to resolve the matter.
- (ii) Sentence Management is intended to achieve the following aims:
 - (A) to reduce the risk of re-offending by Prisoners by identifying areas of risk and providing IMPs for Prisoners during imprisonment aimed at reducing that risk;
 - (B) to enable Prisoners to make constructive use of their time in prison through structured IMPs;
 - (C) to provide strategies for Prisoners to avoid further offending and consequent further periods of imprisonment through the provision of appropriate programs for Prisoners and to work towards the possibility of the earliest release of Prisoners from custody;
 - (D) to provide information to assist administrators to target resources more effectively in order to ensure that prison regimes and services more closely match the identified needs of Prisoners;
 - (E) to determine the individual security rating and the appropriate placing of a Prisoner based on risk;
 - (F) to place Prisoners in programs based on Prisoner risks, needs and available resources;
 - (G) where practicable, to place Prisoners as close as possible to family, friends and/or significant others in order to promote family, community and social support; and
 - (H) to schedule regular reviews to assess a Prisoner's progress, placement and security rating.
- (iii) The Contractor's approach to sentence management must be governed by the following fundamentals:
 - (A) to ensure effective sentence management, the Contractor must work closely with its colleagues in other prisons, the Department and other justice stakeholders to provide comprehensive information on the

Acacia Prison Services Agreement

Schedule 13 – Initial Individual Management Plan Requirements

provision of sentence management at the Prison, its capabilities and its expertise;

- (B) to ensure effective sentence management, the Contractor must carry out a review of all Sentence Planning Documents on the Prisoner's arrival to assess its currency and refine the planning documentation (in liaison with the State and the Prisoner) should this be considered advantageous ('At Arrival – Checking ').
 - (C) to ensure effective sentence management, the Contractor must regularly review, on a planned and as-needs basis, Sentence Planning Documents to ensure continued currency, to respond to developing and changing needs and risks, and to move the hurdles forward to maintain the Prisoner's momentum ('During – Updating'); and
 - (D) to ensure effective sentence management, the Contractor must work closely with 'next-stage' providers and partners to provide provision that dovetails and overlaps with that provided within the Prison ('Before Leaving – Transferring').
- (iv) The Contractor must promote good communication and record control in sentence management.
 - (v) The Contractor must ensure that its sentence management staff have a primary role in coordinating sentence management provision and recording activity.
 - (vi) The Contractor must work with the Department's sentence management systems and personnel and the Adult Community Corrections and any other relevant agencies, to ensure that there is timely provision of information regarding the Prisoner's progress to releasing authorities.
 - (vii) The Contractor must ensure that security of the Prison is managed efficiently and effectively by the placement of Prisoners in a range of accommodation options at varying levels of security.

(b) Case management

- (i) The Contractor acknowledges that case management requires the day-to-day provision of assistance and support to Prisoners by case officers, to assist Prisoners to achieve the goals and outcomes set out in their Sentence Planning Documents. In particular, case officers must work with each Prisoner to assess progress in the achievement of their goals and outcomes and sentence management targets, to inform any later sentence management processes.
- (ii) The Contractor:
 - (A) must recruit Contract Workers to fulfil the role of case officers and describe the full responsibilities of case officers and the training which they will receive to ensure they have the capacity to perform their role;
 - (B) must describe how case officers' functions will be assessed and monitored on an ongoing and regular basis;

Acacia Prison Services Agreement

Schedule 13 – Initial Individual Management Plan Requirements

- (C) acknowledges that the role of case officers in case management is intrinsic to the sentence management process; and
 - (D) must provide case officers with such ongoing training as may be required for their role and manage them in a way that reflects their status.
- (iii) The Contractor must integrate with the Departmental System to ensure comprehensive and accurate record keeping for case management requirements.

(c) Initial Individual Management Plans

- (i) The Contractor must ensure that an initial IMP is developed and completed within 6 weeks of sentencing for each Prisoner serving an effective sentence of greater than 6 months and any other eligible Prisoner.
- (ii) The Contractor must ensure that as part of the development and completion of the initial IMP:
 - (A) each Prisoner is individually assessed to identify relevant educational and vocational courses and treatment interventions to support the Prisoner's reintegration back into the community and reduce their likelihood of re-offending;
 - (B) an Education and Vocational Training Checklist is completed on TOMS;
 - (C) a Treatment Assessment Report is completed;
 - (D) all checklists and report recommendations referred to in sections 3.2(c)(ii)(A), (B) and (C) must be considered as part of the development of the Prisoner's initial IMP. The Contractor must ensure that courses and interventions most likely to reduce the Prisoner's re-offending shall be prioritised, having regard to realistic opportunities given the length of the Prisoner's sentence; and
 - (E) all checklists and report recommendations referred to in sections 3.2(c)(ii)(A), (B) and (C) must be completed in a format and standard required by the Department.
- (iii) The Contractor must ensure that a Prisoner's IMP is reassessed at any time during their sentence should it be determined necessary as a result of further sentencing or a change in the Prisoner's circumstance.
- (iv) The Contractor must ensure that treatment assessments can be conducted external to the usual treatment assessment procedures for Prisoners who are subject to the *Criminal Law (Mentally Impaired Accused) Act 1996* (WA). The Contractor shall consider this on an individual basis.
- (v) The Contractor must ensure that for Prisoners serving a sentence with an indefinite term (other than those exempt), a Forensic Psychologist shall provide a Treatment Assessment Report and related TOMS Note, within 11 months

Acacia Prison Services Agreement

Schedule 13 – Initial Individual Management Plan Requirements

from the commencement date of the indefinite term. The Contractor must ensure the Treatment Assessment Report outlines any recommended treatment programs or individual counselling interventions, as well as potential management issues and that any treatment recommendations are then incorporated in the IMP review of that Prisoner.

(d) Individual Management Plans Reviews

- (i) The Contractor must ensure that every Prisoner with an existing IMP has the IMP reviewed as scheduled and otherwise in accordance with applicable Legislative Requirements or Departmental Policies.
- (ii) The Contractor must ensure that each IMP for a Prisoner is updated as may be required and contains:
 - (A) details of any security concerns regarding the Prisoner (including past and current escape attempts and breaches of discipline);
 - (B) details of any Incidents which may be relevant to maintaining the Prisoner's wellbeing and stressors relevant to the Prisoner's mental equilibrium, particularly relating to self-harm or suicide;
 - (C) the Prisoner's at risk status as identified pursuant to section 2.21;
 - (D) details of whether the Prisoner poses a threat to other persons as identified pursuant to section 2.23;
 - (E) information regarding the location of the Prisoner's family and visiting and telephone arrangements;
 - (F) details of other Prisoners or groups of Prisoners from whom the Prisoner should be separated;
 - (G) recommendations on sources of professional and informal support and help to the Prisoner;
 - (H) an assessment of the Prisoner's risk of re-offending both within the prison system and in the community;
 - (I) plans and recommendations for the Prisoner's education, employment, vocational skills development and involvement in programs designed to address the Prisoner's offending behaviour, risk of re-offending and maintain his health and wellbeing (including drug, alcohol and substance abuse programs); and
 - (J) progress against scheduled interventions.
- (iii) The Contractor must:
 - (A) use reasonable endeavours to ensure that each Prisoner sights and signs off his updated IMP following its review under this section; and
 - (B) keep each Prisoner's IMP confidential from other Prisoners.

Acacia Prison Services Agreement

Schedule 13 – Initial Individual Management Plan Requirements

- (iv) The Contractor must ensure that:
 - (A) programs are delivered to each Prisoner in accordance with the type, date, duration and intensity as scheduled in the Prisoner's IMP;
 - (B) any cancellations or waivers of a program by a Prisoner must be supported by robust evidence; and
 - (C) the inclusion of a Prisoner in a program, outside of those Prisoners scheduled to participate, must be supported by a diagnosed need.
- (v) The Contractor must arrange Case Conferences in accordance with each Prisoner's IMP.

(e) Classification Reviews

- (i) The Contractor must ensure that:
 - (A) a Classification Review Checklist is completed at the time the Prisoner's IMP is reviewed, in accordance with the IMP review schedule;
 - (B) a Classification Review Checklist is completed in the event of a change in the Prisoner's circumstances, which warrants a review of the Prisoner's Security Rating and amendment to the IMP;
 - (C) the Classification Review Checklist considers different Security Rating factors, than those considered in the initial Security Rating score. The Contractor must ensure the score takes into account the progress of a Prisoner, or otherwise, at each review. All of the Security Rating items are to be scored as accurately as possible in accordance with the Department's Sentence Management Manual.
 - (D) the information used to score the items and complete the Classification Review Checklist is reliable and where possible verified via a documented source.

(f) Management and Placement Checklists

- (i) The Contractor must ensure that the requirements contained within a Prison's MAP are met or are delivered to that Prisoner (as the case may be).