



HERBERT  
SMITH  
FREEHILLS

Deed

# Junee Correctional Centre - Deed of Amendment and Extension

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

**(State)**

and

The GEO Group Australia Pty Limited

**(Operator)**



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## Deed of Amendment and Extension

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Date ► 30 November 2018

Between the parties

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State **Commissioner of Corrective Services for and on behalf of the Crown in right of the State of New South Wales**  
Henry Deane Building, 20 Lee Street, Sydney, NSW, 2000  
(ABN 32980170 687)  
**(State)**

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Operator **The GEO Group Australia Pty Limited**  
Level 18, 44 Market Street, Sydney, NSW, 2000  
(ABN 24051130600)  
**(Operator)**

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Recitals

- 1 The parties entered into the agreement entitled 'Management Agreement for Junee Correctional Centre' on 30 April 2009 (**Management Agreement**).
- 2 The State wishes to extend the term of the Management Agreement pursuant to, and in the manner described in, clause 3.2(b) of the Management Agreement.
- 3 The parties wish to amend the Management Agreement in the manner set out in this deed.

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This deed witnesses as follows:

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## 1 Definitions, interpretation and deed components

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### 1.1 Definitions

Capitalised terms used in this deed have the meaning given to them in the amended and restated Management Agreement in Schedule 1 unless otherwise defined.

### 1.2 Interpretation

Clause 1 (*Interpretation*) of the Management Agreement is incorporated into this deed, as if it is set out in its entirety in this clause 1.2, except for the purpose of this deed references in that clause to 'this Agreement' shall be read as references to 'this deed'.

### 1.3 Deed components

This deed includes any schedule.

## 2 Extension of term

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- (a) The State notifies the Operator that pursuant to and for the purposes of clause 3.2(b) of the Management Agreement, the State extends the term of the Management Agreement for an additional period of five years from 1 April 2019 (**Extension Date**).
- (b) The parties acknowledge that pursuant to clause 3.3(b) of the Management Agreement, on and from the Extension Date, the definition of 'Termination Date' (for the purposes of the Management Agreement) will be amended to replace the date 31 March 2019 with the date 31 March 2024 and clause 3.2(b) of the Management Agreement will be taken to be deleted.

## 3 Amendment and restatement

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### 3.1 Amendment

With effect on and from the first Business Day after the Date of Completion (EW) (**Amendment Start Date**) the Management Agreement is amended and restated so that it is in the form of, and all its terms are those set out, in Schedule 1.

### 3.2 Confirmation

On and with effect from the Amendment Start Date, each party is bound by the Management Agreement as amended by this deed.

#### 4 No entitlement to additional costs

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The Operator acknowledges and agrees that nothing in this deed nor the amendments to the Management Agreement effected by clause 3 will constitute a Variation, a Change in Requirements, a Compensable Relief Event or a Relief Event for the purposes of the Management Agreement.

#### 5 Notices provided by State

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The State will:

- (a) promptly give the Operator notice of the Date of Completion (EW) once that date has been reached; and
- (b) give the Operator no less than six months prior notice of the date on which the State requires Operational Readiness (EF) to be achieved (**Notice of Operational Readiness (EF)**).

#### 6 Balance of the Sinking Fund

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The Operator must:

- (a) on the day prior to the Operational Readiness Date (EF), pay the balance of the Sinking Fund (if any) to the State and provide a receipt to the State confirming that the relevant transaction has been made; and
- (b) within two Business Days of the date of payment of the balance of the Sinking Fund in accordance with clause 6(a), provide to the State a copy of the bank statement for the account in which the Sinking Fund is held, confirming the transfer of the balance of the Sinking Fund to the State.

For the purposes of this clause 'Sinking Fund' means the bank account that the Operator has established to assist the Operator to satisfy its obligations with respect to asset maintenance and replacement under the Management Agreement.

#### 7 Annexure 4 to the Payment Schedule

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- (a) As soon as practicable but no later than 20 Business Days after the Amendment Start Date, the parties must enter into negotiations and negotiate in good faith in an endeavour to agree the lifecycle payments in respect of the Expanded Facility that will be set out in Annexure 4 to the Payment Schedule (**Lifecycle Payments**).
- (b) Upon the Lifecycle Payments being agreed under clause 7(a) that information will be deemed to be included in Annexure 4 to the Payment Schedule.
- (c) If the parties cannot agree the Lifecycle Payments within 3 Months of the commencement of negotiations, the State will issue a Variation Request to the Operator in respect of the Lifecycle Payments pursuant to clause 6.1(a) of the Management Agreement.

## 8 Operating Plans

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The parties agree that, notwithstanding clause 3:

- (a) the Operator must submit the Operating Plans to the State prior to the Amendment Start Date at the times set out in the Plans and Report Schedule;
- (b) the process in clause 5.2 of the amended and restated Management Agreement in Schedule 1 will apply to those documents, save that the Operator will not be required to comply with any such plans (as approved) until the Amendment Start Date; and
- (c) for the purposes of clauses 8(a) and 8(b):
  - (1) the Plans and Reports Schedule; and
  - (2) clause 5.2 of the Management Agreement,are incorporated into this deed in full.

## 9 Performance security

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- (a) No later than 20 Business Days after the date of this deed, the Operator must replace the Performance Security held by the State (for the purposes of clause 29 of the Management Agreement) with Performance Security that is for the benefit of the 'Commissioner of Corrective Services for and on behalf of the Crown in right of the State of New South Wales (ABN 11 005 693 553)'.
- (b) Clause 9(a) does not limit the Operator's obligations under clause 29.2(c) of the Management Agreement.

## 10 General

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### 10.1 No release

Nothing in this deed shall release the parties from their obligations and liabilities under the Management Agreement except to the extent expressly provided by this deed.

### 10.2 Further acts

Each party must promptly do all further acts, and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

### 10.3 Amendments not to affect validity, rights, obligations

- (a) The parties agree that each provision of the Management Agreement remains in full force and effect in accordance with its terms, except to the extent expressly varied by this deed.
- (b) Nothing in this deed:
  - (1) affects the validity or enforceability of the Management Agreement except to the extent expressly provided by this deed;

- (2) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Management Agreement before the Amendment Date; or
- (3) discharges, releases or otherwise affects any liability or obligation arising under the Management Agreement before the Amendment Date.

#### **10.4 Amendments**

This deed may only be amended by a deed signed by or on behalf of each party.

#### **10.5 Assignment, novation or transfer**

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed other than in accordance with the Management Agreement.

#### **10.6 Governing law and dispute resolution**

This deed is governed by the law governing the Management Agreement and all disputes relating to or any way connected to this deed must be resolved in accordance with the dispute resolution procedures of the Management Agreement.

#### **10.7 Counterparts**

This deed may be executed in any number of counterparts which, taken together, will be deemed to constitute one and the same instrument.

#### **10.8 Costs**

Except as otherwise provided in this deed, each party must pay its own costs, duty and other expenses in connection with negotiating, preparing, executing and performing this deed.

#### **10.9 Entire agreement**

This deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.



HERBERT  
SMITH  
FREEHILLS

## Schedule 1

Amended and restated Management Agreement

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# **Management Agreement for Junee Correctional Centre**

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

ABN 32 980 170 687

**The GEO Group Australia Pty Limited**

ABN 24 051 130 600

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**Schedule 1 – not used**

**Schedule 2 – Official Visitors**

**Schedule 3 – Departmental Services**

**Schedule 4 – Correctional Centre Equipment**

**Schedule 5 – Maintenance Standards**

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**Schedule 7 – Community Transport**

**Schedule 8 – not used**

**Schedule 9 – Staff Deployment Plan**

**Schedule 10 – Matters relating to Transition Out Plan**

**Schedule 11 – Roles and Relationships Procedures**

**Schedule 12 – not used**

**Schedule 13 – Monitor Functions**

**Schedule 14 – Request for Tender**

**Schedule 15 – not used**

**Schedule 16 – Plans and Report Schedule**

**Schedule 17 – not used**

**Schedule 18 – not used**

**Schedule 19 – Performance Regime**

**Schedule 20 – Ramp-up Profile (indicative)**

**Schedule 21 – Payment Schedule**

**Schedule 22 – Site Plans**

**Schedule 23 – Output Specification**



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# Management Agreement for Junee Correctional Centre

## DATE

## PARTIES

**Commissioner of Corrective Services for and on behalf of the Crown in right of the State of New South Wales** of Henry Deane Building, 20 Lee Street, Sydney, NSW, 2000  
ABN 11 005 693 553 (**State**)

**The GEO Group Australia Pty Limited** of Level 18, 44 Market Street, Sydney, NSW, 2000  
ABN 24 051 130 600 (**Operator**)

## RECITALS

- A. The Governor of the State of New South Wales has declared the Correctional Centre to be a correctional centre for the purposes of the CAS Act.
- B. The Commissioner has the care, direction, control and management of all correctional centres under the CAS Act.
- C. The Commissioner is authorised by Part 12 of the CAS Act to enter into an agreement with a corporation for the management of a correctional centre.
- D. The Commissioner has agreed that the Operator should manage the Correctional Centre, and transfer Inmates between correctional centres, subject to the terms and conditions set out below.

## OPERATIVE PROVISIONS

### 1. INTERPRETATION

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#### 1.1 Definitions

In this Agreement except where a contrary intention appears:

**Act** includes every Act of the Parliament of the Commonwealth of Australia and of New South Wales and includes every amendment to an Act, every law, regulation, by-law, or order and all subsidiary legislation under an Act.

**ACICA** means the Australian Centre for International Commercial Arbitration.

**Additional Officers** has the meaning given in **Clause 19A.2(a)**.

**Additional Security Escorts Look Forward Notice** has the meaning given in **Clause 19A.2(a)**.

**Additional Security Escorts Notice** has the meaning given in **Clause 19A.2(c)**.

**Agreement** means this document.

**Amendment Start Date** has the meaning given to that term in clause 3.1 of the Deed of Amendment and Extension.

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**Assault** has the meaning given to it in section 1.4 of the Performance Regime.

**Asset Management Plan** means the plan of that name prepared by the Operator in accordance with the Plans and Reports Schedule.

**Assets** means assets (including classes of assets or asset pools) specified in the Asset Management Plan.

**Associate or Associates** means, in relation to a person, any related body corporate of that person, and any officer, agent, adviser, consultant, contractor or employee of that person or that related body corporate and:

- (a) in the case of the Operator, includes:
  - (i) the Operator's Representative;
  - (ii) the Operator's Personnel and agents, advisers, consultants and contractors, each acting in connection with the performance of the Services;
  - (iii) any subcontractors (that are not covered by paragraph (a)(ii) and their respective officers, agents, advisers, consultants, contractors and employees, each acting in connection with the performance of the Services; and
  - (iv) any person on or at the Correctional Centre at the express or implied invitation of the Operator or a subcontractor in connection with the performance of the Services,

but does not include the State or any of the State's Associates; and

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

each acting in connection with the Services but does not include Justice Health, the Operator or any of the Operator's Associates.

**Authorisation** means:

- (a) an approval, consent, declaration, exemption, notarisation, licence, permit, certificate, waiver or other authorisation, however described, required by any law; and

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- (b) in relation to anything that could be prohibited or restricted by law if an Authority acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

**Authority** means any:

- (a) government, government department or government agency;
- (b) governmental, semi-governmental or judicial person (including the Commissioner carrying out any statutory authority or function); or
- (c) other person (whether autonomous or not) who is charged with the administration of a law.

**Available Inmate Places** has the meaning given to that term in the Performance Regime.

**Bakery** means the industry building forming part of the Expanded Facility to be managed and operated by the Operator as a bakery in accordance with the Output Specification.

**Bakery Equipment and Fixtures** has the meaning given to that term in Clause 19A.7(e).

**Bakery Fit Out** has the meaning given to that term in Clause 19A.7(a).

**Bank Guarantee** means an unconditional payment obligation by a bank (in a form satisfactory to the State) to pay the State the amount required by **Clause 30B(c)(i)** on demand in the circumstances set out in **Clause 30B(c)**.

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

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

- (d) with the standard of skill, care and diligence which may reasonably be expected of a skilled and experienced professional suitably qualified in the provision of services similar to the Services at a correctional centre similar to the Correctional Centre;
- (e) in a manner safe to all people and the Environment;
- (f) with the intent of ensuring reliable, long term and safe and secure operation of the correctional centre;
- (g) by trained and experienced personnel using high quality, safe and proper equipment, tools, procedures and industry standards;
- (h) with adequate levels of resources, including personnel, materials and supplies;
- (i) using suitable, new and high quality finishes and materials which are free from defects; and
- (j) with a commitment to continually adopting innovation to improve service quality and value for money, provided that this requirement in and of itself does not require the Operator to upgrade the Correctional Centre.

**Business Day** means a day other than Saturday, Sunday or a gazetted public holiday in New South Wales.

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**Calendar Quarter** means each period of three Months commencing on the first day of, respectively, January, April, July and October.

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

**Change in Law** means:

- (a) a change in an existing Law; or
- (b) a new Law,

which takes effect after the date of this Agreement.

**Change in Requirements** has the meaning given to that term in **Clause 6.5**.

**Change Proposal** has the meaning given to that term in **Clause 6.5**.

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

**Claim** includes any claim, action, demand, proceeding, judgment or order however arising, whether at law or in equity and including:

- (a) under or in connection with this Agreement or any other contract, deed or agreement;
- (b) by statute;
- (c) in tort for negligence or otherwise, including negligent misrepresentations;
- (d) in restitution for unjust enrichment,

and includes any notice, order, demand or other official requirement of any Authority.

**Commissioner** means the Commissioner of Corrective Services.

**Commencement Date** means 30 April 2009.

**Communications and Community Relations Plan** means the plan of that name developed by the Operator in accordance with Schedule 16.

**Community Advisory Council** means the council appointed by the Minister in accordance with section 243 of the CAS Act to assist in the monitoring of the Correctional Centre and to encourage community involvement in the oversight of its management.

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

- (a) a breach by the State of this Agreement;
- (b) a fraudulent, reckless, unlawful or malicious act or omission of the Commissioner or the State or any of their respective Associates in connection with the provision of the Services;
- (c) provided the Operator is complying with **Clause 44**, industrial action which occurs only at the Correctional Centre or otherwise only in respect of the provision of the Services, which is the direct result of an act or omission of the State or any of their respective Associates at the Correctional Centre and in connection with the provision of the Services other than any act or omission which is authorised or permitted under this Agreement, under Government and Department Policies or at Law;

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- (d) a Defect (EW) but only for the period from receipt by the State of the Operator's notice under **Clause 19A.4(a)** until:
- (i) if the State issues a Defect (EW) Notice, the earlier of:
    - (A) the rectification of the Defect (EW) by the Operator to the satisfaction of the State (acting reasonably); or
    - (B) the timeframe for rectification of the Defect (EW) as set out in the Defect (EW) Notice or as extended pursuant to **Clause 19A.4(d)(i)**; or
  - (ii) if the State does not issue a Defect (EW) Notice, the rectification of the Defect (EW) by the State or a third party to the satisfaction of the State (acting reasonably); or
- (e) any other event described as a Compensable Relief Event in this Agreement.

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

**Confidential Information** means any written or oral information of a technical, business or financial nature which:

- (a) is taken by any provision of this Agreement to be Confidential Information; or
- (b) the Disclosing Party makes the Receiving Party aware is considered by the Disclosing Party to be confidential and/or proprietary,

but does not include information:

- (c) which the Receiving Party can establish:
  - (i) was in the public domain when it was given to the Receiving Party;
  - (ii) became, after being given to the Receiving Party, part of the public domain, except through disclosure contrary to this Agreement;
  - (iii) was already in the Receiving Party's possession when it was given to the Receiving Party and was not otherwise acquired from the Disclosing Party directly or indirectly; or
  - (iv) was lawfully received from another person having the unrestricted legal right to disclose that information without requiring the maintenance of confidentiality; or
- (d) which is specified in **Clause 41** as information the State is required to disclose.

**Contamination** has the same meaning as in the *Contaminated Land Management Act 1997* (NSW) and **Contaminate** and **Contaminated** have the same meaning.

**Control** has the meaning given in section 50AA of the *Corporations Act 2001* except that in addition an entity controls a second entity if the first entity would be taken to control the second entity but for subsection 50AA(4).

**Contractor (EW)** means CPB Contractors Pty Ltd (ABN 98 000 893 667).

**Contract Year** means in respect of the first Contract Year following the Amendment Start Date, the period of 12 Months commencing on 1 April 2019, and in respect of each

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subsequent Contract Year, the period of 12 Months which commences on 1 April and concludes on 31 March.

**Correctional Centre** means the Junee Correctional Centre including the land upon which it is situated and the Expanded Facility.

**Correctional Buildings** means the buildings comprising the Correctional Centre from time to time including the Expanded Facility and any new buildings which may be erected.

**Correctional Centre Equipment** means the equipment provided by the State including the equipment specified in **Schedule 4** and includes in addition any replacement equipment which the Operator may be required to purchase pursuant to this Agreement.

**Correctional Industries** means those works and activities undertaken by Inmates described in the Output Specification.

**Correctional Centre Operating Manuals or Operating Manuals** means those manuals to be prepared and updated by the Operator in accordance with **Clause 20.1** and the Output Specification.

**Corrections Legislation** means:

- (e) the CAS Act; and
- (f) the *Crimes (Administration of Sentences) Regulation 2014* (NSW).

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

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

**Note:** A Critical Incident involving one or more persons shall count as one Critical Incident.

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**Example 1:** A riot situation which is replicated in other units in the Correctional Centre (a "rolling riot") shall count as one Critical Incident.

**Example 2:** Conviction of more than one Operator's Personnel arising out of one incident (such as where two or more persons have been engaged in a conspiracy and/or where multiple convictions have arisen out of the same events) shall count as one Critical Incident.

**Cure Plan** has the meaning given to that term in Clause 34.2A.

**Custodial Operations Policy and Procedures or COPP** means the State policy and procedures manual provided by the State to the Operator, as amended from time to time.

**Custodial Patients** has the meaning given to it in the Performance Regime.

**Custodian of Inmates** means a person authorised by the Commissioner under section 240 of the CAS Act to carry out the functions of a correctional officer.

**Date for Operational Readiness (EF)** means the date specified in the Notice of Operational Readiness (EF) as the date on which Operational Readiness must occur, as adjusted (if at all) in accordance with **Clause 19A.2A(d)**.

**Date of Completion (EW)** the date upon which the Contractor (EW) achieves Completion (EW) of the Expansion Works as notified by the State to the Operator's Representative in accordance with the Deed of Amendment and Extension.

**Deed of Amendment and Extension** means the document entitled 'Junee Correctional Centre - Deed of Amendment and Extension' between the State and the Operator dated on or about 30 November 2018.

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

- (a) the identity of the persons who Control or manage the Operator change during the Term without the prior written consent of the State pursuant to **Clause 47.1(a)**;
- (b) the Operator fails to remedy a Major Default which is capable of being remedied within the time specified in **Clause 34.2**, subject to **Clause 34.2A**, after the issue of a Major Default Notice;
- (c) the Operator has not satisfied the State on being required to show cause that, where an Major Default which is not capable of remedy has occurred, that termination or suspension is not warranted;
- (d) the Operator repeatedly commits or permits the commission of Major Defaults, provided the Operator has been issued with a Major Default Notice in respect of each Major Default;
- (e) repeated Critical Incidents have occurred at the Correctional Centre which reveal a consistent pattern of Critical Incidents and the State, in good faith, considers the suspension or termination of this Agreement to be in the public interest; or
- (f) the Operator has accrued a Charge Event liability of greater than \$ [REDACTED] (Indexed by the CPI Annual Multiplier (as defined in the Payment Schedule) in any rolling [REDACTED] Month period;
- (g) the Operator has incurred Total Deductions (calculated in accordance with the Payment Schedule) and Charge Events (as determined under the Performance Regime) with an aggregate value greater than:

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- (i) ■% of the Base Fee and Volumetric Adjustment (as calculated in accordance with the Payment Schedule) in any rolling ■Month period; or
  - (ii) ■% of the Base Fee and Volumetric Adjustment (as calculated in accordance with the Payment Schedule) in any rolling ■Month period.

**Default Termination Notice** means a notice given by the State pursuant to **Clause 34.6(a)**.

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

**Defect (EW) Notice** has the meaning given in **Clause 19A.4(c)(ii)**.

**Department** means the New South Wales Department of Justice Corrective Services.

**Departmental Services** means the services provided to the Operator by the Department and detailed in **Schedule 3**.

**Disclosing Party** means a party giving information.

**Dispute** means any controversy or Claim arising out of or in relation to this Agreement or with respect to a breach of this Agreement.

**Effective Date** means 1 May 2009.

**Emergency** means a situation which, in the opinion of the State, requires immediate action to be taken in relation to the Correctional Centre or the provision of the Services to ensure proper management, control and security of the Correctional Centre or the welfare of Inmates.

**Environment** means all components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter;
- (d) any living organism; and
- (e) natural or man made or modified features or structures,

and includes ecosystems and all elements of the biosphere.

**Environmental Aspect** means in respect of any land:

- (a) each interaction of any activity on the land or of the land itself with the Environment; and
- (b) each of the following:
  - (i) heritage items on the land or heritage values or significance of the land or anything on it;
  - (ii) Contamination of or from the land or from activities on the land;
  - (iii) Pollution of or from the land or from activities on it;



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- (iv) the flora and fauna on or in the vicinity of the land including threatened species, populations or ecological communities or their habitats on or in the vicinity of the land;
  - (v) critical habitat on or in the vicinity of the land;
  - (vi) the propensity of the land to be affected by natural disasters such as bushfires, flooding or geotechnical instability or earthquakes; and
  - (vii) the physical, chemical or geotechnical characteristics of the land or any structures on it.

**Escape** has the meaning given to it in section 2.2 the Performance Regime.

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

**Essential Services** means the provision of:

- (a) accommodation;
- (b) food and water;
- (c) exercise;
- (d) visits required by Legislative Requirement;
- (e) security and supervision; and
- (f) Services which, if not provided, may result in death or serious health problems,

which are required to be provided by the Operator as part of the Services during the Term.

**Existing Facility** means that part of the Correctional Centre in existence prior to the Expansion Works, as described in the Site Plans.

**Expanded Facility** means that part of the Correctional Centre to be delivered by the State following completion of the Expansion Works, as described in the Site Plans.

**Expansion Works** means the works performed on behalf of the State to deliver an additional 480 maximum security beds and associated infrastructure and includes the works in respect of the Bakery.

**Expansion Works Contract** means the contract between the State of New South Wales and the Contractor (EW) under which the State of New South Wales has engaged the Contractor (EW) to perform the Expansion Works.

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

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

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- (e) bushfire, lightning, cyclone, hurricane, tempest, mudslide, landslide, earthquakes, droughts declared as a state of emergency and high seas inundation;
  - (f) a flood which might at the date of this Agreement be expected to occur no more frequently than once in 100 years;
  - (g) fire or explosion caused by events referred to in paragraphs (a) to (f); or
  - (h) any one or more Utility Services not being available for use at the Site (at all or in the necessary quantity) due to an interruption that occurs upstream from the point at which the Utility Infrastructure of the provider of those Utility Services connects specifically to the Site or the Correctional Centre;

and which:

- (i) save in relation to paragraph (h), occurs at or directly in the vicinity of the Site;
- (j) prevents the Operator from carrying out all or substantially all of the Services;
- (k) was not caused or contributed to by the Operator or its Associates, or the State or its Associates or an Inmate, to the extent arising from a failure by the Operator or its Associates to perform the Services in accordance with this Agreement;
- (l) was beyond the reasonable control of the Operator or its Associates; and
- (m) could not have been prevented, avoided, remedied or overcome by taking those steps which a prudent, experienced and competent contractor for facilities similar to the Correctional Centre and providing services similar to the Services would have taken using Best Services Practices (including the expenditure of reasonable sums of money).

**General Manager** means the General Manager of the Correctional Centre in terms of section 3 of the CAS Act.

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

**Government and Department Policies** means the policies of the New South Wales State Government and/or the Department relating to the management of the Correctional Centre, and which may apply to the Correctional Centre in particular or to correctional centres in general.

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

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

**Inmates** means those persons from time to time delivered or transferred under the CAS Act into the custody of the General Manager.

**Insolvency Event** means, in respect of a person:

- (a) an order being made, or the person passing a resolution, for its winding up;
- (b) an application being made to a court for an order for its winding up;
- (c) an administrator being appointed to the person;
- (d) (i) the person resolving to appoint a controller or analogous person to the person or any of the person's property;

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- (ii) an application being made to a court for an order to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property; or
  - (iii) an appointment of the kind referred to in subparagraph (ii) being made (whether or not following a resolution or application);
- (e) the holder of a Security Interest or any agent on its behalf taking possession of any of the person's property;
  - (f) the person being taken under section 459F(1) of the *Corporations Act 2001* (Cth) to have failed to comply with a statutory demand;
  - (g) the person:
    - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
    - (ii) being taken by applicable law to be (or if a court would be entitled or required to presume that the person is) unable to pay its debts or otherwise insolvent;
  - (h) the process of any court or authority being invoked against the person or any of its property to enforce any judgment or order for the payment of money or the recovery of any property;
  - (i) the person dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason;
  - (j) the person taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the *Corporations Act 2001* (Cth));
  - (k) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; or
  - (l) any analogous event under the laws of any applicable jurisdiction,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the State.

**Intellectual Property Rights** means all copyright, patents, trade marks, designs, drawings, manuals, specifications and other intellectual property rights.

**Issues** means any issues relating to this Agreement or the performance of a party's obligations under this Agreement which one party wishes to raise pursuant to the Roles and Relationships Procedures.

**Justice Health** means the statutory health corporation constituted under the *Health Services Act 1997* (NSW), responsible for the provision of healthcare programmes for people in custody across New South Wales.

**Key Performance Indicators** means those items specified in section 3 of the Performance Regime.

**Legislative Requirement** includes the requirements of Commonwealth, State or local government legislation, including statutes, regulations, by-laws, ordinances, orders, proclamations and other subordinate legislation.

**Level 1 Performance Range** has the meaning ascertained from the Performance Regime.

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**Level 2 Performance Range** has the meaning ascertained from the Performance Regime.

**Laws** or **Law** includes:

- (a) those principles of law or equity established or recognised by decisions of courts; and
- (b) Legislative Requirements.

**Loss** means any loss, cost, expense or liability (including consequential loss, indirect loss, loss of profit, loss of revenue and damages for loss of opportunity).

**Maintenance Standards** means:

- (a) in respect of the Existing Facility, those standards for the maintenance of the relevant Correctional Buildings and Correctional Centre Equipment set out in **Schedule 5**; and
- (b) in respect of the Expanded Facility, those standards for the maintenance of the relevant Correctional Buildings and Correctional Centre Equipment set out in **Attachment C.1** to the Output Specification,

and (in relation to both facilities) any applicable corrective maintenance benchmarks or standards specified in the Asset Management Plan.

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

- (a) any failure by the Operator to perform or comply with any material obligation, under this Agreement or the Deed of Amendment and Extension;
- (b) a Charge Event occurs;
- (c) the Operator has incurred Total Deductions (as calculated in accordance with the Payment Schedule) and Charge Events (as determined under the Performance Regime) with an aggregate value greater than:
  - (i) ■% of the Base Fee and Volumetric Adjustment (as calculated in accordance with the Payment Schedule) in any rolling ■Month period; or
  - (ii) ■% of the Base Fee (as calculated in accordance with the Payment Schedule) in any rolling ■Month period; or
- (d) an Insolvency Event affecting the Operator;
- (e) the Operator's performance falls within the Level 2 Performance Range for the same Quality Failure for ■ or more Months within a rolling period of ■Months; and
- (f) any representation or warranty made by the Operator being found to be materially incorrect or misleading in the opinion of the State.

**Major Default Notice** means a notice given by the State pursuant to **Clause 34.1**.

**Margin** means an amount on account of:

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

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

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**Minister** means the Minister responsible for the Department.

**Mitigating Factors** means:

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

**Monitor** means the person appointed for the purposes of section 242 of the CAS Act in respect of the Correctional Centre.

**Month** means calendar month and **Monthly** has a corresponding meaning.

**Monthly Service Payment** means a monthly service payment payable to the Operator as calculated in accordance with the Payment Schedule.

**Notice of Operational Readiness (EF)** has the meaning given in the Deed of Amendment and Extension.

**Official Visitor** means a person appointed by the Minister in accordance with section 228 of the CAS Act for the Correctional Centre.

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

**Operational Readiness (EF)** means commencement of the performance of the Services in connection with the Expanded Facility.

**Operational Readiness (EF) Activities** has the meaning given in **Clause 19A.2A(b)**.

**Operational Readiness Date (EF)** means the date on which Operational Readiness (EF) is achieved.

**Operator Act or Omission** means:

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

**Operator Margin** means the percentage that the Operator may charge as Margin, being ■%.

**Operator's Code of Conduct Manual** means the Correctional Centre Operating Manual governing the code of conduct to be observed by the Operator's Personnel.

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**Operator's Equipment** means all equipment used by the Operator in providing the Services other than the Correctional Centre Equipment.

**Operator's Personnel** means a person employed by the Operator or by any sub-contractor of the Operator in or in relation to the Correctional Centre and includes a Custodian of Inmates.

**Operator's Representative** means the person appointed pursuant to **Clause 10.5**.

**Output Specification** means the objectives and performance standards in relation to the management of the Correctional Centre and performance of the Services set out in **Schedule 23**.

**Payment Claim** means a payment claim submitted by the Operator in accordance with **Clause 25.1(b)** in the form reasonably required by the State.

**Payment Statement** has the meaning given in **Clause 25.1(c)**.

**Plans** means:

- (a) the Operating Plans;
- (b) the Staff Deployment Plan;
- (c) the Operating Manuals; and
- (d) the Transition Out Plan.

**Plans and Reports Schedule** means **Schedule 16**.

**Payment Schedule** means **Schedule 21**.

**Performance Regime** means the regime set out in **Schedule 19**.

**Performance Security** means an unconditional payment obligation from a bank, insurance company or other person acceptable to the State to unconditionally pay to the State \$ [REDACTED] in the circumstances prescribed in **Clause 29**.

**Pollution** has the same meaning as in the *Protection of the Environment Operations Act 1997* and **Pollute** has the same meaning.

**Privacy Legislation** means the *Privacy Act 1988* (Cth), the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Health Records and Information Privacy Act 2002* (NSW) and all legislation, subordinate legislation or binding schemes with similar objectives (to the extent that it applies to the party).

**Privileged Letter or Parcel** in relation to an Inmate, means a letter or parcel which has been addressed by the Inmate to the Ombudsman, the Commonwealth Ombudsman, the Judicial Commission, the National Crime Authority, the New South Wales Crime Commission, the Anti-Discrimination Board, the Equal Opportunity Tribunal, the Independent Commission Against Corruption, the Privacy Committee, the Legal Aid Commission, the Legal Services Commissioner, the Legal Services Tribunal, the Inspector-General of Corrective Services, a Member of Parliament, a legal practitioner or a police officer.

**Probation and Parole Staff** means persons employed by the State to perform the functions of probation and parole officers.

**Quality Failure** has the meaning given to it in the Payment Schedule.

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**Quality Failure Abatement** means a quality failure abatement calculated in accordance with **Section 10.2** of the Payment Schedule.

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

- (a) commencing on the Operational Readiness Date (EF); and
- (b) ending nine weeks after the Operational Readiness Date (EF), or on such other end date as set out in the then current Ramp-Up Profile Schedule.

**Ramp-Up Profile Schedule** means Schedule 20, as updated from time to time in accordance with clause 19A.6(a)(i).

**Receiving Party** means a party to which information including Confidential Information is given.

**Records** means comprehensive detailed records and business systems recorded in writing in books or filed in the Operator's computer system:

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

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

- (a) a Compensable Relief Event;
- (b) any act or omission of:
  - (i) the State; or
  - (ii) any Associate of the State,

in connection with the performance of the Services other than any act or omission which is authorised or permitted under this Agreement, under Government and Department Policies or Law;

- (c) a Force Majeure Event; or
- (d) the State exercises its step-in rights under **Clause 34.5** or **Clause 34.6**, other than where the event that gives rise to the exercise of the State's rights is an Operator Act or Omission or an act or omission of an Inmate, to the extent arising from a failure by the Operator or its Associates to perform the Services in accordance with this Agreement.

**Relief Event Effects** means effects of the Variation, Change in Requirements or the Relief Event (as applicable) on:

- (a) the quality, appearance or durability of any part of the Correctional Centre;
- (b) the management or maintenance of the Correctional Centre;
- (c) the carrying out of the Services (including the Operator's ability to carry out the Services in accordance with the Services Requirements); and
- (d) any other relevant part of this Agreement, including any amendments required.

**Regulations** means the regulations made under the CAS Act.

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

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**Request for Tender** means the document comprising **Schedule 14**.

**Roles and Relationships Procedures** means the roles and relationships of the relevant employees of the Department and the Operator set out in **Schedule 11**.

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

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

**Serious Assault** has the meaning given to it in section 1.4 of the Performance Regime.

**Services** means:

- (a) the services referred to in the Services Requirements to be performed by the Operator; and
- (b) all other things the Operator is, or may be, required to provide or undertake to comply with the Services Requirements,

in each case as modified in accordance with this Agreement.

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

- (a) the Output Specification;
- (b) the Tender Response; and
- (c) the remainder of this Agreement.

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

**Site Plans** means Schedule 22.

**Staff** means those people engaged by the Operator or any of its Associates to perform any Services at the Correctional Centre.

**Staff Deployment Plan** means the Operator's plan for the overall number of Operator's Personnel engaged to provide the Services as set out in **Schedule 9** and as updated from time to time.

**Staff Misconduct** has the meaning given to it in section 3.11 of the Performance Regime.

**Staged Handover Area** means the area or areas designated as such in the Staged Handover Notice.

**Staged Handover Notice** has the meaning given in **Clause 19A.5(c)**.

**Staged Handover Preparation Notice** has the meaning given in **Clause 19A.5(b)**.

**State Representative** means the person appointed pursuant to **Clause 10.1**.



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**Step In Operator** means a person appointed by the State under **Clause 34.5** or **Clause 34.6**.

**Submitted Document** means any document required to be submitted for review in accordance with Clause 5.2.

**Target Performance Range** has the meaning ascertained from the Performance Regime.

**Tax Invoice** has the meaning given in the GST Law.

**Tender Response** means the document comprising **Schedule 14, Annexure B**.

**Termination Date** means the earlier of:

- (a) 31 March 2024;
- (b) any date on which this Agreement terminates in accordance with its terms; or
- (c) such date as may be agreed by the parties in writing.

**Term** means the period commencing on the Effective Date and ending on the Termination Date.

**Total Deductions** has the meaning given to it in the Payment Schedule.

**Transition Plan** means the plan of that name prepared by the Operator in accordance with the Plans and Reports Schedule.

**Transition Out Plan** means the plan developed by the parties in accordance with **Clause 35.9** governing the Operator's disengagement from the operation and management of the Correctional Centre.

**Uninsurable** means, in relation to a risk, either that:

- (a) insurance required pursuant to **Clause 43** is not available in the Australian insurance market with reputable insurers of good standing in respect of the risk at the time that insurance is sought to be obtained and coverage is not available under the *Terrorism Insurance Act 2003* (Cth) or similar legislative scheme; or
- (b) the insurance premium payable for insuring that risk is at such a level that the risk is not generally being insured against in the Australian insurance market with reputable insurers of good standing by prudent, competent and experienced providers in Australia of services similar to those provided by the Operator under this Agreement at the time at which the insurance was sought to be obtained.

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

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

**Variation** means:

- (a) a change to the Services Requirements or the Services; or
- (b) a change to the Correctional Centre,

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but excluding:

- (c) a Change in Requirements; and
- (d) any other change referred to in paragraphs (a) or (b) which is required to ensure that the Correctional Centre or the Services are in accordance with this Agreement.

**Variation Order** means the notice entitled "Variation Order" issued in accordance with **Clause 6.5(b)(i)** or **Clause 6.5(b)(ii)**.

**Variation Request** has the meaning given to it in **Clause 6.1(a)**.

**Visitor** has the meaning given in the CAS Act.

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

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

## 1.2 Construction

Unless expressed to the contrary:

- (a) words importing:
  - (i) the singular include the plural and vice versa; and
  - (ii) any gender includes the other genders;
- (b) if a word or phrase is defined cognate words and phrases have corresponding definitions;
- (c) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;
- (d) a reference to:
  - (i) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
  - (ii) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (iii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iv) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
  - (v) a right includes a benefit, remedy, discretion, authority or power;
  - (vi) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
  - (vii) a reference to this Agreement includes all schedules and annexures referred to in it;

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- (viii) the word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing; and
  - (e) the words subsidiary, holding company, related body corporate and substantial holding have the same meanings as in the *Corporations Act 2001* (Cth).

### 1.3 Headings

Headings do not affect the interpretation of this Agreement.

### 1.4 Inconsistency between documents forming this Agreement

- (a) If there is an ambiguity, discrepancy or inconsistency between the documents forming part of this Agreement, then, subject to **Clause 1.4(b)**, the following order of precedence will apply:
  - (i) Clauses 1 to 49 and the Schedules (**Primary Documents**);
  - (ii) the Tender Response; and
  - (iii) the Request for Tender.
- (b) If either party identifies an inconsistency, ambiguity or discrepancy between the Primary Documents, then that party must notify the other party of the inconsistency, ambiguity or discrepancy as soon as possible and, in any case not later than 5 Business Days after becoming aware of the inconsistency, ambiguity or discrepancy.
- (c) Within 15 Business Days after:
  - (i) in the case of a notice from the Operator under **Clause 1.4(b)**, the State's receipt of the Operator's notice pursuant to **Clause 1.4(b)**; or
  - (ii) in the case of a notice from the State, the date of the State's notice pursuant to **Clause 1.4(b)**,

the State will direct the Operator as to how to resolve the inconsistency, ambiguity or discrepancy which is the subject of the notice given under **Clause 1.4(b)** as follows:

- (iii) if the relevant inconsistency, ambiguity or discrepancy is within a document forming part of this Agreement, and there is a process for resolving such inconsistencies, ambiguities and discrepancies contained in the relevant document, then, in accordance with that process; or
- (iv) if the inconsistency, ambiguity or discrepancy is between documents forming the Primary Documents or is within a document that forms part of this Agreement but does not have a process for resolving the inconsistency, ambiguity or discrepancy, then the State will direct the Operator to adopt the option the State requires the Operator to proceed with, which may be the greater, more onerous to the Operator or higher requirement, standard, quality, level of service, staffing level, quantum or scope as determined by the State.

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## 2. ENGAGEMENT OF OPERATOR

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### 2.1 Engagement

Pursuant to Part 12 of the CAS Act:

- (a) the Commissioner engages the Operator; and
- (b) the Operator accepts the Commissioner's engagement to perform the Services for the Term in accordance with the provisions of this Agreement.

The Operator shall comply with the Output Specification.

### 2.2 CAS Act Prevails

Part 12 of the CAS Act applies to this Agreement and, to the extent of any inconsistency with this Agreement, the provisions of Part 12 of the CAS Act will prevail.

### 2.3 Operator's Code of Conduct

The Operator shall comply with, and ensure that each of the Operator's Personnel complies with, the Operator's Code of Conduct Manual, as approved by the State, and as varied from time to time with the prior approval of the State.

## 3. TERM

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### 3.1 Initial term

This Agreement:

- (a) commenced on the Commencement Date; and
- (b) will terminate on the Termination Date.

### 3.2 Option

- (a) The State may, in its absolute discretion, extend the Term for an additional period of five years by notifying the Operator in writing on or prior to 30 September 2013.
- (b) If the State extends the Term under **Clause 3.2(a)**, the State may, in its absolute discretion, extend the Term for a second additional period of five years by notifying the Operator in writing on or prior to 30 September 2018.

### 3.3 Adjustment of Termination Date

- (a) If the State extends the Term under **Clause 3.2(a)**, from 1 April 2014 the definition of Termination Date will be amended to replace the date 31 March 2014 with the date 31 March 2019 and **Clause 3.2(a)** will be taken to be deleted.
- (b) If the State extends the Term under **Clause 3.2(b)**, from 1 April 2019 the definition of Termination Date will be amended to replace the date 31 March 2019 with the date 31 March 2024 and **Clause 3.2(b)** will be taken to be deleted.

## 4. COMPLIANCE WITH TENDER

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- (a) Subject to **Clause 4(b)**, the Operator shall comply with the terms of the Tender Response in addition to performing any other obligations under this Agreement.

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- (b) Where the Operator's obligation to comply with the terms of the Tender Response is inconsistent with its obligations under this Agreement the obligations under this Agreement will prevail.

## **5. OBLIGATIONS OF OPERATOR**

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### **5.1 Services to be Provided**

- (a) From the Effective Date the Operator shall provide the Services in accordance with this Agreement.
- (b) In providing the Services the Operator shall comply with:
- (i) the CAS Act and Regulations;
  - (ii) any other Legislative Requirement;
  - (iii) the Services Requirements and any Variation Orders issued by the State in accordance with this Agreement;
  - (iv) the Request for Tender;
  - (v) the Performance Regime;
  - (vi) any instructions and directions from the State in performing any statutory power;
  - (vii) all other relevant Government and Department Policies;
  - (viii) the Correctional Centre Operating Manuals; and
  - (ix) the Custodial Operations Policy and Procedures.
- (c) The Operator shall transfer inmates between correctional centres in accordance with section 237 of the CAS Act.
- (d) The Operator acknowledges that the standard of delivery of the Services shall be in accordance with the Services Requirements.

#### **5.1A Plans and Reports**

- (e) The Operator must:
- (i) prepare and update each Operating Plan and Report:
    - (A) in accordance with the Plans and Reports Schedule (as applicable) and the other requirements of this Agreement;
    - (B) to ensure each Operating Plan contains complete and accurate information in respect of the relevant aspects of the Correctional Centre, including the Expanded Facility; and
    - (C) as necessary to reflect any changes to the nature, understanding or status of the Services; and
  - (ii) submit each Operating Plan and Report to the State for review in accordance with **Clause 5.2** and the Plans and Reports Schedule (as applicable).

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- (f) If a Plan or Report is required to be approved by an Authority, the Operator must ensure that it has obtained that Authorisation prior to submitting the relevant Plan or Report to the State for review.
  - (g) Unless otherwise agreed by the State, the Operator must carry out the Services in accordance with the Plans.
  - (e) The Operator warrants that:
    - (i) each Plan and each Report is complete and correct, and not false or misleading in any material respect, at the time it is provided to the State; and
    - (ii) each Plan will, at all relevant times during the Term, be fit for purpose.
  - (h) A reference to any Plan or Report is a reference to that Plan or Report as amended or updated from time to time under this Agreement.

## 5.2 Review of Submitted Documents

- (a) Within 20 Business Days of receiving a Submitted Document the State shall advise the Operator whether or not the State approves of that Submitted Document and if the State does not approve of a Submitted Document, the State shall provide the Operator with comments.
- (b) If the State notifies the Operator that the State does not approve of a proposed Submitted Document then, within 5 Business Days of the Operator's receipt of that notice, the Operator shall supply an amended version of that proposed Submitted Document, in which case the provisions of **Clause 5.2(a)** and **Clause 5.2(b)** will apply to that amended proposed Submitted Document.
- (c) If the State approves the Submitted Document, the Operator must comply with the Submitted Document as approved.
- (d) No:
  - (i) review of, comment upon, acceptance, approval, certification of, endorsement, rejection of or failure to comment upon any material submitted by the Operator (including the Submitted Documents) by the State or its Associates;
  - (ii) inspection or review of the Services or the Correctional Centre by the State or its Associates; or
  - (iii) failure by (or on behalf of) the State or its Associates, to detect any non-compliance by the Operator with its obligations in accordance with this Agreement or any Laws or Government and Departmental Policies,will:
  - (iv) relieve the Operator Co from, or alter or affect, its liabilities, obligations or responsibilities whether in accordance with this Agreement or otherwise according to Law;
  - (v) prejudice the State's rights against the Operator whether under this Agreement or otherwise according to Law; or
  - (vi) constitute an approval by the State of the Operator's performance of its obligations in accordance with this Agreement.

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- (e) The Operator will not be entitled to make any Claim against the State, whether under this Agreement or at Law, for any liabilities incurred by the Operator in connection with any review, comment or failure to comment on, acceptance, approval, certification of, endorsement or rejection of, any material submitted by the Operator (including the Submitted Documents).

### **5.3 Employ a General Manager**

- (a) The Operator shall employ a person authorised by the Commissioner and who is competent to exercise the functions and to perform the duties of the General Manager of the Correctional Centre.
- (b) The Operator shall ensure the proper performance by the General Manager of any powers, authorities, duties and functions imposed or conferred on the General Manager by the CAS Act and the Regulations or under this Agreement.
- (c) The Operator shall, if directed by the Commissioner, terminate the appointment of the General Manager in respect of the Correctional Centre.

### **5.4 Services Standard**

The Operator shall perform the Services:

- (a) safely;
- (b) in a diligent, careful, skilful and competent manner;
- (c) in accordance with the standards and level of care, skill, knowledge and judgment generally applicable in correctional centres which the Commissioner otherwise has the care, direction, control and management of under the CAS Act;
- (d) in a proper and reputable manner;
- (e) except as otherwise expressly provided in this Agreement entirely at the Operator's own risk; and
- (f) so as to satisfy the Output Specification.

#### **5.4A Not used**

### **5.5 Provision of Operator's Equipment**

Unless this Agreement otherwise provides, the Operator shall supply everything necessary, including all Operator's Equipment, to enable the Operator to:

- (a) discharge its obligations under this Agreement;
- (b) properly and satisfactorily perform the Services; and
- (c) discharge the Operator's liabilities under this Agreement.

### **5.6 Supply of Operator's Personnel**

The Operator shall:

- (a) provide management, maintenance and support activities to enable the uninterrupted performance of the Services;
- (b) employ or engage sufficient and competent Custodians of Inmates and paramedical and other staff to enable it to discharge its obligations under this Agreement;

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- (c) employ or engage, supervise and be solely responsible for, so far as permitted by Law, all of the Operator's Personnel, including employing or engaging sufficient and competent Custodians of Inmates and paramedical and other staff to enable it to discharge its obligations under this Agreement;
  - (d) comply with the Staff Deployment Plan as approved by the State;
  - (e) ensure continuous coverage of sufficient Operator's Personnel to provide the Services on a 24 hour, seven day a week basis; and
  - (f) ensure that no Operator's Personnel performs any of the Services whilst under the influence of alcohol or any other drug.

#### **5.6A Revised Staff Deployment Plan**

Within 20 Business Days of the Amendment Start Date, the Operator must submit to the State a revised version of the Staff Deployment Plan that provides for the Expanded Facility and otherwise complies with the requirements of Schedule 9 and the Output Specification.

#### **5.7 Authorisation of Staff**

The Operator shall not employ or engage any person to perform duties in connection with the management of the Correctional Centre who is required to be authorised by the Commissioner under s 240 of the CAS Act, unless the person is the holder of an authority, issued by the Commissioner, authorising the person to perform the duties concerned.

#### **5.8 Submit particulars**

- (a) To assist the Commissioner in accordance with section 240 of the CAS Act to determine whether to grant any approval or authorisation for a proposed Custodian of Inmates, or any other person to be employed at the Correctional Centre who is required to be authorised by the Commissioner under s 240 of the CAS Act, the Operator shall submit to the Commissioner such particulars as the Commissioner may require of all persons that the Operator proposes to employ.
- (b) In pursuance of **Clause 5.8(a)**, the Operator shall furnish at least 4 weeks prior to any commencement date of prospective Custodians of Inmates and other relevant persons, sufficient information as required by NSW Police to conduct criminal record checks.

#### **5.9 Disclosure of offences**

The Operator shall disclose to the State all matters relating to the professional conduct of the Operator's Personnel required to be disclosed by the Services Requirements.

#### **5.10 Pre-service training program approved by State**

- (a) The Operator shall have its pre-service training program for Custodians of Inmates accredited by the State before commencing the training of the Operator's Personnel.
- (b) Should the Operator wish to vary the pre-service training program referred to in **Clause 5.10(a)**, the Operator shall submit the relevant details and obtain approval accreditation prior to implementation of the pre-service training program.

#### **5.11 Authorisation of Custodians of Inmates**

The Operator shall not:



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- (a) employ or engage any person to perform the duties of a Custodian of Inmates at the Correctional Centre unless that person has completed an accredited pre-service training program and has been authorised pursuant to section 240 of the CAS Act to exercise the functions and powers of a Custodian of Inmates; or
  - (b) permit any such Custodian of Inmates to discharge functions or exercise powers beyond those which are specified in the instrument by which the Custodian of Inmates was authorised.

#### **5.12 Powers of Custodians of Inmates**

The Commissioner shall, if the Commissioner agrees by instrument in writing, authorise persons nominated by the Operator, and who have completed an accredited course of training to be Custodians of Inmates and to discharge such functions and exercise such powers as are specified in the instrument, including:

- (a) the power to search any Inmate;
- (b) the power to use such force as is reasonably necessary to ensure an Inmate's compliance with a lawful direction given to the Inmate;
- (c) the power to open any mail other than a Privileged Letter or Parcel received by post addressed to any Inmate for the purpose of examining the same to ascertain whether it contains contraband;
- (d) the power to seize and take possession of any contraband for such time as is necessary to notify the Commissioner, the police or such other relevant authority; and
- (e) the power to release from the Correctional Centre any Inmate where notification has been given in writing by the Commissioner ordering the release of such Inmate.

#### **5.13 No employment relationship**

The Operator's Personnel are not, by virtue of this Agreement, employees of the State or the Commissioner.

#### **5.14 Communications and Community Relations**

- (a) The Operator acknowledges that the areas where Services are being carried out are of great importance to many people, including local residents and businesses.
- (aa) The Operator must manage and participate in all community relations programs and activities as:
  - (i) required by the Services Requirements;
  - (ii) contained in the Communications and Community Relations Plan; and
  - (iii) reasonably requested by the State from time to time.
- (b) Without limiting the generality of **Clause 5.14(a)**, the Operator must:
  - (i) comply with, implement (in conjunction with the State) and fund the preparation of, consultations on and implementation of the Communications and Community Relations Plan; and
  - (ii) not, and must procure that its Associates do not, communicate with the media or communicate any information publicly with regard to the

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Correctional Centre without the prior written consent of the State Representative.

- (c) The Operator must (to the extent not otherwise addressed in the Communications and Community Relations Plan):
  - (i) unless otherwise advised by the State Representative, organise and chair all stakeholder group and community meetings, workshops and other stakeholder and community involvement events relating to the Services;
  - (ii) promptly notify the State Representative of any protests, requests, problems and complaints in connection with the Correctional Centre and not liaise directly with members of the community in relation to protests, requests, problems and complaints without the prior written consent of the State Representative;
  - (iii) consult with the State Representative with a view to agreeing a plan to manage community and political protests, requests, problems and complaints; and
  - (iv) engage directly with Junee Shire Council in relation to matters in connection with traffic management, staff recruitment and economic opportunities in the area.

#### **5.15 Aboriginal liaison**

The Operator must engage and make available to Inmates and staff at the Correctional Centre an 'Aboriginal Liaison Officer' in accordance with, and in order to meet, the requirements set out in the Output Specification.

#### **5.16 Aboriginal participation**

The Operator must:

- (a) prepare and submit to the State Representative within the relevant time periods set out in the Plans and Report Schedule, its draft and final Aboriginal Participation Plan.
- (b) systematically manage its Aboriginal participation processes and implement its Aboriginal Participation Plan in accordance with the Aboriginal Participation Plan;
- (c) on an annual basis, provide to the State Representative, its Aboriginal Participation Report which explains how the Aboriginal Participation Plan has been implemented and what outcomes have been achieved; and

demonstrate to the State, whenever requested, that it has met and is meeting at all times its obligations under **Clauses 5.16(a) to 5.16(c)**.

### **6. VARIATIONS TO SERVICES**

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#### **6.1 Variation Request**

- (a) Either party may issue a notice entitled "Variation Request" to the other party which must include details of:
  - (i) the proposed Variation; and

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- (ii) in the case of a Variation proposed by the State, any information the State requires that the Operator includes in its Variation Proposal,

**(Variation Request).**

- (b) Unless otherwise agreed in writing by the State, the Operator will:
  - (i) bear all risks and costs associated with a Variation proposed by the Operator; and
  - (ii) not be entitled to make any Claim against the State arising out of, or in any way in connection with, a Variation proposed by the Operator,including where the State issues a Variation Order requiring the Operator to implement the Variation in accordance with the Variation Proposal.

## **6.2 Variation Proposal**

Within 20 Business Days after receipt of a Variation Request, the Operator must submit a notice entitled "Variation Proposal" to the State (**Variation Proposal**). The Variation Proposal must:

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

## **6.3 Variation Order**

- (a) After receipt of a Variation Proposal, the State may request further information from the Operator required by the State (acting reasonably) to assess the relevant Variation Proposal.
- (b) Where the State requests further information under **Clause 6.3(a)**, the Operator must promptly provide such further information to the State.
- (c) Following:
  - (i) receipt of a Variation Proposal; or
  - (ii) if further information is requested under **Clause 6.3(a)**, receipt by the State from the Operator of all such further information reasonably requested,the State must issue a notice to the Operator advising the Operator that the State:
  - (iii) accepts the Variation Proposal and directs the Operator to proceed with the Variation in accordance with the Variation Proposal by issuing a notice entitled "Variation Order";
  - (iv) does not accept the Variation Proposal but directs the Operator to proceed with the Variation by issuing a notice entitled "Variation Order" in which case the Operator's entitlement to:
    - (A) compensation will be determined in accordance with **Clause 27C**; and
    - (B) relief will be determined by the State (acting reasonably); or
  - (v) does not wish to proceed with the proposed Variation and confirms that the Variation Request is withdrawn.

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- (d) Whether or not either party has issued a Variation Request under **Clause 6.1(a)**, the State may at any time instruct the Operator to implement a Variation by issuing a notice entitled "Variation Order" in which case the Operator's entitlement to:
    - (i) compensation will be determined in accordance with **Clause 27C**; and
    - (ii) relief will be determined by the State (acting reasonably).

#### **6.3A Right to proceed**

- (a) The Operator must not proceed with any Variation, and will not have any entitlement to make any Claim in respect of a Variation unless a Variation Order requiring the Operator to proceed with the Variation has been issued by the State.
- (b) The State will be under no obligation to issue a Variation Order requiring the Operator to proceed with a Variation proposed by the Operator under **Clause 6.1(a)**.

#### **6.3B Omission by State**

- (a) The parties acknowledge and agree that the State may issue a Variation Request that seeks to decrease, omit, delete or remove any part of the Services (**Omitted Services**).
- (b) The Operator must:
  - (i) permit the State or any of the State's Associates to carry out any Omitted Services;
  - (ii) co-operate with the State and any of the State's Associates in carrying out any Omitted Services (as applicable); and
  - (iii) co-ordinate the Services with the work carried out or to be carried out by the State or any of the State's Associates in connection with any Omitted Services (as applicable).

#### **6.3C Implementation**

If the State issues a Variation Order in accordance with **Clause 6.3**:

- (a) the Operator must implement the Variation in accordance with the terms of the Variation Order;
- (b) in respect of a Variation proposed by the Operator under **Clause 6.1(a)** and the Variation will give rise to a saving, the State and the Operator will share any saving between the parties as determined in accordance with **Clause 27C**; and
- (c) where the Operator is entitled to compensation under **Clause 27C**, the State will pay the Operator the amount:
  - (i) if the State issues a notice under **Clause 6.3(c)(iii)**, set out in the Variation Proposal; or
  - (ii) otherwise calculated in accordance with **Clause 27C**.

#### **6.4 Directions**

- (a) For the purposes of this **Clause 6.4**, **Direction** means a direction, determination or decision by the State.

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- (b) If the Operator considers that a Direction constitutes or involves a Variation and the State has not given that Direction expressly by way of a Variation Order, and the Operator intends to make a Claim that the Direction is a Variation, the Operator must:
- (i) within 5 Business Days after receiving the Direction and before commencing any work the subject matter of the Direction, give written notice to the State that it considers the Direction constitutes or involves a Variation; and
  - (ii) within 10 Business Days after giving the notice under **Clause 6.4(b)(i)** and before commencing any work the subject matter of the Direction, give the State a Variation Proposal in respect of the alleged Variation.
- (c) Within 10 Business Days of the State receiving a Variation Proposal under **Clause 6.4(a)** the State must:
- (i) confirm by notice in writing that the Direction is in fact a Variation, in which case the State will issue a notice entitled "Variation Order";  
  
withdraw the Direction, in which case the Operator must not comply with the Direction; or
  - (ii) inform the Operator that, in the State's view, the Direction does not constitute or involve a Variation in which case the Operator must comply with the Direction but may refer the matter to dispute resolution in accordance with **Clause 32**.
- (d) The Operator is not entitled to make any Claim in respect of a Direction that gives rise to a Variation of the type described in **Clause 6.4(b)** unless it has given the notices under **Clause 6.4(b)**.

## **6.5 Change in Requirements**

- (a) If after the Amendment Start Date there is:
- (i) an amendment to the CAS Act which affects the provision of the Services;
  - (ii) an amendment to any Legislative Requirement which specifically applies to correctional centres in New South Wales, including the Correctional Centre and not generally to the community;
  - (iii) a direction or requirement of any person in performing any statutory power which requires changes to the management of prisons in New South Wales and, in particular, the Correctional Centre;
  - (iv) a change to any Government and Department Policy which materially affects the provision of the Services;
  - (v) a change to the Output Specification which materially affects the provision of the Services;
  - (vi) a direction of the State concerning the management of the Correctional Centre, including any direction relating to the detention, treatment, transfer, removal, discharge or release of Inmates;
  - (vii) a direction of the State effecting a change to the Operator's Code of Conduct Manual referred to in **Clause 2.3**;

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- (viii) a direction given by either the State Representative or the Monitor under **Clause 10.7**; or
  - (ix) a direction of the State requiring a revision or variation to the Correctional Centre Operating Manual that meets the requirements of **Clause 20.7**,

that is not required to ensure that the Correctional Centre or the Services are in accordance with this Agreement (each a **Change in Requirements**), the Operator must provide the State with a notice within 10 Business Days of becoming aware of that Change in Requirements that provides details of the Change in Requirements, any Mitigating Factors and the Relevant Relief Effects (**Change Proposal**).

- (b) On receipt of a notice under **Clause 6.5(a)**, the State will notify the Operator whether the State:
  - (i) accepts the Change Proposal and directs the Operator to comply with the relevant Change in Requirements by issuing a notice entitled "Variation Order";
  - (ii) does not accept the Change Proposal but directs the Operator to comply with the relevant Change in Requirements by issuing a notice entitled "Variation Order" in which case the Operator's entitlement to:
    - (A) compensation will be determined in accordance with **Clause 27C**; and
    - (B) relief will be determined by the State (acting reasonably); or
  - (iii) unless a failure to comply with that Change in Requirements would result in the Operator being in breach of Legislation Requirements or any Authorisation, direct the Operator not to comply with the relevant Change Requirements.

## **6.6 Notice of change to policies and procedures**

- (a) Where there is a change to:
  - (i) any Government or Department Policy;
  - (ii) the Output Specification; or
  - (iii) a direction of the State,the State shall provide a specific written direction to the Operator to comply with the matter specified in that direction.
- (b) A failure by the State to provide a written direction in accordance with **Clause 6.6(a)** will not be treated as a default or breach by the State of the provisions of this Agreement.

## **7. OPERATOR'S RIGHT TO TENDER**

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The Operator will not be given any preferential right to tender for the provision of any services required by the State in carrying out any extension, modification or expansion to the Correctional Centre, but will be entitled to submit a response to any request for tenders made with regard to those matters on an arm's length non-discriminatory basis and in accordance with regular practice as set out in Government and Department Policies.

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**8. NOT USED**

**9. DEPARTMENTAL SERVICES**

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**9.1 State to provide Departmental Services**

The State may, at its discretion, provide such of the Departmental Services as the Operator may request from time to time.

**9.2 Payment for Departmental Services**

The Operator shall pay the State for the provision of those Departmental Services for which payment is required in the manner and at the times specified in **Schedule 3**.

**9.3 Departmental Services Standard**

The State shall perform the Departmental Services:

- (a) safely; and
- (b) in accordance with the State's usual standards and level of care, skill, knowledge and judgement.

**9.4 Training initiatives**

- (a) The State may direct that some or all of the Operator's Personnel undergo training or education with the State or its nominee as a result of a Departmental initiative or change in correctional practice which is applicable in correctional centres in New South Wales. Such training will not be a Departmental Service and will be provided by the State at no cost to the Operator.
- (b) Subject to **Clause 9.4 (a)**, training or education initiatives provided by the State or its nominee to the Operator's Personnel:
  - (i) which the Operator is required to provide or arrange under the Output Specification or otherwise; or
  - (ii) which the Operator is directed by the State to undertake (including for remedial purposes),

is a Departmental Service the reasonable cost of which is to be met by the Operator.

**10. APPOINTMENT OF STATE REPRESENTATIVE, MONITOR AND OPERATOR'S REPRESENTATIVE**

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**10.1 Appointment of State Representative**

- (a) The State shall, not later than 30 Business Days after the Commencement Date, appoint a person to be the State Representative.
- (b) The State shall notify the Operator in writing of:
  - (i) the name; and
  - (ii) the contact details,

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of the person appointed as the State Representative as soon as practicable after the appointment, or any reappointment or replacement.

## **10.2 Power and responsibility of State Representative**

Subject to the other provisions of this Agreement, the State Representative:

- (a) has, to the fullest extent permitted by Legislative Requirement, all of the powers of the State in respect of any matter arising under this Agreement; and
- (b) will act as the representative of the State in respect of all matters arising under this Agreement, except as otherwise provided in this Agreement or as otherwise specified in writing by the State.

## **10.3 Appointment of Monitor**

- (a) The State shall, upon the Commencement Date, appoint a person to be the Monitor.
- (b) The State shall notify the Operator in writing of:
  - (i) the name; and
  - (ii) the contact details;of the person appointed as the Monitor as soon as practicable after the appointment, or any reappointment or replacement.

## **10.4 Responsibility of Monitor**

- (a) The Monitor will be responsible to the State for the assessment and review of the management of the Correctional Centre by the Operator.
- (b) The Monitor will provide an annual report in writing to the State of the Monitor's findings regarding:
  - (i) the management of the Correctional Centre; and
  - (ii) any activity undertaken in accordance with this Agreement that effects the Correctional Centre, including any transportation of offenders (including Inmates) to or from the Correctional Centre.
- (c) The Monitor will have such other functions as may be specified in **Schedule 13**, in the CAS Act, and by the Commissioner from time to time.
- (d) The Operator shall provide to the Monitor free and unfettered access at all times to all parts of the Correctional Centre, to all Records, to Inmates and to all persons employed or engaged at the Correctional Centre and/or employed or engaged by the Operator either in respect of the Correctional Centre or the Services.
- (e) The Operator shall provide the Monitor with the use of appropriate facilities at the Correctional Centre when required.

## **10.5 Appointment of Operator's Representative**

- (a) The Operator shall, upon the Commencement Date, appoint a person to be the Operator's Representative.
- (b) The Operator shall notify the State in writing of:
  - (i) the name; and



- 
- (ii) the contact details;

of the person appointed as the Operator's Representative as soon as practicable after the appointment or any reappointment or replacement.

#### **10.6 Power and authority of Operator's Representative**

The Operator's Representative:

- (a) is the agent of the Operator for the purpose of doing anything to be done under this Agreement; and
- (b) has authority to make and give, or accept, on the Operator's behalf any approvals, acceptances, directions, notices and other decisions that the Operator may make, give or accept under this Agreement.

#### **10.7 Operator to comply with directions**

The Operator shall comply with a lawful direction given by the State Representative and or the Monitor in respect of the Services or a matter arising under this Agreement as if that direction had been given by the State.

### **11. COMMUNITY ADVISORY COUNCIL**

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- (a) The parties acknowledge and agree that the Minister shall, pursuant to section 243 of the CAS Act, appoint a Community Advisory Council for the Correctional Centre:
  - (i) the Community Advisory Council will consist of persons who in the opinion of the Minister are suitably qualified to serve on the Community Advisory Council and who are suitably representative of the interests of the local community;
  - (ii) the Community Advisory Council will assist in the monitoring of the management of the Correctional Centre and will have such functions as the Minister determines from time to time; and
  - (iii) the Community Advisory Council shall make quarterly reports in writing to the Minister of its findings regarding the management of the Correctional Centre.
- (b) The Operator shall, at its cost, provide the Community Advisory Council with the use of appropriate facilities at the Correctional Centre when required.

### **12. OFFICIAL VISITORS**

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- (a) The parties acknowledge and agree that the Minister shall, pursuant to section 228 of the CAS Act, appoint Official Visitors to the Correctional Centre.
- (b) The Commissioner shall notify the Operator in writing of:
  - (i) the name; and
  - (ii) the contact details;

of the persons appointed as the Official Visitors as soon as practicable after the appointment, or any reappointment or replacement.

- 
- (c) Not used.
  - (d) Not used.
  - (e) The Operator shall be responsible for meeting the expenses of the Official Visitors, as set out in **Schedule 2**.

The Operator acknowledges that the amount payable as the expenses of the Official Visitors may vary from the amounts set out in Schedule 2 by reason of changes to Legislative Requirements and that the Operator will be required to meet the expenses at the level imposed from time to time.

### **13. PROBATION AND PAROLE OFFICERS**

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The Operator shall at its own cost provide and maintain all reasonably necessary office equipment, facilities and accommodation within the Correctional Centre for the Probation and Parole Staff, including without limitation, the provision of stationery and office supplies.

### **14. COMMUNITY TRANSPORT**

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The Operator shall provide a transport service for visitors of Inmates from Sydney to Junee and return each weekend and public holiday in the manner set out in **Schedule 7**.

### **15. NOT USED**

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### **16. NOT USED**

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### **17. NOT USED**

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### **18. NOT USED**

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### **19. ACCESS AND OCCUPATION**

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#### **19.1 Right to occupy**

The Operator is entitled to occupy the Correctional Centre to enable it to perform the Services.

#### **19.2 No tenancy**

The right to occupy the Correctional Centre conferred by **Clause 19.1** rests in contract only and does not create in or confer upon the Operator any tenancy or estate or interest in or over the Correctional Centre.

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### 19.3 Authorised persons

- (a) The State Representative and the Monitor or any other person so authorised by the State, Commissioner or Legislative Requirement shall at all times have free and unfettered access to the Correctional Centre. The Operator must provide appropriate security measures to ensure the safety and security of such persons when exercising a right of access.
- (b) Official Visitors and members of the Community Advisory Council may visit the Correctional Centre at any time unless, in the opinion of the General Manager, a visit would be undesirable for reasons of security. The Operator must provide appropriate security measures to ensure the safety and security of such persons when exercising a right of access.

### 19.4 Maintenance and Repair

The Operator shall maintain and keep the Correctional Buildings and the Correctional Centre Equipment in good repair and condition, in compliance with the Services Requirements, Maintenance Standards and the Asset Management Plan, and subject to **Clause 46.2** deliver the Correctional Buildings and Correctional Centre Equipment to the State on the Termination Date on the basis that the Correctional Centre, Correctional Buildings and the Correctional Centre Equipment are in the condition required by the Maintenance Standards and the Asset Management Plan.

### 19.5 Utility Service

The Operator shall:

- (a) arrange the provision of each Utility Service to the Correctional Centre as required for the purposes of performing the Services; and
- (b) pay all costs in respect of each Utility Service to the person or entity which provides the Utility Service (including any costs associated with, and obligations arising from any Change in Law affecting the provision of Utility Services to the Correctional Centre).

### 19.6 Correctional Centre Risks

The Operator acknowledges and agrees that as between the Operator and the State all risks of and associated with the occupation, use, physical conditions and characteristics of the Correctional Centre and its surroundings, including but not limited to risks relating to:

- (a) all Utility Services to the Correctional Centre, including those required for the carrying out of the Services;
- (b) the existence of any Pollution, Contamination or other Environmental Aspect of the Correctional Centre;
- (c) the existence of any hazardous conditions or hazardous substances on the Correctional Centre (including any asbestos in any buildings, plant or equipment);
- (d) water, atmospheric and subsurface conditions or characteristics; and
- (e) the suitability of the Correctional Centre for the carrying out of the Services,

rest with the Operator and the Operator may not make any Claim against the State and the State has no liability in relation to such risks.

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**19.7 Permitted Use of Correctional Centre**

The Operator must and must ensure the Operator's Personnel:

- (a) only use the Correctional Centre to perform the Services; and
- (b) do not cause or permit the Correctional Centre to be used for any other purpose, without obtaining the State's prior written consent and all relevant Authorisations.

**19.8 No Misuse of Amenities, Plant and Equipment**

The Operator must not cause or permit:

- (a) the misuse or abuse of any amenities, plant or equipment in the Correctional Centre;
- (b) the use of any amenities, plant or equipment in the Correctional Centre for any purpose other than the purpose for which they were constructed or installed; or
- (c) anything to be done to impede the proper function and operation of any amenity, plant or equipment, including the introduction of sweepings, rubbish, rags or other things that may damage, block or harm the amenity, plant or equipment.

**19.9 No Alterations or Damage**

Except as otherwise permitted by this Agreement the Operator must:

- (a) not cause or permit any alteration, interference with, or damage to:
  - (i) the Correctional Centre;
  - (ii) any Correctional Buildings or Correctional Centre Equipment; or
  - (iii) the State's property;
- (b) at its cost take all appropriate measures to protect and preserve any Correctional Buildings or Correctional Centre Equipment from damage or destruction of any kind; and
- (c) immediately notify the State of any loss, damage or destruction to any Correctional Buildings, Correctional Centre Equipment or State's property.

**19.10 Obligation not to Pollute or Contaminate**

The Operator must not cause or permit:

- (a) any Pollution to occur in or emanate from the Correctional Centre; or
- (b) Contamination of the Correctional Centre or adjacent land by any substance, whether by storm water or other run off or arising from the occupation or use of the Correctional Centre or the carrying out of the Services.

**19.11 Waste disposal**

The Operator must at its cost promptly collect and dispose of all garbage, Waste and oil from the Correctional Centre in accordance with Laws and all applicable Authorisations.

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### **19.12 Inflammable Substances**

The Operator must not cause or permit any chemicals, acetylene, petrol or alcohol, any solid, liquid or gaseous flammable material or any volatile or explosive material to be used, manufactured, processed, distributed, sold, stored or transported to or from the Correctional Centre for any purpose unless:

- (a) all relevant Authorisations are obtained and complied with; and
- (b) the substance is necessary for the performance of the Services at the Correctional Centre and the quantity does not exceed what is reasonably necessary in the circumstances and the amount approved under the relevant Authorisation; and
- (c) where that use, manufacture, processing, distribution, sale, storage or transportation is not specifically contemplated by the Output Specification, the State has given prior written approval to the Operator.

### **19.13 State's Right to Inspect**

- (a) Without affecting the Operator's obligations under this Agreement and without limitation to any inspection contemplated by the Output Specification, the State may at any time and without notice to the Operator:
  - (i) inspect the state of repair and the condition of the Correctional Centre;
  - (ii) carry out works to the Correctional Centre, subject to consultation with the Operator to minimise any interference with the performance of the Services or the Operator's obligations under this Agreement;
  - (iii) remove any hazardous material from the Correctional Centre; and
  - (iv) undertake a review or assessment of any Environmental Aspect of the Correctional Centre including any Contamination or Pollution of or occurring at the Correctional Centre.
- (b) The Operator must provide appropriate security measures to ensure the safety and security of the State (and such personnel exercising authority on the State's behalf) in the exercise of the State's rights under this clause.

### **19.14 Compliance with Laws**

The Operator must comply, and must ensure that all of the Operator's Personnel comply, with all applicable Laws (including any Change in Law), Authorisations and notices in particular relating to:

- (a) performance of the Operator's obligations under this Agreement;
- (b) performance of the Services; and
- (c) the Correctional Centre.

### **19.15 Contamination**

If any Contamination is discovered at the Correctional Centre or discovered to be migrating from the Correctional Centre, the Operator must:

- (a) at its cost comply with all relevant Laws and Authorisations and any notices in respect of the Contamination; and
- (b) immediately notify the State.

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### 19.16 Continuing obligation in respect of Contamination

The Operator's responsibility in respect of Contamination under **Clause 19.15** does not cease at the end of the Term, but continues in relation to any Contamination discovered after the end of the Term.

### 19.17 Reporting

The Operator must:

- (a) maintain adequate procedures to monitor its compliance with Laws in relation to the performance of the Services; and
- (b) immediately notify the State of any failure by the Operator or the Operator's Personnel to comply with any Law.

### 19.18 Obligation to make-good

Without limiting **Clause 19.4**, prior to the end of the Term, the Operator must at its cost:

- (a) retain a suitably qualified environmental expert to carry out an assessment of Contamination and Pollution at the Correctional Centre;
- (b) clean up any Contamination and remove any Pollution not identified in a report obtained by the State and disclosed to the Operator prior to the commencement of the Term; and
- (c) ensure that the physical condition and characteristics of the Correctional Centre are reinstated to at least an equivalent standard as that disclosed in a report obtained by the State and disclosed to the Operator prior to the commencement of the Term unless otherwise agreed by the State.

## 19A EXPANSION WORKS

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### 19A.1 Expansion Works (general)

The parties acknowledge and agree that the State has procured the Contractor (EW) to perform the Expansion Works at or in the vicinity of the Correctional Centre.

### 19A.2 Additional Officers

- (a) The State may, on the second week of every Month after the Amendment Start Date until the Operational Readiness Date (EF), provide a notice to the Operator entitled "Additional Security Escorts Look Forward Notice" which sets out the number of additional correctional officers or additional correctional supervisors (or both, as the case may be) (**Additional Officers**) which the State anticipates will be required for the following Month commencing at least 2 weeks after the date of the relevant Additional Security Escorts Look Forward Notice which must be broken down on a day by day basis (**Additional Security Escorts Look Forward Notice**).
- (b) The Operator must attend weekly meetings with the State to discuss the State's requirement for Additional Officers.
- (c) The State may on a weekly basis until the Operational Readiness Date (EF) provide a notice to the Operator entitled "Additional Security Escorts Notice" which sets out the number of Additional Officers which the State requires the Operator to provide for the week commencing 2 weeks after the date of the relevant Additional

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Security Escorts Notice which must be broken down on a day by day basis  
**(Additional Security Escorts Notice)**.

- (d) Subject to **Clauses 19A.2(e)** and **19A.2(f)**, the Operator must provide 10 Additional Officers on every Escort Day until the Operational Readiness Date (EF). For the avoidance of doubt, such Additional Officers must not otherwise be engaged to provide Services at the existing Correctional Centre for those relevant Escort Days.
- (e) If the State provides an Additional Security Escorts Notice:
  - (i) that requires less than 10 Additional Officers on an Escort Day in the week commencing 2 weeks after the date of the relevant Additional Security Escorts Notice, the Operator must use reasonable endeavours to:
    - (A) provide the number of Additional Officers specified in the relevant Additional Security Escorts Notice for the relevant Escort Days requiring less than 10 Additional Officers; and
    - (B) mitigate its liabilities and other costs in respect of complying with this **Clause 19A.2(e)**; and
  - (ii) that requires more than 10 Additional Officers on an Escort Day in the week commencing 2 weeks after the date of the relevant Additional Security Escorts Notice, the Operator must use best endeavours to provide the number of Additional Officers specified in the relevant Additional Security Escorts Notice for the relevant Escort Days requiring more than 10 Additional Officers.
- (f) The State may direct the Operator that it is no longer required to provide Additional Officers pursuant to this **Clause 19A.2** by providing no less than 4 weeks' notice to the Operator and the Operator is not entitled to make any Claim against the State in respect of such direction.

#### **19A.2A Operational Readiness**

- (a) The Operator acknowledges the State will give the Notice of Operational Readiness (EF) to the Operator in accordance with the Deed of Amendment and Extension.
- (b) Subject to **Clause 19A.7(d)**, but without limiting any of its other obligations under this Agreement, the Operator must:
  - (i) carry out the activities required for the Operator to achieve Operational Readiness (EF); and
  - (ii) achieve Operational Readiness on the Date for Operational Readiness (EF),

**(Operational Readiness (EF) Activities)**, and continue to perform the Services in connection with the Existing Facility.
- (c) If either party becomes aware of any matter which has, or will, delay Operational Readiness (EF) beyond the Date for Operational Readiness (EF), that party must, promptly upon becoming aware of the event, notify the other party of that expectation and provide an estimate of the date upon which it reasonably expects the Date for Operational Readiness (EF) to take place.

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(d) The State may notify the Operator that the Date for Operational Readiness (EF) will be delayed, and the date will be adjusted to reflect the period of that delay. To the extent:

- (i) the Operator demonstrates to the State's satisfaction that it would have achieved Operational Readiness on the Date for Operational Readiness (prior to that date being adjusted); and
- (ii) that delay was the result of an act or omission of the State or its Associates in connection with the Expansion Works,

the State will pay the Operator compensation calculated in accordance with **Clause 27C**.

### **19A.3 Completion and commissioning of the Expansion Works**

- (a) In respect of any testing or commissioning performed by or on behalf of the State in respect of the Expanded Facility:
  - (i) the State may give the Operator not less than 5 Business Days prior written notice of the date, time and place for the conduct of any testing or commissioning;
  - (ii) the State:
    - (A) may postpone a test or commissioning activity; and
    - (B) will provide 5 Business Days' notice to the Operator before any such postponement;
  - (iii) if the State postpones a test or commissioning activity in accordance with **Clause 19A.3(a)(ii)**, the State may give the Operator at least 5 Business Days' notice of the rescheduled date, time and place for the conduct of that test or commissioning activity;
  - (iv) the Operator may, but is not obliged to, attend and witness the conduct of tests or commissioning activity; and
  - (v) if the Operator attends any testing or commissioning in respect of the Expansion Works, the Operator must not provide any comments or otherwise interfere with or hinder the testing or commissioning.

### **19A.4 Expansion Works Defects**

- (a) From the Amendment Start Date until the end of the Term, the Operator must notify the State (or any party nominated by the State) as soon as it becomes aware of any Defect (EW), which notice must identify:
  - (i) the Defect (EW);
  - (ii) the location of that Defect (EW); and
  - (iii) whether the Defect (EW) is a Material Defect (EW).
- (b) If a Material Defect (EW) occurs:
  - (i) the Operator must immediately undertake such temporary and make safe measures as are required to avoid or overcome the occurrence of a Critical Incident and thereafter the regime in **Clause 19A.4(c)** will apply to the rectification of the Defect (EW); and



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- (ii) the cost of any temporary and make safe measures undertaken by the Operator will be paid by the State to the Operator in accordance with **Clause 27C**.
  - (c) Following receipt of a notice from the Operator under **Clause 19A.4(a)** or the State otherwise becoming aware of a Defect (EW), the State (or its nominee) may:
    - (i) rectify the Defect (EW) itself or engage a third party to rectify that Defect (EW); or
    - (ii) issue a notice to the Operator requiring the Operator to rectify that Defect (EW) which notice must set out the timeframe within which the Operator must rectify the Defect (EW) which timeframe must be reasonable having regard to the nature of the Defect (EW) and the operation of the Correctional Centre (**Defect (EW) Notice**).
  - (d) If the State (or its nominee) issues a Defect (EW) Notice:
    - (i) the Operator must rectify that Defect (EW) within the time set out in the Defect (EW) Notice and the cost of any such rectification work will be paid by the State to the Operator in accordance with **Clause 27C**; and
    - (ii) if the Defect (EW) is not rectified by the Operator in accordance with the Defect (EW) Notice as may be extended in accordance with **Clause 19A.4(d)(i)**, then the State may rectify that Defect (EW) itself or engage a third party to rectify that Defect (EW) and any liability incurred by the State in connection with that Defect (EW), including the cost of any such rectification work will be a debt due and payable by the Operator to the State.

#### **19A.5 Handover of Staged Handover Area**

- (a) The Operator acknowledges and agrees that the Staged Handover Area (or any part of it) may be ready for use and operation by the Operator in carrying out the Services prior to the Date for Operational Readiness (EF).
- (b) The State may, at any time prior to the Date for Operational Readiness (EF), provide to the Operator a written notice entitled "Staged Handover Preparation Notice" which sets out:
  - (i) the locations of the Staged Handover Area which the State reasonably anticipates will be ready for the Operator's use prior to the Date for Operational Readiness (EF); and
  - (ii) the date upon which the State reasonably anticipates such Staged Handover Area will be complete and ready for use by the Operator to carry out the Services, which date must be at least 4 weeks after the date of the relevant Staged Handover Preparation Notice,  
**(Staged Handover Preparation Notice)**.
- (c) The State may, no earlier than 4 weeks after the date that the Staged Handover Preparation Notice was provided in accordance with **Clause 19A.5(b)**, provide to the Operator a further written notice entitled "Staged Handover Notice" which sets out the locations of the Staged Handover Area which the State is satisfied (acting reasonably) are ready for the Operator's use and operation prior to the Date for Operational Readiness (EF) (which cannot include any areas not identified in the Staged Handover Preparation Notice) (**Staged Handover Notice**).

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- (d) From the date of the Staged Handover Notice the Operator must perform the Services in the relevant Staged Handover Area identified in the Staged Handover Notice in accordance with this Agreement.

#### **19A.6 Available Inmate Places**

This **Clause 19A.6** applies from the Operational Readiness Date (EF) only and does not impact on the Operator's obligations to provide accommodation to the number of Inmates in the Existing Facility and provide the Services in respect of those Inmates on and from the Amendment Start Date.

- (a) The parties acknowledge and agree that the State:
- (i) may provide the Operator with an updated version of the Ramp-Up Profile Schedule prior to the commencement of the Ramp-Up Period; and
  - (ii) will use reasonable endeavours to consult with the Operator in respect of the updates referred to in **Clause 19A.6(a)(i)**.
- (b) The Operator must, at all times on and from the Operational Readiness Date (EF), provide to the State:
- (i) [REDACTED] Available Inmate Places for medium and minimum security male Inmates;
  - (ii) [REDACTED] Available Inmate Places for female Inmates; and
  - (iii) [REDACTED] Available Inmate Places for maximum security male Inmates,
- at the Correctional Centre.
- (c) Notwithstanding **Clause 19A.6(a)**, during the Ramp-Up Period, the Operator:
- (i) is only required to accommodate the number of Inmates in the Expanded Facility set out in the Ramp-Up Profile Schedule and provide the Services in respect of those Inmates; and
  - (ii) may be required following notice in writing from the State to move Inmates around all housing locations within the Expanded Facility, to ensure that the facilities or procedures within each part of the Expanded Facility operate as designed.
- (d) Without limiting the State's rights under this Agreement, on and from the Operational Readiness Date (EF), the State will pay the Operator the Monthly Service Payment as calculated in accordance with the Payment Schedule.
- (e) Without limiting the State's rights under this Agreement, if at any time during the Ramp-Up Period, the State is of the opinion (acting reasonably) that the Operator is unable to provide the Services in respect of the Expanded Facility to the number of Inmates proposed in the Ramp-Up Profile Schedule having regard to the Operator's performance of the Services, then on and from the date of a notice from the State to the Operator setting out the State's opinion, the Performance Regime will apply and the Monthly Service Payment will be adjusted to the extent and in the manner described in the Performance Regime and the Payment Schedule.

#### **19A.7 Bakery**

- (a) On the Amendment Start Date, the State will hand over the Bakery to the Operator, and the Operator must fully fix all required equipment to, and complete installations

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- within, the Bakery to enable its operation as a fully-functioning commercial bakery (**Bakery Fit Out**).
- (b) The Operator must supply everything necessary, including all Operator's Equipment, to enable the Operator to:
    - (i) properly and satisfactorily complete the Bakery Fit Out and operate the Bakery in accordance with this Agreement; and
    - (ii) otherwise discharge the Operator's obligations under this Agreement.
  - (c) The parties acknowledge and agree that as at the Amendment Start Date, the Bakery is constructed to a standard enabling the Operator to complete the Bakery Fit Out.
  - (d) Unless otherwise agreed by the parties, the Operator must ensure the Bakery is fully operational within 2 Months of the Date for Operational Readiness (EF).
  - (e) The Operator:
    - (i) acknowledges and agrees that, other than the Operator's Equipment, all things affixed to the Bakery or equipment required for the operation of the Bakery (including all equipment and installations installed as part of the Bakery Fit Out) (**Bakery Equipment and Fixtures**) will be owned at all times by the Department;
    - (ii) must ensure that any manufacturers warranties in relation to the Bakery Equipment and Fixtures are assigned to the State;
    - (iii) warrants that all Bakery Equipment and Fixtures will be free from any Security Interest or other restriction on use from the time they are affixed or installed; and
    - (iv) acknowledges and agrees that on the expiry of the Term, full management of the Bakery (including all Bakery Equipment and Fixtures) will revert to the State.

## **20. MANAGEMENT OF THE CORRECTIONAL CENTRE**

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### **20.1 Correctional Centre Operating Manuals**

- (a) No later than 20 Business Days after the Amendment State Date, the Operator must provide revised Operating Manuals to the State for review and approval.
- (b) The revised Operating Manuals must:
  - (i) provide for the Expanded Facility;
  - (ii) comply with the requirements of the Output Specification; and
  - (iii) be consistent with the COPP and all relevant Laws.

### **20.2 Approval of proposed Operating Manuals**

- (a) The State shall advise the Operator within 20 Business Days of receiving the proposed Operating Manuals whether or not the State approves of those proposed Operating Manuals.

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- (b) If the State does not approve of the proposed Operating Manuals, the State shall notify the Operator why the State does not approve the proposed Operating Manuals.

**20.3 Amendment of proposed Operating Manuals**

If the State notifies the Operator that the State does not approve of the proposed Operating Manuals then, within 5 Business Days of the Operator's receipt of that notice, the Operator shall supply the amended proposed Operating Manuals, in which case the provisions of **Clause 20.2** and this **Clause 20.3** will apply to the amended proposed Operating Manuals.

**20.4 Not used**

**20.5 Not used**

**20.6 No variation by Operator**

The Operator shall not revise or vary the contents of any of the Operating Manuals without the State's prior written consent other than in the circumstances described in section 4.4.2 of Part C of the Output Specification.

**20.7 Variations by State**

- (a) Without limiting section 4.4.2 of Part C of the Output Specification, the State may, from time to time, require revisions or variations to the Operating Manuals, and the Operator shall comply with:
  - (i) the State's requirements; and
  - (ii) the requirements of the Operating Manuals as revised or varied.
- (b) Where the State has required revisions or variations to be made to the approved Operating Manuals that are not contemplated by section 4.4.2 of Part C of the Output Specification or the Transition Plan, such revisions or variations may constitute a Change in Requirements.

**20.8 Inconsistencies**

If there is any inconsistency between:

- (a) the provisions of this Agreement and the Operator's approved Operating Manuals, the provisions of this Agreement prevail; and
- (b) the Operator's approved Correctional Centre Operating Manuals and the COPP, the provisions of the COPP prevail.

**21. PERFORMANCE MONITORING**

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- (a) The Operator acknowledges that it shall be subject to continuous appraisal and monitoring at a level determined by the State.
- (b) The Operator shall co-operate with the appraisal and monitoring process and subject to **Clause 19.3** will provide access for Departmental officers involved or any agents so authorised by the State.
- (c) The costs involved in such appraisal and monitoring will be borne by the State except where the action or inaction of the Operator results in increased appraisal or monitoring costs to the State in which case the Operator will bear the increased costs.

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**22. NOT USED**

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**23. FINANCIAL STATEMENTS AND RECORDS OF OPERATOR**

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**23.1 Operator to keep Records**

- (a) The Operator shall keep and maintain Records including but not limited to information in respect of the Output Specification as required by the State.
- (b) To demonstrate compliance with the Output Specification, the Records shall:
  - (i) incorporate the detail; and
  - (ii) meet the standards,  
required by the State.
- (c) The Operator shall do everything necessary and/or reasonably requested by the State to enable the State to comply with applicable Legislative Requirements (including the *State Records Act 1998* (NSW)) in relation to the Records, the Correctional Centre and the Inmates.

**23.2 Availability of Records**

The Operator shall make all Records available to the State for inspection, audit, copying or any other purpose.

**23.3 Operator's financial records**

The Operator shall provide to the State, any person authorised by the State, or by Legislative Requirement:

- (a) all books of account, records and documents, financial, and other accounts which relate to this Agreement or the Services;
- (b) within 3 Months of the end of each immediately preceding Calendar Year, a copy of the Operator's and the Operator's parent entity's most recently audited financial accounts; and
- (c) quarterly audited statements of income in the form specified by the State from the Correctional Industries,

for inspection, copying, audit by the State or the State's nominated auditor or any other purpose.

**23.4 Computer requirement**

- (a) The Operator shall maintain access to the State's corporate information system known as the Offender Integrated Management System.
- (b) The Operator shall:
  - (i) establish a link from the Operator's computer system; and
  - (ii) use software which is either:
    - (A) compatible with the State's computer system; and/or

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- (B) supplied by the State (at the State's cost),
- so that the State:
- (iii) has on-line 24 hour access to the Records; and
  - (iv) can print out and store the Records on the State's computer system.
- (c) The Operator shall continually, as appropriate, upgrade the software and systems on the Operator's computer system at the cost of the:
- (i) State in respect of software which the State supplies; or
  - (ii) Operator in all other cases.
- (d) When the Operator undertakes a software upgrade in accordance with **Clause 23.4(c)(ii)**, the Operator shall immediately:
- (i) so notify the State in writing; and
  - (ii) undertake the work and provide the facilities to ensure that any computer terminal which is linked to the Operator's computer system provided by the Operator to the Monitor or Probation and Parole Staff is similarly upgraded.

### **23.5 Legible reproductions**

If any information or thing referred to in this **Clause 23** is stored or recorded in a medium:

- (a) other than paper; or
- (b) in the Operator's computer system,

the Operator shall, immediately on the State's request, make available to the State such facilities as the State may require to give to the State legible reproduction of that information or thing.

### **23.6 Maintenance of Records**

The Operator shall:

- (a) during the Term of this Agreement maintain the Records in accordance with this Agreement and all Legislative Requirements; and
- (b) hand over all Records relating to the management of the Correctional Centre and Inmates to the State on the expiry of the Term.

### **23.7 Ownership of intellectual property**

- (a) The State will own all Intellectual Property Rights in:
  - (i) any data recorded by the Operator under this Agreement;
  - (ii) Inmates' professional management, detention, case, medical and dental files;
  - (iii) Custodial Operations Policy and Procedures or any other manuals or works commissioned or produced at the direction of the State including the 'Correctional Centre Operating Manuals' prepared by the Operator for the purposes of this Agreement); and
  - (iv) any information about the:

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- (A) Correctional Centre produced by the State;
  - (B) management of Inmates produced by either the State or the Operator; and
  - (C) the Operator's obligations under this Agreement,

regardless of the form in which it is recorded and/or stored, and such rights shall vest in the State immediately on creation.

- (b) To the extent that the Operator may at any time acquire any right, title or interest in any of the materials or works referred to in this clause, the Operator, by this document, assigns to the State all such right, title and interest.
- (c) The Operator warrants that the State's use of any of the materials or works referred to in this clause will not infringe any Intellectual Property Rights of any person nor give rise to any liability to make royalty or other payments to any person.
- (d) The Operator must give the State all information and assistance the State requests to facilitate any application for registration or protection of any Intellectual Property in any of the materials or works referred to in this clause and must execute and deliver any documents required in connection with any such application.

#### **23.8 Protection of Information**

- (a) The parties agree that the information stored on the computer systems of:
  - (i) the State; or
  - (ii) the Operator so far as it relates to the management of Inmates or the Operator's obligations under this Agreement,forms part of the Confidential Information; and
- (b) the provisions of **Clause 40** will apply to all such information as if the Operator were the Receiving Party.

#### **23.9 Operator's assistance**

The Operator shall provide to the State all reasonable facilities and assistance to enable the State to fully exercise the State's powers under this **Clause 23**.

### **24. CRITICAL INCIDENTS, RIOTS AND HOSTAGE OR SIEGE SITUATIONS**

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#### **24.1 Request for assistance**

If the Operator requests the assistance of the State to manage a disturbance, including a riot or a Critical Incident, the Operator shall meet the costs of the service provided by the State on a fee for service basis as set out in **Schedule 3**.

#### **24.2 Intervention**

Where a disturbance other than a hostage or siege situation escalates due to a failure by the Operator to take timely and appropriate action in accordance with the Custodial Operations Policy and Procedures or the Operating Manuals, including requesting assistance from the State, the State may intervene under **Clause 34.3** and the Operator shall meet the State's costs in relation to such intervention as set out in **Schedule 3**, to the

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extent that these costs exceed any reduction in the Monthly Service Payment in accordance with the Performance Regime.

**24.3 Hostage or siege**

Where a disturbance results in a hostage or siege situation the State may intervene under **Clause 34.3** and shall meet its own costs in relation to such intervention.

**24.4 Intervention to affect Monthly Service Payment**

Where the State intervenes in a disturbance pursuant to **Clause 24.2** the Operator will have failed to meet the relevant Key Performance Indicator and may lose a proportion of the Monthly Service Payment.

**25. MONTHLY SERVICE PAYMENT**

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**25.1 Payment Of Monthly Service Payment**

- (a) In consideration of the Operator performing the Services the Operator is entitled, on and from the Amendment Start Date and for the remainder of the Term, the Monthly Service Payment (as calculated in accordance with the Payment Schedule) in accordance with this **Clause 25**.
- (b) Within 5 Business Days at the end of each Month for any other amounts due and payable by the State to the Operator or by the Operator to the State under this Agreement, the Operator must prepare and provide to the State a Payment Claim for any other amounts then due and payable by the State to the Operator or by the Operator to the State under this Agreement.
- (c) The State will, within the later of:
  - (i) 5 Business Days after receipt by the State of a Payment Claim; and
  - (ii) 5 Business Days after receipt by the State of the relevant Monthly Performance Report,provide to the Operator a statement (**Payment Statement**) stating the amount payable to or by the Operator (which may be more or less than the amount set out in the Payment Claim) and the reasons for any difference to the amount in the Payment Claim.
- (d) If the Operator does not issue a Payment Claim or Monthly Performance Report, the State may still issue a Payment Statement setting out the amount payable to or by the Operator.
- (e) Each of the State and the Operator acknowledges that it (or in the case of the State, an entity on behalf of the State) is registered for GST when it enters into this Agreement and that each party will notify the other party if it (or the relevant entity) ceases to be registered.
- (f) Without limiting the Operator's right to dispute the amount for payment stated in the Payment Statement, the Operator or the State (as applicable) will provide to the other party a Tax Invoice in connection with any supplies the subject of the Payment Statement for the amount stated in the Payment Statement within 2 Business Days of receipt of the Payment Statement.
- (g) Without limiting **Clause 25.1**, if the Operator or the State (as applicable) fails to provide a Tax Invoice in the time required, the State or the Operator (as the case



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may be) may prepare the Tax Invoice on behalf of the Operator or the State (as applicable) and provide that Tax Invoice to the Operator or the State (as applicable).

- (h) Subject to **Clause 25.1B**, payment of the amount stated to be payable to or by the Operator in the Payment Statement will be made by the State to the Operator or by the Operator to the State (as the case may be) within 10 Business Days of receipt of the Tax Invoice provided under **Clause 25.1(f)** or clause **25.1(g)**.
- (i) Neither payment of Monthly Service Payments by the State to the Operator nor the issuing of any Payment Statement is:
  - (iii) evidence that the Services have been carried out by the Operator in accordance with this Agreement; or
  - (iv) an admission of liability,and is only to be taken as payment on account.
- (j) The State may, in any Payment Statement, correct any error in any previous Payment Statement issued by the State.

#### **25.1A Payment of other amounts**

The parties acknowledge and agree that the Operator is entitled to certain amounts in addition to the Monthly Service Payment as set out in, and as calculated in accordance with, the Payment Schedule.

#### **25.2 Payment adjustments under the Performance Regime and Payment Schedule**

- (a) The Monthly Service Payments will be adjusted to the extent and in the manner described in the Performance Regime and Payment Schedule to reflect the agreed principle that the State will only pay for the quantum and quality of the Services actually provided. If a Charge Event or Quality Failure occurs, the State may elect to:
  - (i) adjust the Monthly Service Payment in accordance with this **Clause 25.2(a)**; or
  - (ii) require the Operator to pay to the State the corresponding 'charge' as specified in the Performance Regime within 20 Business Days of demand by the State.
- (b) To the extent that the Operator must pay the State for any liabilities contemplated by the exclusions in **Clause 25.2(e)** and those liabilities are in excess of the Monthly Service Payments, then in addition to any other remedies of the State or its Associates under this Agreement or at Law, the future Monthly Service Payments will be reduced to the extent necessary for the State or its Associates to be compensated for those liabilities in full. To the extent that the State and its Associates are unable to recover such compensation by the reduction of future Monthly Service Payments, any shortfall in such compensation will be a debt due and payable by the Operator to the State.
- (c) The Operator acknowledges and agrees that if **Clause 25.2(a)**, or any adjustment under the Performance Regime or Payment Schedule pursuant to that clause, is held to be void or unenforceable, other than a challenge to the Performance Regime or Payment Schedule initiated by the State or its Associates, **Clause 25.2(a)** and the Performance Regime and the Payment Schedule will not limit the Operator's Liability to the State under this Agreement or otherwise at Law for any

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liability suffered by the State up to an amount equal to the amount that would have been applied as a consequence of the Quality Failure or Charge Event had it not been held to be void or unenforceable.

- (d) Subject to **Clause 25.2(c)** and **Clause 25.2(e)** adjustment of the Monthly Service Payments by application of the Performance Regime or Payment Schedule under **Clause 25.2(a)** will be the only monetary consequence for the Operator for any Quality Failure or Charge Event to which the Performance Regime or Payment Schedule applies.
- (e) **Clause 25.2(d)** does not limit or affect:
- (i) any other right or remedy under this Agreement or at Law (other than, subject to this **Clause 25.2(e)**, for monetary compensation to the extent such right or remedy applies to the same events as the Quality Failure or the Charge Event to which the Performance Regime or Payment Schedule applies);
  - (ii) the State's right to recover in respect of loss or damage caused by a Quality Failure or a Charge Event under **Clause 38** (other than **Clause 38(b)(iii)**), to the extent that the State has not been fully compensated for that loss or damage;
  - (iii) the State's entitlement to recover any costs, expenses or liabilities incurred by the State as a consequence of exercising its rights under **Clauses 34.3 or 34.4**;
  - (iv) the State's rights under this Agreement in respect of the event that caused or contributed to the Quality Failure or Charge Event (as opposed to the Quality Failure or Charge Event (as applicable) itself);
  - (v) any payment on termination of this Agreement;
  - (vi) any liability of the Operator under **Clause 19A.4(d)** for the rectification of a Defect; or
  - (vii) any liability of the Operator to the State or an Associate of the State suffered or incurred by the State or any Associate of the State as a result of any:
    - (A) fraudulent, unlawful or criminal act or omission; or
    - (B) any wilful breach of this Agreement,by the Operator or any of its Associates where the State has not been completely compensated for that liability by the adjustment in accordance with **Clause 25.2(a)**.
- (f) The Operator acknowledges and agrees that:
- (i) it is difficult, and in some instances impossible, to calculate with precision the diminution in value the State may suffer in connection with each Quality Failure or Charge Event; and
  - (ii) notwithstanding **Clause 25.2(f)(i)**, the application and escalation of the Performance Regime and Payment Regime associated with each Quality Failure or Charge Event is proportionate and not extravagant and reflects a genuine pre-estimate of the diminution in value of the Services to the State in connection with such Quality Failures or Charge Events.

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## 25.2A Set-off

- (a) Without limiting the State's rights at Law, the State may deduct from any moneys due and payable to the Operator under this Agreement or otherwise at Law:
  - (i) any moneys due and payable by the Operator to the State;
  - (ii) any liabilities contemplated by the exclusions in **Clause 25.2(e)**; and
  - (iii) the amount of any Claim that the State may make in good faith against the Operator.
- (b) The State must provide the Operator with reasonable details of the basis on which it is setting off any amount pursuant to **Clause 25.2A(a)**.
- (c) The Operator must make all payments to the State free from any set-off or counterclaim and without deduction or withholding for or on account of any present or future tax, unless the Operator is compelled by Law to make such a deduction or withholding.

## 25.3 Correctional Industries

The net surplus from Correctional Industries (comprising gross revenue from Correctional Industries less direct expenses incurred by the Operator in generating that revenue) will be set-off against the Monthly Service Payment each Calendar Quarter. The Operator shall prepare and provide to the State an audited report of net surplus (statement of income) from Correctional Industries in the form specified by the State each Calendar Quarter within 4 weeks of the end of each Calendar Quarter.

## 26. NOT USED

## 27. KEY PERFORMANCE INDICATORS

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- (a) At the end of each Contract Year, the Operator must consult in good faith and use all reasonable endeavours to review the operation of each part of each Key Performance Indicator with the State, taking into consideration the following factors:
  - (i) the Target Performance Range, Level 1 Performance Range and Level 2 Performance Range may be adjusted to account for industry improvements to maintain the Operator's performance targets relative to publicly operated correctional centre performance levels, taking into consideration the specific characteristics of the Correctional Centre and Inmates; and
  - (ii) the outcome of:
    - (A) any audit performed in accordance with **Clause 23.2**; and
    - (B) the State exercising any rights under **Clause 34.5** or **Clause 34.6**, of this Agreement.
- (b) To the extent that, in the course of their review, the parties agree that:

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- (i) a Key Performance Indicator or a part of a Key Performance Indicator should be omitted, replaced or otherwise amended;
  - (ii) a new Key Performance Indicator should be inserted;
  - (iii) the Target Performance Range, Level 1 Performance Range and/or Level 2 Performance Range should be increased, decreased or otherwise amended; or
  - (iv) the Quality Failure Points associated with a Key Performance Indicator or any part of a Key Performance Indicator (as set out in the Performance Regime) should be amended,

then:

- (v) the State must prepare and provide the Operator with an amended version of Schedule 19 which clearly identifies any amendments (**Amended Schedule 19**); and
- (vi) both parties must sign the Amended Schedule 19,

and from the date on which the Amended Schedule 19 has been signed by both parties:

- (vii) the Amended Schedule 19 will be deemed to have replaced Schedule 19; and
- (viii) Quality Failure Abatements will be calculated with reference to the Amended Schedule 19.

## **27A RELIEF EVENTS**

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### **27A.1 Early warning**

- (c) If the Operator becomes aware of a Relief Event or any other matter which has prevented, or will prevent it from performing the Services, it must promptly give the State notice of the matter and the delay or effect it is likely to cause (**Early Warning**).
- (d) Subject to this **Clause 27A**, 'prevent' or 'prevented' does not mean that the Operator is permanently prevented from performing its obligations and includes delays in performing its obligations.

### **27A.2 Entitlement to Claim**

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

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

the Operator will be entitled to claim relief from performance of its obligations in accordance with this **Clause 27A**.

### **27A.3 Conditions precedent to relief**

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

- 
- (a) that the Operator submits to the State:
    - (i) a notice (with reference to the Early Warning, if relevant) which includes the Relief Event Effects and any Mitigating Factors, within 10 Business Days after the date on which it first became aware of the occurrence of the Relief Event; and
    - (ii) where the delay or period that the Operator is prevented from performing any of the Services extends beyond the period set out in the notice submitted in accordance with **Clause 27A.3(a)(i)**, an updated notice, once the consequences of the Relief Event have ceased, promptly (and in any event, within 5 Business Days after the consequences of the Relief Event have ceased); and
  - (b) the Operator's performance of all or any part of the Services is actually prevented, or will actually be prevented, by the relevant Relief Event.

#### **27A.4 Relief determined by State**

- (a) Subject to **Clause 27A.4(b)**, if the conditions precedent in **Clause 27A.3** have been satisfied, the State will grant the Operator such reasonable relief from the Services taking into account all relevant evidence presented by the parties.
- (b) Notwithstanding anything in this Agreement, the State is not required to grant the Operator relief from any Services from which the Operator has not claimed relief.
- (c) To the extent that the Operator is granted relief under **Clause 27A.4(a)** in respect of a Compensable Relief Event, the State will pay the Operator the amount calculated in accordance with **Clause 27C**.
- (d) If the Operator is granted relief under **Clause 27A.4(a)**:
  - (i) the State must continue to pay the Operator the Monthly Service Payment in connection with the Services affected by the Relief Event which are suspended in accordance with **Clause 27A.4(e)** for the period of the suspension; and
  - (ii) the Monthly Service Payment will not be subject to Abatement in accordance with the Performance Regime and the Payment Schedule in connection with the Relief Event; and
  - (iii) the State will deduct from the Monthly Service Payment, the amounts of any recurrent and other costs which are permanently avoided by the Operator because the obligation to carry out the relevant Services has been suspended,provided that the Operator has complied and continues to comply with **Clause 27A.3**.
- (e) Subject to **Clause 27A.5**, to the extent that:
  - (i) a Relief Event prevents the Operator from meeting any part of the Services Requirements in accordance with this Agreement; and
  - (ii) the conditions precedent in **Clause 27A.3** have been satisfied,then:
  - (iii) the relevant obligation of the Operator will be suspended; and

- 
- (iv) the failure to perform the affected Services will not be a breach of this Agreement by the Operator, a Major Default or a Default Termination Event,  
but only until the earlier of:
    - (v) the date the Relief Event and its consequences cease to prevent performance of the relevant Services; and
    - (vi) the date on which the Relief Event and its consequences would have ceased to prevent performance, had the Operator or any of its Associates not failed to do any of the things contemplated by **Clause 27B(b)**.
  - (f) Subject to **Clause 27A.5**, if a Relief Event prevents the Operator from meeting any part of the Services Requirements in accordance with this Agreement, then the Operator:
    - (i) must, subject to **Clause 27A.4(a)** and unless it is actually or practically impossible to do so at the Correctional Centre given the nature of the Relief Event, continue to provide the Services and otherwise perform its obligations under this Agreement;
    - (ii) must use all reasonable endeavours to amend its methodology for performing the Services as necessary to continue to provide the Services during the Relief Event; and
    - (iii) must continue to perform the Services in accordance with current Best Services Practice.

#### **27A.5 Essential Services**

Notwithstanding the occurrence of a Relief Event, the Operator must continue to perform the Essential Services except to the extent and for the duration that the State exercises its right to appoint a Step In Operator to perform the Essential Services in accordance with **Clause 34.5** or **Clause 34.6**.

#### **27A.6 Alternative arrangements**

- (a) During the period of suspension of any Services as a result of a Relief Event, the State may:
  - (i) make alternative arrangements for the performance of those Services at no cost to the Operator, and without the State incurring any liability to the Operator in respect of those alternative arrangements; or
  - (ii) direct the Operator to deliver those Services by an alternative method or 'work around' from that contemplated in the then current COPP and the Output Specification to the extent that it is reasonably possible for the Operator to do so.
- (b) If the State requires the Operator to perform those Services by an alternative method or 'work around' in accordance with **Clause 27A.6(a)(ii)**, the State must pay the Operator an amount calculated in accordance with **Clause 27C** in respect of such alternative method or 'work around'.

#### **27A.7 Cessation of Relief Event**

The Operator must:

- (a) notify the State; and

- 
- (b) recommence performing all Services suspended as a result of the Relief Event, immediately after it ceases to be prevented from performing those Services as a result of the relevant Relief Event or its consequences.

#### **27A.8 Sole Remedy**

- (a) The Operator's sole remedy for a prevention, delay or disruption during the Term is as set out in this **Clause 27A**.
- (b) The Operator will not be entitled to make any Claim, and the State will have no liability for, any Claim made by the Operator (including for damages for breach) for the Operator being delayed or prevented from providing the Services in accordance with this Agreement other than for the relief and compensation in accordance with this **Clause 27A**.

#### **27B REDUCTION IN LIABILITY FOR RELEVANT EVENTS**

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The State's, Commissioner's and Department's liability and the Operator's entitlements in connection with any Relief Event or other event which entitles the Operator to:

- (a) relief or suspension from performance of its obligations under this Agreement;
- (b) compensation from the State; or
- (c) bring any other Claim against the State,

in connection with the performance of the Services (**Relevant Event**) will be reduced:

- (a) to the extent that the Relevant Event is:
- (i) within the reasonable control of the Operator and its Associates; or
- (ii) caused or contributed to by an act or omission of the Operator;
- (b) to the extent the Operator, or any of its Associates, fails to:
- (i) use all reasonable endeavours to mitigate, minimise or avoid the effects, consequences or duration of the Relevant Event (including by putting in place temporary measures reasonably required by the State); or
- (ii) take all reasonable steps which a prudent, competent and experienced contractor in the circumstances of the Operator or the relevant Associate of the Operator would have taken to mitigate, minimise or avoid the effects, consequences or duration of the Relevant Event;
- (c) by any insurance proceeds:
- (i) payable to the Operator, or any of its Associates, in respect of any Insurances; or
- (ii) which would have been payable to the Operator or any of its Associates in accordance with any Insurances referred to in **Clause 43** but for a failure by the Operator to comply with this Agreement or a failure by the Operator or any of its Associates to comply with the terms of those Insurances.

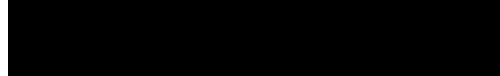
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## 27C COMPENSATION

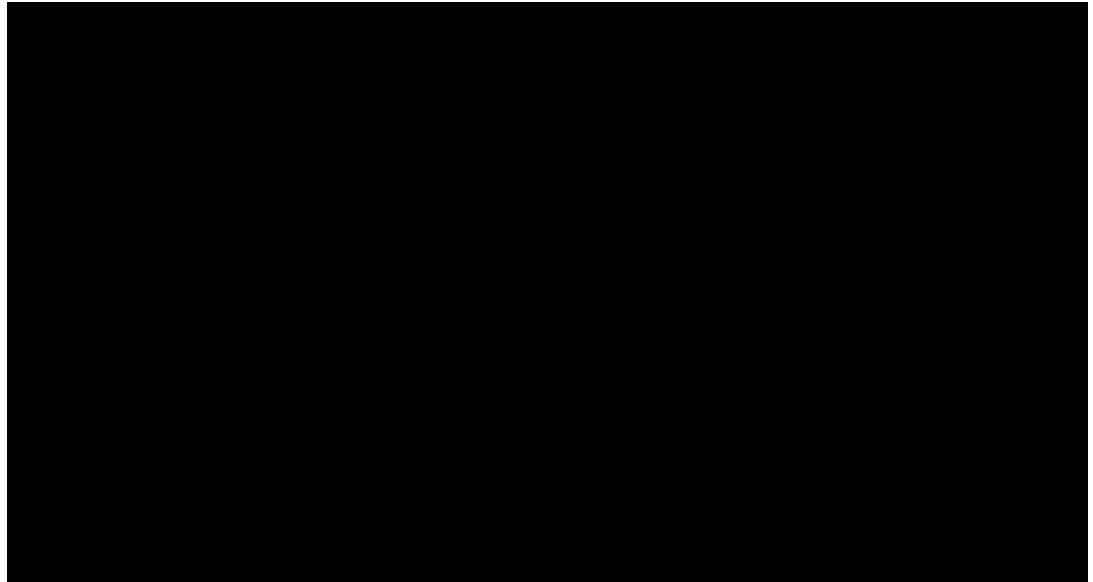
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### 27C.1 Compensation

Where this Agreement requires compensation to be calculated in accordance with **Clause 27C**, the compensation payable to, or by, the Operator will be calculated in accordance with this **Clause 27C**, including as follows:



where:



### 27C.2 Operator Margin

Where this Agreement requires compensation to be calculated in accordance with clause 27C, the applicable Operator Margin relevant to the calculation of 'C' and 'D' under clause 27C.1 is as follows:





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### 27C.3 General principles for calculating compensation

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

- (a) **(overriding considerations)**: the overriding considerations will be that:
  - (i) the State is receiving value for money; and
  - (ii) the compensation amount is fair and reasonable and is calculated in a manner that is transparent and reflects commercial arm's length arrangements;
- (b) **(Open Book Basis)**: the Operator must and must procure that its Associates:
  - (i) provide all information referred to in this **Clause 27C** on an Open Book Basis;
  - (ii) make available the appropriate personnel to explain the basis on which a particular calculation has been made; and
  - (iii) allow the State to review and undertake audits,

in order to enable the State to verify compliance with this Agreement and make an accurate assessment of compensation;
- (c) **(time value of money)**: appropriate regard must be given to the time value of money and timing of cash flows by discounting or inflating them to reflect when they occur (if applicable); and
- (d) **(no double counting)**: no amounts will be double counted and no costs will be payable more than once;
- (e) **(costs and margin)**: any costs which have, or will be, incurred by the Operator as a result of the relevant event will not include any Margin; and
- (f) **(Margin)**: except where the Operator is expressly entitled to be paid a Margin, the State will not pay or otherwise compensate the Operator for any Margin (or loss of Margin) in respect of a Compensable Relief Event.

In this **Clause 27C.3**, 'Open Book Basis' includes the Operator providing a breakdown of the calculation of all relevant preliminaries, labour, equipment, materials, subcontract, finance and other costs and Margins of the Operator and its Associates in a clear and transparent manner and other information reasonably requested by the State including reasonably available source documents required to verify such calculation.

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#### 27C.4 Savings for Operator Variations

For the purposes of **Clause 6.3C**, the amount of any saving payable to the State in respect of a Variation proposed by the Operator that will give rise to a saving will be:

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

#### 27C.5 Annual review of ongoing compensation

- (a) **(Annual review)**: If compensation is payable to the Operator under this **Clause 27C** and has been made by an increase in the Monthly Service Payment, the amount of the compensation will be subject to annual review at the end of each Operating Year in accordance with this **Clause 27C.5** to reflect actual costs incurred for the relevant event entitling the Operator to compensation under this **Clause 27C** for that Operating Year.
- (b) **(Adjustment to Monthly Service Payment)**: To the extent that the ongoing net costs or net savings arising as a consequence of any event entitling the Operator to compensation under this **Clause 27C** differs from the then existing compensation made through the Monthly Service Payment, the Monthly Service Payment will be adjusted accordingly over the balance of the Term.
- (c) **(Time of review)**: Within one Month prior to the end of each Operating Year, the Operator must undertake and provide to the State a review of the amount of ongoing net costs or net savings arising as a consequence of the event entitling the Operator to compensation under this **Clause 27C** incurred, paid or accrued for which compensation has been made through the Monthly Service Payment over the Term.
- (d) **(State review and Disputes)**: The State must, within 20 Business Days of receipt of a review undertaken in accordance with **Clause 27C.5(c)**, notify the Operator of any matter within that review with which the State does not agree, and any Dispute on the extent of any adjustment of compensation may be referred by either party for resolution in accordance with **Clause 32**.

### 28. GST

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#### 28.1 GST Wording

Words defined in the GST law have the same meaning in clauses concerning GST, unless it is clear that a different meaning is intended.

#### 28.2 GST Gross-up

If GST is or will be imposed on a supply made under or in connection with this Agreement to the extent that the consideration otherwise provided for that supply under this Agreement is not stated to include an amount in respect of GST on the supply:

- (a) the consideration otherwise provided for that supply under this Agreement is increased by the amount of that GST; and
- (b) the recipient must make payment of the increase as and when the consideration otherwise provided for, or relevant part of it, must be paid or provided or if the consideration has already been paid or provided, within 7 days of receiving a written demand from the supplier.

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### 28.3 Tax Invoices

The right of the supplier to recover any amount in respect of GST under this Agreement on a supply is subject to the issuing of the relevant Tax Invoice or adjustment note to the recipient.

### 28.4 Reimbursements/Indemnities

- (a) If a party has a Claim under or in connection with this Agreement for a cost on which that party must pay an amount for GST, the Claim is for the cost plus the amount of GST (except any amount for GST for which that party is entitled to an input tax credit).
- (b) If an amount under or in connection with this Agreement depends on actual or estimated revenue or a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether or not that amount is separate or included as part of a larger amount).

## 29. PERFORMANCE SECURITY

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### 29.1 Operator to provide Performance Security

On the Commencement Date the Operator provided to the State the Performance Security.

### 29.2 State's recourse to, and replacement of, Performance Security

- (a) The State may have recourse to all or part of the Performance Security in any manner the State may determine:
  - (i) where the Operator has committed or permitted to occur an Major Default; and
  - (ii) where the Operator has failed to remedy or rectify such Major Default within the time specified by the State for the Operator to do so; or
  - (iii) where the State has otherwise become entitled under this Agreement to have recourse to the Performance Security.
- (b) The amount of the Performance Security to which the State has recourse in accordance with **Clause 29.2(a)** will be the amount determined by the State. The determination by the State under this clause may be disputed by the Operator and, if so disputed, shall be resolved as a dispute in accordance with **Clause 32**.
- (c) The Operator shall within 5 Business Days after receiving a request from the State replace the whole or any part of the Performance Security used or applied by the State to ensure that the total amount of the Performance Security remains, at all times, not less than the amount specified in the definition of "Performance Security" in **Clause 1.1**.

### 29.3 Release of Performance Security

Subject to the Operator's due and proper performance of its obligations under this Agreement, the State will release the Performance Security 20 Business Days after the Termination Date.

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### 30. ASSET OWNERSHIP

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The parties acknowledge that:

- (a) ownership of the Correctional Centre Equipment, including any replacement for or addition to the Correctional Centre Equipment, remains with the State at all times; and
- (b) ownership of the Operator's Equipment is and remains with the Operator at all times.

### 30A NOT USED

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### 30B. ASSET MAINTENANCE PERFORMANCE GUARANTEE

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- (a) The State will approximately 6 Months prior to the Termination Date undertake an assessment of the condition of the Correctional Centre Buildings and Correctional Centre Equipment.
- (b) Should the assessment disclose non-compliance with the Maintenance Standards or the Asset Management Plan (or both, as the case may be), then:
  - (i) the State will, not later than 3 Months prior to the Termination Date, notify the Operator of the details of its non-compliance;
  - (ii) the Operator will within 7 days of receipt of such notice provide the State with an outline of a program of works necessary to restore the condition of the Correctional Centre Buildings or Correctional Centre Equipment as the case may be; and
  - (iii) the time allowed to complete the works will be a period which will expire prior to the expiration of the Agreement and within 8 weeks from the date of notification, or in accordance with the program provided under **Clause 30B(b)(ii)**, subject to any amendments to that program required by the State and advised to the Operator in writing within 14 days.
- (c) Should the Operator fail to provide the program of works or restore the condition of the Correctional Centre Buildings to an acceptable standard within the required time set out in **Clause 30B(b)(iii)**, then:
  - (i) the Operator is to lodge with the State a Bank Guarantee to the value of [REDACTED] plus the value of outstanding works (with such amounts adjusted for CPI from the Effective Date); and
  - (ii) such Bank Guarantee will be held by the State until the works are completed in accordance with this clause; or
  - (iii) should the works not be completed by a time 3 Months prior to the Termination Date then the State may upon giving notice to the Operator draw down the Bank Guarantee and arrange the completion of the works;
  - (iv) in the event that there is a balance of the Bank Guarantee remaining upon completion of the works, then such balance will be paid to the Operator within 30 days of the State's completion of the works; or

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- (v) in the event of the cost of the works exceeding the value of the Bank Guarantee, the amount outstanding will be deemed to be a debt due and payable by the Operator to the State within 14 days of a demand in that sum.

### **30C. NOT USED**

## **31. RELATIONSHIP MANAGEMENT**

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### **31.1 Co-operation**

In carrying out their respective obligations under this Agreement each party shall co-operate in a timely and effective manner with the other, using the management structures and contact persons detailed in the Roles and Relationships Procedures as set out in **Schedule 11**.

### **31.2 Meetings**

The State Representative and the Operator's Representative will meet regularly as agreed under the Roles and Relationships Procedures to discuss any Issues referred to them under **Clause 31.3**, and any other matters relating to this Agreement.

### **31.3 Issues**

- (a) Each Party will keep the other informed as to any Issues.
- (b) If the State Representative and the Operator's Representative are unable to agree upon a solution to the Issue within 5 Business Days of the receiving party receiving written notice of the Issue, either party may refer the Issue to the parties' respective nominees specified in the Roles and Relationships Procedures.

### **31.4 Escalation of Issues**

- (a) If the parties' respective nominees specified in the Roles and Relationships Procedures are unable to agree upon a solution to the Issue within 5 Business Days of the Issue being referred to them, both parties shall refer the Issue to their respective chief executives (or equivalent officer).
- (b) If the parties' respective chief executives (or equivalent officers) are unable to agree upon a solution to the Issue or an alternative method for the resolution of the Issue (such as a dispute resolution panel) within 5 Business Days of the Issue being referred to them, the procedures in **Clause 32** will apply to that Issue.

### **31.5 Issues register**

The Operator shall record all Issues arising under **Clause 31.3** in an Issues register, and keep an ongoing record of the status of each Issue so recorded including, if applicable, when and how the Issue was resolved. The State shall have access to the Issues register at all reasonable times.

## **32. DISPUTE RESOLUTION**

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### **32.1 Amicable settlement**

The parties shall use reasonable endeavours to solve a Dispute amicably using the procedures set out in **Clause 31** and otherwise through discussions between the parties.

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Only if the parties fail to resolve the Dispute within 20 Business Days (or such other period as agreed to in writing between the parties) using the procedures set out in **Clause 31** or by amicable arrangement and compromise, the aggrieved party may notify the other party that it seeks arbitration of the Issue in accordance with the provisions of this **Clause 32**.

### **32.2 Means of Resolution**

A Dispute is to be dealt with as follows:

- (a) where the parties agree within 15 Business Days of the day on which notice of the Dispute is given that the Dispute be submitted to arbitration; or
- (b) where the parties do not agree that the Dispute be submitted to arbitration, the Dispute shall:
  - (i) first be the subject of conciliation administered by ACICA conducted and held in accordance with the conciliation rules of ACICA in force on the day notice of the Dispute is given (or if none exist at that date, in force on the date of this Agreement); and
  - (ii) where the Dispute has not been resolved within 20 Business Days (or any other period as may be agreed to in writing by the parties) of the conciliation, the Dispute shall be submitted to arbitration before an arbitrator appointed by ACICA.
- (c) A dispute submitted to arbitration shall be administered by ACICA. The arbitrator shall be agreed between the parties from a panel suggested by the President of the ACICA or failing agreement an arbitrator appointed by the President of ACICA. Subject to the foregoing arbitration shall be conducted and held in accordance with and subject to the laws in New South Wales. The arbitrator shall not be the same person as the conciliator.

### **32.3 Place of Arbitration or Conciliation**

Any arbitration or conciliation meetings and proceedings are to be held in Sydney (or in any other place agreed to in writing between the parties).

### **32.4 Continuance of Performance**

Despite the existence of a Dispute, the parties shall continue to perform their respective obligations under this Agreement.

### **32.5 Summary or Urgent Relief**

Nothing in this **Clause 32** prevents either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

### **33. NOT USED**

### **34. INTERVENTION IN RELATION TO TERMINATION OF OR SUSPENSION OF AGREEMENT**

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#### **34.1 Major Default Notice**

If a Major Default occurs, the State may give the Operator a Major Default Notice.

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### 34.2 Rectification period

On receipt of a Major Default Notice the Operator shall:

- (a) in the case of a Major Default which relates to the payment of money, rectify that Major Default within 5 Business Days;
- (b) in the case of a Major Default which relates to the provision of an Essential Service and which is capable of remedy, remedy that Major Default as soon as the Major Default can be rectified, and in any case, within 24 hours;
- (c) in any other case of a Major Default which is capable of remedy, remedy the Major Default within 10 Business Days; and
- (d) in the case of a Major Default which is not capable of remedy, show cause as to why the State should not exercise the right to suspend or terminate this Agreement under **Clause 34.4**.

### 34.2A Cure Regime

- (a) Where a Major Default which is capable of being remedied (other than a Major Default to which **Clause 34.2(a)** applies) occurs and the Major Default cannot be remedied in the time period referred to in **Clause 34.2**, the Operator may, within the relevant time frame referred to in **Clause 34.2**:
  - (i) introduce temporary measures to permit Services to be provided notwithstanding the Major Default, and these temporary measures may be of a standard lesser than that required by this Agreement but must be of a standard which is acceptable to the State; and
  - (ii) provide to the State a cure plan, being the plan proposed by the Operator to remedy the Major Default and which must outline the extension to the time periods referred to in **Clause 34.2** which is required, the time required in which to cure the Major Default and the work plan to be undertaken to ensure compliance (the **Cure Plan**).
- (b) Where the Operator has introduced temporary measures and provided a Cure Plan which are acceptable to the State, the State will grant an extension of the time within which the relevant Major Default can be remedied under **Clause 34.2** in order to permit the Operator to carry out the Cure Plan and remedy the Major Default.

### 34.3 Intervention by the State

- (a) The State may intervene in relation to this Agreement if:
  - (i) there are grounds for so doing under **Clause 34.3(b)**; or
  - (ii) the intervention is in the public interest or is necessary to ensure the proper performance of a Service.
- (b) The grounds for intervening in this Agreement are that:
  - (i) the circumstances set out in **Clauses 24.2** or **24.3** occur; or
  - (ii) the Operator fails to effectively perform a Service.

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#### **34.4 Termination or suspension of Agreement**

The State, with the approval of the Minister, may terminate or suspend (wholly or partially) this Agreement if, in the opinion of the State:

- (a) a Default Termination Event occurs; and
- (b) the termination or suspension of this Agreement is in the public interest.

#### **34.5 Step In Operator Where Intervention in Relation to Agreement**

If the State intervenes under **Clause 34.3**, the State may appoint a Step In Operator:

- (a) to give directions to the Operator as to the manner in which a Service is to be performed; or
- (b) to perform a Service.

#### **34.6 Step In Operator where termination or suspension of this Agreement**

If the State terminates or suspends this Agreement under **Clause 34.4**, the State:

- (a) will give notice to this effect to the Operator (**Default Termination Notice**); and
- (b) may appoint a Step In Operator to perform any Service.

#### **34.7 Compliance with directions**

The Operator and all of the Operator's Personnel shall comply with any direction in respect of the performance of a Service, or ceasing the performance of a Service, given by a Step In Operator.

#### **34.8 State may be Step In Operator**

The State may appoint the Department as the Step In Operator.

#### **34.9 Requisitioning of Operator's Equipment**

If the State intervenes in this Agreement under **Clause 34.3** or terminates or suspends this Agreement under **Clause 34.4**, the State or the Step In Operator (with the approval of the State) may:

- (a) no later than 2 Months after the intervention, termination or suspension, requisition any Operator's Equipment; and
- (b) use any Operator's Equipment for the ongoing performance of the Services during the period of intervention provided such period does not exceed 12 Months on and from the requisition of the Operator's Equipment.

#### **34.10 Consequences of Intervention in this Agreement**

If the State intervenes in this Agreement pursuant to **Clause 34.3**:

- (a) without prejudice to any of the State's other rights, the Operator shall unless this Agreement provides otherwise pay to the State the costs of the State;
- (b) no compensation will be payable by the State or any other person to the Operator or any other person in respect of the State intervening in this Agreement pursuant to **Clause 34.3**;



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- (c) the Monthly Service Payment will be adjusted in accordance with the Performance Regime and the Payment Schedule to the extent the Services are not being provided in accordance with this Agreement; and
  - (d) if the amount under **Clause 34.10(a)** is in excess of the Monthly Service Payment amount (as adjusted in accordance with the Performance Regime and the Payment Schedule under **Clause 34.10(c)**), such amount will be a debt due and payable by the Operator to the State, other than to the extent the State's costs are incurred as a consequence of any breach of this Agreement by the State or a negligent act or omission of the State or its Associates.

#### **34.11 Consequences of termination or suspension of this Agreement**

- (a) The Operator shall compensate the State for any Loss incurred by the State arising from the termination or suspension of this Agreement pursuant to **Clause 34.4(a)**. The Loss for which the Operator shall be liable shall not include any higher cost charged by a replacement Operator or otherwise incurred by the State for the performance of the Services in the period commencing 12 Months after termination or suspension of the Agreement and continuing for the balance of the Term of this Agreement (assuming this Agreement had not been terminated).
- (b) Subject to clause 34.11(c), no compensation (including no Monthly Service Payment) will be payable by the State to the Operator or any other person in respect of the State suspending or terminating this Agreement pursuant to **Clause 34.4**, other than that the State will pay to the Operator any amount due to the Operator for Services performed prior to the date of such termination or suspension.
- (c) If this Agreement is terminated under **Clause 34.4(b)** prior to 31 March 2024, the State will pay the Operator the 'Bakery Termination Payment' calculated in accordance with Annexure 6 of the Payment Schedule.

#### **34.12 Compensation for requisitioning Operator's Equipment**

If any Operator's Equipment is requisitioned under **Clause 34.9**, the State shall pay to the Operator as full and final compensation for the loss of the use of the Operator's Equipment for the period in which such equipment is requisitioned an amount:

- (a) as agreed by the State and the Operator; or
- (b) if the parties do not agree, an amount determined by an independent valuer appointed by the President of the ACICA on the application of either party.

### **35. OBLIGATIONS ON TERMINATION**

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#### **35.1 Handover**

The Operator shall do all things reasonably required of the Operator by the State to ensure that on expiry of the Term there is a smooth and efficient transfer of responsibility for the performance of the Services from the Operator to the State or to any other person the State nominates.

#### **35.2 Obligations on handover**

Without limiting **Clause 35.1**, on the expiry of the Term the Operator shall, if required by the State:

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- (a) surrender to the State, or otherwise give the State unrestricted access to and the right to use and copy, all Records and other data, systems and information held by the Operator in relation to the performance of the Services;
  - (b) continue to perform the Services, or any part of them that the State may require for that period of management not exceeding 3 Months as the State may reasonably require to effect the handover, in which case the Operator will continue to be paid the Monthly Service Payment;
  - (c) when required by the State;
    - (i) give up possession of the Correctional Centre; and
    - (ii) deliver to the State all keys, security access cards and other devices associated with security and movement throughout the Correctional Centre; and
  - (d) co-operate with the State and provide reasonable assistance to the State in connection with the transfer of the performance of the Services to the employees of the State, the Minister or the Commissioner or to employees of a third party nominated by the State; and
  - (e) delivered to the State all items required as contemplated by the Handover Package.

### **35.3 Removal of Operator's Equipment**

Subject to **Clause 34.9** and **Clause 35.2**, within 10 Business Days after the expiry of the Term the Operator shall remove from the Correctional Centre all of the Operator's Equipment.

### **35.4 Operator's Equipment left**

Subject to **Clause 35.3**, if the Operator fails to remove from the Correctional Centre any of the Operator's Equipment or other goods within the period referred to in **Clause 35.3**, the Operator's Equipment or goods will be deemed to have been abandoned by the Operator and:

- (a) will become the property of the State; and
- (b) the State may elect to:
  - (i) retain the abandoned property; or
  - (ii) dispose of that property as the State thinks fit, and retain any money that the State may receive in respect of any such disposal.

### **35.5 Rectification of damage**

The Operator shall make good to the State's satisfaction any damage caused to the Correctional Centre by the Operator removing any of the Operator's Equipment.

### **35.6 Condition of the Correctional Centre**

Without limiting **Clause 30B**, on termination of this Agreement the Operator shall leave the Correctional Buildings in a state of repair and condition that is in accordance with the Operator's obligations under this Agreement.

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### 35.7 Delivery of Correctional Centre Equipment

Without limiting **Clause 30B**, the Operator shall, promptly on the Termination Date, deliver the Correctional Centre Equipment to the State in the state of repair and condition that is in accordance with the Operator's obligations under this Agreement.

### 35.8 Rights of State preserved

The termination of this Agreement will not affect any of the State's rights against the Operator in respect of anything occurring prior to the Termination Date.

### 35.9 Transition Out Plan

- (a) The Operator shall develop, in consultation with the State, a Transition Out Plan for the orderly transition of the obligation to perform the Services to the State or the State's nominee on termination or expiry of this Agreement. The parties shall meet to develop the Transition Out Plan within 6 Months of the Amendment Start Date, so that an initial Transition Out Plan is developed within that period, and the parties shall review the Transition Out Plan at the end of each Contract Year.
- (b) The parties shall meet to review and finalise the Transition Out Plan, in the light of circumstances then applicable, not less than 6 Months prior to the scheduled expiration of the Term.
- (c) The Transition Out Plan shall set out the obligations to be performed by each party in connection with the orderly transition of the obligation to perform the Services to the State or its nominee, and shall include those matters described in **Schedule 10**.

### 35.10 Termination of Use of the Correctional Centre

Except as otherwise provided by this Agreement, the entitlement of the Operator to use the Correctional Centre ceases on the expiry of the Term and the Operator shall not, and shall ensure that none of the Operator's Personnel, use or occupy the Correctional Centre for any purpose after that date except with the State's prior written consent.

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## 36. TREATMENT OF EMPLOYEES ON TERMINATION

### 36.1 Payment of entitlements/redundancy

On termination of this Agreement:

- (a) the State shall use reasonable endeavours to ensure that any incoming operator makes an offer of employment to each of the Operator's Personnel on terms no less favourable to the Operator's Personnel than those which apply as at the termination of this Agreement; and
- (b) the Operator shall pay:
  - (i) any redundancy payments which are required to be paid to any employee who does not accept an offer of employment from the incoming operator or the State; and
  - (ii) the amount determined in accordance with **Clause 36.2** to the incoming operator or the State on the State's demand.

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## 36.2 Determination of Entitlements

The State shall within 10 Business Days of the Termination Date cause to be determined by an independent expert the net cash value of the legal entitlements, for each of the Operator's Personnel who accepts an offer of employment with the incoming operator made pursuant to **Clause 36.1(a)** which would be payable to each of the Operator's Personnel if his or her employment were terminated as at the Termination Date.

## 37. WARRANTIES

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### 37.1 General

The Operator as at the date of this Agreement:

- (a) makes the representations and warranties set out in **Clause 37.2** for the benefit of the State; and
- (b) acknowledges that the State has entered into this Agreement in reliance on those representations and warranties.

### 37.2 Representations and Warranties

The Operator makes the following representations and warranties:

- (a) the Operator is a body corporate validly incorporated and existing under the laws of Australia;
- (b) the Operator has the power:
  - (i) to carry on the Operator's business as now conducted or contemplated; and
  - (ii) to enter into this Agreement and observe and perform the Operator's covenants to be observed and performed by the Operator;
- (c) the Operator has taken all necessary action to authorise the entry into, and the observance and performance of, this Agreement;
- (d) each authorisation required in relation to:
  - (i) the execution, delivery or observance and performance by the Operator of;
  - (ii) the validity and enforceability of; or
  - (iii) the transactions contemplated by,this Agreement has been obtained or effected and is in full force and effect;
- (e) this Agreement is, subject to stamping, valid, binding and enforceable in accordance with its terms;
- (f) the execution, observance and performance of this Agreement by the Operator will not violate:
  - (i) any Legislative Requirement binding on the Operator; or
  - (ii) any other document or agreement which is binding on the Operator;and does not and will not result in:

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- (iii) the occurrence of any Insolvency Event; or
  - (iv) anything which constitutes, or would with the giving of notice or lapse of time constitute, an event which enables a creditor of the Operator under any document or security to declare that the money secured by that document or security is immediately due and payable;
- (g) all documents or agreements to which the Operator is a party, and all facts known or thought to be known to the Operator which are material to this Agreement and which have or might have the effect of varying this Agreement, have been disclosed to the State;
  - (h) all information provided by the Operator to the State in relation to this Agreement and/or the Tender Response is true and complete in all material respects as at the Commencement Date and is not, by the omission of information or otherwise, misleading;
  - (i) no litigation, arbitration, Claim, dispute or administrative proceeding is presently current or pending or, to the Operator's knowledge, threatened against the Operator which has not been disclosed to the State either prior to the commencement of the term of this Agreement or during its currency in accordance with the reporting requirements under this Agreement, and which is material to the performance of the Operator of the Services;
  - (j) the Operator has obtained and relied on independent legal, financial and other advice as to all matters specified in this Agreement;
  - (k) the Operator had no knowledge of the price of any other proponent for the Services at the time the Operator submitted the Tender Response and the Operator 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; and
  - (l) the Operator has no professional or contractual obligations that as at the date of this Agreement, or during the Term, will conflict with its obligations to perform the Services.

### **37.3 Survival of Operator's representations and warranties**

The Operator acknowledges that all representations and warranties save that contained in **Clause 37.2(i)** given by the Operator will survive the execution of this Agreement and the expiry of the Term and any extension of the Term.

### **37.4 State's Representations and Warranties**

The State represents and warrants that:

- (a) each authorisation required in relation to:
  - (i) the execution, delivery or observance and performance by the State of;
  - (ii) the validity and enforceability of; and
  - (iii) the transactions contemplated by;this Agreement has been obtained or effected and is in full force and effect; and
- (b) this Agreement is, subject to the payment of appropriate duty, valid, binding and enforceable in accordance with its terms.

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## 38. INDEMNITIES

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### 38.1 Indemnity by Operator

- (a) The release and indemnity in this clause 38 applies in accordance with its terms despite and is not limited by:
- (i) the suitability of the Correctional Centre for the performance of the Services; and
  - (ii) the condition of the Correctional Centre at the commencement of the Term.
- (b) Except as otherwise provided in this Agreement, the Operator shall release and indemnify, and keep indemnified, the State and its Associates against any Loss or Claim, to the extent that any Loss or Claim arises from or in connection with this Agreement including without limitation:
- (i) any damage, loss, injury or death, caused or contributed to by the Operator or its Associates;
  - (ii) any damage to property;
  - (iii) any breach of the Operator's obligations under this Agreement;
  - (iv) a Major Default by the Operator under this Agreement;
  - (v) the Commissioner or the State attending or responding to any complaint, inquiry, inquest or commission (including a coronial inquest);
  - (vi) the use or occupation of the Correctional Centre by the Operator or Operator's Personnel;
  - (vii) Contamination or Pollution of the Correctional Centre or the migration of Contamination or emanation of Pollution from the Correctional Centre;
  - (viii) any Utility Service not working properly, being unavailable or being interrupted, or the misuse of any Utility Service provided to the Correctional Centre, unless caused by the negligence of the Commissioner or the State; and
  - (ix) the escape of any water from the Correctional Centre.
- (c) The indemnity in **Clause 38.1(b)** shall be reduced to the extent that the Loss is caused by the neglect, fraud, dishonesty or reckless act of the Commissioner or the State or any employee or any Associate of either.

### 38.2 Legal Fees etc.

The Operator shall reimburse the Commissioner and the State and any of their employees, officers or agents on a solicitor-and-client basis in respect of the indemnity given under **Clause 38.1** for any legal fees and costs reasonably incurred in connection with investigating or defending Claims with respect to which indemnity is provided and for settlement of Claims, the payment of which has been previously approved by the Operator. Such legal fees and costs are payable in respect of investigating or defending any Claim irrespective of whether the Claim is proven, upheld or settled in any forum. This obligation to reimburse the Commissioner and the State for such legal fees and costs arises 21 days after the State provides all records reasonably required by the Operator to consider any claim for indemnity.

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### **38.3 Notification and taking over of Claims**

- (a) If a Claim is made or threatened in respect of which the State may seek to be indemnified under **Clause 38.1**, the State shall promptly notify the Operator in writing giving reasonable detail of the matter for which indemnity may be sought.
- (b) The State has the right to take primary responsibility for the prosecution, defence or settlement of any such Claim, and the Operator shall provide at its cost all information reasonably required for such prosecution, defence or settlement and shall co-operate to the fullest extent possible.
- (c) In that event, the Operator has the right to employ its own lawyers, but the fees and expenses of its doing so will be to the account of the Operator.

### **38.4 Indemnity for officers and agents**

The indemnity given in **Clause 38.1** is also given for the benefit of, and is held on trust for, the employees, officers and agents of the Commissioner and the State or either of them.

### **38.5 Findings**

Subject to **Clause 38.2**, if allegations contained in a Claim for indemnification pursuant to this **Clause 38** are not proven or upheld in legal proceedings, the rights of the parties under this **Clause 38** are governed by the holding or findings rendered with respect to the Claim rather than the allegations.

### **38.6 Survival of Indemnity**

The obligations of the Operator under this **Clause 38** will continue after the Termination Date in respect of anything happening prior to the termination of this Agreement.

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## **39. SUB-CONTRACTING**

### **39.1 Prior Approval**

The Operator shall not sub-contract the whole or any part of the Services to be performed under this Agreement except:

- (a) with the prior written consent of the Commissioner under the CAS Act (which consent shall not be unreasonably withheld); and
- (b) on such conditions as the Commissioner or the State thinks fit.

### **39.2 Surviving Liabilities**

An approval to sub-contract all or any part of the Operator's obligations under this Agreement given by the Commissioner under **Clause 39.1** shall not relieve the Operator of any of its liabilities or obligations under this Agreement.

### **39.3 Liability for sub-contractors**

Notwithstanding any approval to sub-contract given by the Commissioner under **Clause 39.1**, the Operator shall be liable for the acts, defaults and neglect of any sub-contractor or any employee or agent of the sub-contractor as fully as if they were the acts, defaults or neglect of the Operator or the officers, employees or agents of the Operator.

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#### **39.4 Liability for performance of work**

Notwithstanding any consent given by the Commissioner under this clause, the Operator shall be responsible for ensuring the suitability of a sub-contractor for the work proposed to be carried out and for ensuring that the work performed by the sub-contractor meets the requirements of this Agreement.

#### **39.5 Terms and conditions**

The Operator shall ensure that each sub-contractor is aware of and bound by all of the terms and conditions of this Agreement relevant to the sub-contractor's part in the performance of the Services.

#### **39.6 Security clearance**

The Operator shall not allow any person engaged by a sub-contractor to enter into the Correctional Centre unless:

- (a) the Operator has provided the State with all information in relation to that person that the State requires for the purposes of conducting a security clearance; and
- (b) the State has issued a security clearance to the Operator for that person.

#### **39.7 No contractual relationship with sub-contractors**

Nothing in this Agreement creates any contractual relationship between the State and any sub-contractor or supplier to the Operator.

### **40. CONFIDENTIALITY**

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#### **40.1 Obligations of Confidentiality**

Subject to **Clause 40.2**, the Receiving Party shall not:

- (a) disclose Confidential Information directly or indirectly in any form to anyone else; or
- (b) use or make a copy of any Confidential Information except to perform any of its obligations under this Agreement or in relation to any of the transactions contemplated by it.

#### **40.2 Exceptions**

**Clause 40.1** does not prevent disclosure of Confidential Information of which disclosure is not prohibited by any Legislative Requirement:

- (a) to any consultant, bank, underwriter or professional adviser to the Disclosing Party provided that the Disclosing Party informs the recipient of the confidentiality of the relevant information;
- (b) by one party with the consent of the other;
- (c) to the holding company of the Operator;
- (d) to the extent of any Legislative Requirement; or
- (e) to the extent required by a lawful requirement of any stock exchange having jurisdiction over the Disclosing Party or its parent company.



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### 40.3 Return of Confidential Information

On the expiration or termination of this Agreement, a Receiving Party shall immediately:

- (a) deliver to the Disclosing Party all documents and other materials containing, recording or referring to Confidential Information which are in its possession, power or control;
- (b) ensure that any person who receives the Confidential Information by the Receiving Party's authority returns the Confidential Information (in any form in which it is held) to the Disclosing Party; and
- (c) after delivering a copy of the Confidential Information to the Disclosing Party delete any Confidential Information retained on the Receiving Party's computer system in a manner such that the Confidential Information cannot be retrieved.

The obligations imposed by this **Clause 40.3** shall survive termination of this Agreement.

### 40.4 Publicity

- (a) The Operator may not make any press or other announcements or releases relating to this Agreement and/or the transactions the subject of this Agreement without the approval of the State (which approval will not be unreasonably withheld) unless that announcement or release is required to be made by Law or by a relevant stock exchange.
- (b) The Operator shall refer all inquiries from any media concerning the Correctional Centre to the State.
- (c) The Operator shall comply with any Departmental Policy in relation to the media and the provision of media statements.
- (d) Nothing in this **Clause 40** will prohibit either party from disclosing to its employees and officers and the employees and officers of its affiliates the fact of this Agreement and its subject matter.

### 40.5 Privacy

- (a) For Confidential Information that is personal information (as defined in the Privacy Legislation), the Receiving Party must comply with the Privacy Legislation, and must do all that is reasonably necessary on its part to enable the Disclosing Party to comply with the Privacy Legislation.
- (b) Without limiting **Clause 40.5(a)**, in respect of Records which contain personal information (as defined in the Privacy Legislation) the Operator must comply with the Privacy Legislation and do all that is reasonably necessary on its part to enable the State to comply with the Privacy Legislation.

## 41. DISCLOSURE OF INFORMATION

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The State may publish such information in relation to this Agreement as is required by Part 3, Division 5 of the GIPA Act and any applicable NSW Government policy.

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## 42. FREEDOM OF INFORMATION

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While the Correctional Centre is being operated pursuant to this Agreement, in accordance with s 247 of the CAS Act, the GIPA Act will apply, with any necessary modifications, to and in respect of the Operator as if:

- (a) the Operator were a local authority within the meaning of the GIPA Act; and
- (b) the Operator's managing director (or equivalent officeholder) were its principal officer within the meaning of the GIPA Act; and
- (c) the Minister were its responsible Minister within the meaning of the GIPA Act.

## 43. INSURANCES

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### 43.1 General Liability Insurances

The Operator must effect or cause to be effected:

- (a) broad form public and products liability insurance written on an occurrence basis with a limit of indemnity of not less than \$ [REDACTED] for any one occurrence (and also in the aggregate for all occurrences in any [REDACTED] Month policy period with respect to products liability), or such other amount as the State notifies to the Operator which covers the liability of the Operator, its employees and agents (including to the Commissioner) in respect of:

- (i) loss of, damage to, or loss of use of, any real or personal property; and
- (ii) the personal injury of, disease or illness (including mental illness) to, or death of, any person (other than an employee),

happening anywhere in Australia out of or in connection with the performance of this Agreement or any products manufactured, altered, repaired, supplied or installed by the Operator. The insurance must include cover for loss of or damage to the State's property in the care, custody or control of the Operator for a sub limit of indemnity acceptable to the State to the extent such property is not insured under the industrial special risks policy to be effected by the Operator pursuant to this clause. The insurance must include cover damage or interruption to public utilities;

- (b) insurance with a limit of indemnity of not less than \$ [REDACTED] for any one occurrence, which covers third party property damage arising in relation to any registered or unregistered plant or vehicles used in respect of the performance of any work under this Agreement and which covers injury to, illness of or death of any person related to any unregistered plant or vehicles used in the performance of this Agreement;
- (c) compulsory third party motor vehicle insurance in respect of all registrable vehicles used in the performance of any work under this Agreement; and
- (d) asbestos removalists liability insurance in respect of any intended removal of asbestos or other potentially harmful substances and any other insurance which a responsible corporate would effect or cause to be effected in respect of the unintentional disruption of asbestos or other potentially harmful substances in relation to any construction, alteration, installation, repair, demolition or removal works undertaken by the Operator which may result in the disruption of asbestos

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or other potentially harmful substances in the performance of its obligations under this Agreement.

#### **43.2 Workers' Compensation Insurance**

The Operator must effect or cause to be effected, statutory insurance as required in New South Wales which insures any injury, damage, expense, loss or liability suffered or incurred by any person engaged in the work under this Agreement or any contract (or their dependants) giving rise to a claim under any statute relating to workers' or accident compensation.

#### **43.3 Industrial Special Risks**

The Operator must effect or cause to be effected industrial special risks insurance covering the Correctional Buildings and Correctional Centre Equipment and all plant and equipment of the Operator material to the Operator's ability to perform its obligations under this Agreement and property and equipment of State in the Correctional Buildings against the risks of loss, damage or destruction by all insurable risks (being risks of a type usually insured against by companies with the risk profile of the Operator in the worldwide insurance market with reputable insurers including, without limitation, risks relating to vandalism, to the reasonable satisfaction of the State for their full replacement or reinstatement value (including consultant's fees, extra costs of reinstatement and removal of debris) and business interruption for loss of profit and increased cost of working based on 26 weeks interruption.

#### **43.4 Contract Works Insurance**

To the extent not insured under the industrial special risks insurance to be maintained by the Operator, the Operator must effect or cause to be effected contract works all risks insurance in respect of any construction or demolition works to be performed (including existing structures in or on which the works are carried out) pursuant to the Agreement, against the risks of loss, damage or destruction caused by insurable risks to the reasonable satisfaction of the State, including loss, damage or destruction by earthquake, fire, flood, lightening, storm and tempest, theft, malicious damage and resulting loss or damage arising from faulty material, workmanship or design, for the full reinstatement value (including consultant's fees, removal of debris and expediting expenses) of the work under this Agreement.

#### **43.5 Professional Indemnity Insurance**

The Operator must effect or cause to be effected professional indemnity insurance:

- (a) which covers liability of the Operator arising from a breach of a duty owed in a professional capacity, whether owed in contract or otherwise, by any act or omission of the Operator, its employees, subcontractors, consultants or agents;
- (b) extending to include cover for unintentional breaches of trade practices related legislation and of intellectual property rights (including trademarks, patents and copyright); and
- (c) with a limit of indemnity of not less than \$██████ for any one claim and \$██████ in the aggregate for any period of insurance.

#### **43.6 Other Insurance**

- (a) Not used.
- (b) The Operator shall also take out and maintain any other insurance required by Law and take out and maintain any other insurance reasonably required by the State

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for the Term of this Agreement or such other period as is reasonably required by the State.

#### **43.7 Periods of Insurance**

The Operator must ensure that the insurances referred to in this **Clause 43** are in force before the Operator commences performance of this Agreement and are maintained until the expiry of the Term subject to the following exceptions:

- (a) any contract works insurances are to be in force before any contract works are commenced and maintained until the completion of the works and the expiry of any related defects corrections periods; and
- (b) any insurances written on a claims made basis must also be maintained until the expiry of 7 years after the end of the Term.

#### **43.8 Provisions in policies**

The Operator must ensure that:

- (a) the general liability insurances (other than compulsory insurances) provide that:
  - (i) all insurance agreements and endorsements (with the exception of limits of indemnity) name as insureds and operate as if there was a separate policy of insurance covering the State (for the States' vicarious liability only for the acts or omissions of other insureds only), the Operator and its employees;
  - (ii) failure by any insured to observe and fulfil the terms of the policy or to comply with the duty of disclosure does not prejudice the insurance of any other insured;
  - (iii) the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against named insureds (to the extent they are insured under the policy); and
  - (iv) notice of a claim by any insured will be accepted by the insurer as notice by all insureds.
- (b) the professional indemnity insurance provides that:
  - (i) it insures the Operator and the State (for the State's vicarious liability only for the acts or omissions of the Operator);
  - (ii) failure by any insured to observe and fulfil the terms of the policy or to comply with the duty of disclosure does not prejudice the insurance of any other insured;
  - (iii) the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against named insureds (to the extent they are insured under the policy); and
  - (iv) notice of a claim by any insured will be accepted by the insurer as notice by all insureds.
- (c) the industrial special risks insurance and contract works insurances provide that:

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- (i) all insurance agreements and endorsements (with the exception of limits of indemnity) name as insureds and operate as if there was a separate policy of insurance covering the State and the Operator for their respective rights and interests;
  - (ii) failure by any insured to observe and fulfil the terms of the policy or to comply with the duty of disclosure does not prejudice the insurance of any other insured;
  - (iii) the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against named insureds (to the extent they are insured under the policy); and
  - (iv) notice of a claim by any insured will be accepted by the insurer as notice by all insureds.

#### **43.9 Increase of Limits of Indemnity**

The State may increase the limits of indemnity required under **Clause 43** by notice in writing to the Operator. The State shall not increase required limits of indemnity more than once every 3 years and shall only increase them where it has obtained an opinion from a reputable insurance broker or adviser that an increase is required in order to conform with current prudent insurance practice for a company with the risk profile of the Operator.

#### **43.10 Effecting of Policies**

The Operator must ensure that (and where relevant procure that its subcontractors) ensure that:

- (a) each insurance referred to in **Clause 43** (other than compulsory insurances) is:
  - (i) effected with reputable insurers with a rating of A- or better by Standard & Poors (or the equivalent rating with another reputable ratings agency);
  - (ii) on terms (including deductible levels) approved in writing by the State, which approval must not be unreasonably withheld; and
  - (iii) effected on terms which requires 20 Business Days' notice of cancellation to be given by the insurer;
- (b) once approved by the State, the terms of the insurance is not changed without the State's prior written approval (not to be unreasonably withheld). The Operator must indemnify the State for reasonable legal and other costs (if any) associated with determining whether or not to approve any such requested change.

#### **43.11 Operator Duties**

The Operator must ensure that in relation to any insurance policy required to be maintained by **Clause 43** it:

- (a) does not do anything or fail to do anything or (insofar as it is reasonably within its power) permit anything to occur which prejudices any insurance;
- (b) if necessary, rectifies anything which might prejudice any insurance;
- (c) reinstates an insurance policy if it lapses;
- (d) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the State;

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- (e) immediately notifies the State of any event which may result in an insurance policy lapsing or being cancelled;
  - (f) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance;
  - (g) immediately informs the State whenever it receives or gives a notice under or in connection with any insurance policy including any claim (with the exception of claims or potential claims by the State); and
  - (h) does everything reasonably required by the State or any other person in whose name the policy is effected to enable the State or that other person to claim and to collect or recover monies due under any insurance policy.

#### **43.12 Evidence of Policies**

- (a) The Operator must, in respect of each insurance referred to in **Clause 43** give the State:
  - (i) acceptable proof of currency and coverage of the insurances before the relevant commencement date for each insurance;
  - (ii) copies of all cover notes, policies, certificates of currency, renewal certificates and endorsement slips as soon as the Operator receives them; and
  - (iii) on request, other evidence of the insurances which the State reasonably requires.
- (b) If the Operator does not comply with paragraph (a) above the State may, but is not obliged to, effect the relevant insurances and may:
  - (i) recover the cost of doing so as a debt due and payable on demand by the State from the Operator; or
  - (ii) deduct the premiums payable for them from amounts payable to the Operator under this Agreement.

#### **43.13 Premiums**

The Operator must punctually pay or cause to be paid all premiums in respect of all insurances referred to in this **Clause 43**.

#### **43.14 Undertaking to Inform and Reinstate Limits**

The Operator must, subject to its obligations to insurers, inform the State immediately it becomes aware of any actual, threatened or likely claims under any of the insurances referred to in **Clause 43** which could materially reduce the available limits of indemnity or involve the State. Where a limit of indemnity is materially reduced by claims unrelated to this Agreement, the Operator must, on request from the State, reinstate or replace the depleted limit.

#### **43.15 State's Insurance**

The Operator must not knowingly do anything that may invalidate any insurance policy held by the State in relation to Correctional Buildings and Correctional Centre Equipment and/or any indemnity to which the State may be entitled from the New South Wales Treasury Managed Fund.

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#### 43.16 Subcontractors

Notwithstanding any other provision of this Agreement, the Operator shall use reasonable endeavours to ensure that its subcontractors, agents and consultants are insured as required by **Clause 43**, as is appropriate given the nature of services or work to be performed by them, as if they were the Operator.

#### 43.17 Uninsurable Risks

- (a) Nothing in **Clause 43** will oblige the Operator to take out or maintain insurance in respect of a risk which is or becomes Uninsurable.
- (b) To the extent that any risk required to be insured against under the policies to be effected in accordance with **Clause 43** becomes Uninsurable then:
  - (i) the Operator must notify the State within 5 Business Days of the risk becoming Uninsurable; and
  - (ii) if both agree, or it is determined in accordance with **Clause 32**, that the risk is Uninsurable and that the risk being Uninsurable is not caused by the actions of the Operator,

then the parties must meet to discuss the means by which the risk should be managed (including considering the issue of self-insurance by either party).

#### 43.18 Use of Insurance proceeds

- (a) The Operator will use the proceeds of all insurance policies relating to the Correctional Buildings and Correctional Centre Equipment received by it:
  - (i) subject to **Clause 46.6**, to the extent necessary towards the repair or reinstatement of the Correctional Buildings and Correctional Centre Equipment; and
  - (ii) to otherwise discharge the relevant liability or to make good the relevant Loss covered by the insurance policy.
- (b) The proceeds of all insurance policies relating to the Correctional Buildings and Correctional Centre Equipment which are surplus to the Operator's obligations under this **Clause 43.18** must be paid to the State.

### 44. INDUSTRIAL RELATIONS AND PROVISION OF SERVICES

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The Operator shall use its reasonable endeavours to maintain good industrial relations while performing the Services during the Term and in relation to such industrial relations matters:

- (a) the Operator shall pay such wages or rates and observe and perform such terms or conditions as shall apply from time to time to any persons employed or engaged by the Operator by virtue of any award or any industrial agreement applicable to the Services and binding on the Operator or arising by virtue of any Legislative Requirement;
- (b) if an industrial dispute is threatened or occurs with any person the Operator shall notify the State of the dispute as a matter of urgency;

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(c) the Operator shall take all reasonable steps necessary to bring the existence of the dispute to an end including notifying the dispute to the relevant Industrial Relations Commission (or equivalent body); and

(d) the Operator shall take all reasonable steps to minimise the disruption to the performance of the Services and shall continue to perform all Essential Services,

and the Operator shall indemnify and keep indemnified the State for the consequences of failing to comply with this **Clause 44**.

#### **45. NO PARTNERSHIP OR AUTHORITY**

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The parties are independent contractors. This Agreement does not constitute any party as the employee, agent, partner or joint venturer of the other party. Neither party has authority to incur any obligation on behalf of the other party and must not incur any such obligation except on the express written instruction of the other party.

#### **46. FORCE MAJEURE**

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##### **46.1 Termination**

(a) If a notice is given under **Clause 27A.3(a)** in relation to a Force Majeure Event and the Force Majeure Event continues for more than 60 Business Days, the State may terminate this Agreement by giving at least 30 Business Days written notice to the Operator. In the event of termination pursuant to this **Clause 46.1**, the State shall reimburse the Operator for any cost or expense directly and unavoidably incurred by the Operator prior to the Force Majeure Event in order to be ready, willing and able to perform the Services pursuant to this Agreement. The State is only required to reimburse the Operator for costs or expenses not reimbursed by the Monthly Service Payment paid to the Operator as at the Termination Date.

(b) For the avoidance of doubt, nothing in this **Clause 46.1**:

- (i) requires the State to compensate the Operator for consequential loss, indirect loss, loss of profit, loss of revenue or damages for loss of opportunity in the event of termination under this **Clause 46.1**; or
- (ii) otherwise limits the obligations of the Operator on termination of this Agreement.

##### **46.2 Repair or reinstatement of Correctional Buildings and Correctional Centre Equipment after Force Majeure Event**

In the event that the Correctional Buildings and/or the Correctional Centre Equipment are, because of a Force Majeure Event:

- (a) irreparably damaged or destroyed; or
- (b) damaged and repairable, but in the opinion of the State, should not be repaired,

the State may, in its absolute discretion, direct that the Correctional Buildings and/or the Correctional Centre Equipment:

- (c) not be repaired or reinstated; or
- (d) be repaired or reinstated only in part, in which case the State may direct the Operator to carry out the reinstatement work or engage a third party to do the work.



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## 47. CHANGE OF CONTROL

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- (a) The Operator shall not permit a Change of Control or a change of management of the Operator without the prior written consent of the State.
- (b) The Operator shall give the State notice immediately the Operator becomes aware of a Change of Control or change of management.
- (c) Subject to paragraph (d), a Change of Control occurs in relation to a body corporate or entity (the body) where:
  - (i) an entity that Controls the body ceases to Control the body; or
  - (ii) an entity that does not Control the body comes to Control the body.
- (d) No Change of Control occurs if:
  - (i) the entity that ceases to Control the body under paragraph (c)(i) was, immediately beforehand, a wholly-owned subsidiary of a body corporate that Controls the body; or
  - (ii) the entity that comes to Control the body under paragraph (c)(ii) is, immediately afterward, a wholly-owned subsidiary of a body corporate that previously Controlled and continues to Control the body; or
  - (iii) it results from a Change in Control of a listed entity.

## 48. NOTICES

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### 48.1 General

Any notice, demand, certification or other communication in this Agreement:

- (a) shall be given in writing and in the English language; and
- (b) may be given by an authorised representative of the sender.

### 48.2 Method of service

In addition to any means authorised by Law any communication may be given by:

- (a) being personally served on a party;
- (b) being left at the party's current address for service;
- (c) being sent to the party's current address for service by pre-paid ordinary mail or if the address is outside Australia, by pre-paid airmail; or
- (d) by email to the party's current email address for service.

### 48.3 Address for service

- (a) The addresses and email addresses for service are initially:

**State:**

Address: [REDACTED]

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Email: [REDACTED]

Attention: [REDACTED]

with a copy to the State Representative.

**Operator:**

Address: [REDACTED]

Email: [REDACTED]

Attention: [REDACTED]

A party may from time to time change its address or facsimile number for service by notice to the other party.

**48.4 Service by post**

A communication given by post shall be deemed received:

- (a) if posted within Australia to an Australian address, on the third Business Day after posting; and
- (b) in any other case, on the tenth Business Day after posting.

**48.5 Service by email**

A communication sent by email shall be deemed received when it becomes capable of being retrieved by the addressee at the relevant email or other electronic address.

**48.6 Service after hours**

If a communication to a party is received by it:

- (a) after 5.00 pm; or
- (b) on a day which is not a Business Day,

it will be deemed to have been received on the next Business Day.

**49. MISCELLANEOUS**

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**49.1 Stamp duty**

- (a) The Operator shall, as between the parties, be liable for and duly pay all duty (including any fine or penalty except where it arises from default by the other party) on or relating to this Agreement and any document executed under it.
- (b) If the State pays any duty (including any fine or penalty) on or relating to this Agreement or any document executed under it, the Operator shall pay that amount to the State upon demand.

**49.2 Legal costs**

Subject to any express provision in this Agreement to the contrary, each party shall bear its own legal and other costs and expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this Agreement.

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### **49.3 Amendment**

This Agreement may only be varied or replaced by a document duly executed by the parties.

### **49.4 Waiver and exercise of rights**

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right or as an estoppel precluding enforcement of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

### **49.5 Rights cumulative**

Subject to any express provision in this Agreement to the contrary, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.

### **49.6 Approvals and consent**

Subject to any express provision in this Agreement to the contrary, a party may conditionally or unconditionally give or withhold any consent to be given under this Agreement in its absolute discretion and is not obliged to give its reasons for doing so.

### **49.7 Operation of indemnities**

- (a) Each indemnity in this document survives the expiry or termination of this Agreement.
- (b) A party may recover a payment under an indemnity in this Agreement before it makes the payment in respect of which the indemnity is given.

### **49.8 Operation of provisions**

All provisions of this Agreement which, expressly or by implication from their nature, are intended to survive rescission, termination or expiry of this Agreement will survive the rescission, termination or expiration of this Agreement including:

- (a) **Clauses 19, 23, 25.2A, 29, 30B, 34, 35, 36, 37, 38, 40, 41, 43, 49.7 and 49.11;** and
- (b) the Performance Regime to the extent required to give effect to the State's rights and entitlements under the Performance Regime in respect of any events or circumstances that occurred prior to the rescission, termination or expiry of this Agreement.

### **49.9 Further assurance**

Each party shall promptly execute all documents and do all things that any other party from time to time reasonably requires of it to effect, perfect or complete the provisions of this Agreement and any transaction contemplated by it.

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#### **49.10 Computation of time**

Where time is to be reckoned by reference to a day or event, that day or the day of that event is excluded.

#### **49.11 Governing law and jurisdiction**

- (a) This Agreement is governed by and is to be construed in accordance with the laws in force in New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

#### **49.12 Assignment**

A party shall not dispose of or encumber any right under this Agreement without the prior written consent of the other party.

#### **49.13 Counterparts**

This Agreement may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.

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**EXECUTED** as an agreement.

**EXECUTED** by **COMMISSIONER OF CORRECTIVE SERVICES**, for and on behalf of the Crown in right of the State of New South Wales, in the presence of:

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of witness (print)

**EXECUTED** by **The GEO Group Australia Pty Limited:**

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director / secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

## **Schedule 1 – [NOT USED]**

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## Schedule 2

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### OFFICIAL VISITORS

1. The Operator will be responsible for meeting the expenses of the Official Visitors to the Correctional Centre. There are two (2) Official Visitors appointed to the Correctional Centre. An Official Visitor typically visits the Correctional Centre one (1) day each week.
2. The Operator will be responsible for the payment of fees in accordance with the *Crown Employees (Public Service Conditions of Employment 1997) Award*, clause 12(i) Allowances – General, and clause 12(ii), Allowances – Travelling Compensation (as varied or replaced).

## Schedule 3 – Departmental Services

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### Schedule of Fees

#### Applicable to Departmental Services

#### 1. Inmate compassionate escorts (labour costs component)

█ (█ hours or part thereof): \$█ per officer (GST excl.)

█ (between █ and █ hours): \$█ per officer (GST excl.)

█ (or part thereof) in excess of █ hours: \$█ per officer (GST excl.)

#### 2. Corrective Services Security and Investigations Branch services

Searching: drug interdiction: contraband

Drug-dog team costs \$█ per hour - Correctional Officer (GST excl.)

\$█ per hour - Senior Correctional Officer (GST excl.)

#### 3. Response to disturbances, riots and Critical Incidents (see clause 24)

Assistance with disturbance management

Two officers \$█ per hour (GST excl.)

Four officers \$█ per hour (GST excl.)

Each additional officer \$█ per hour (GST excl.)

#### 4. Urinalysis Program

Cost per urine sample analysed at cost (GST excl.)

Freight at cost (e.g. courier charges)

#### 5. Approval of the Commissioner to change the physical environment

Time and materials

#### 6. Staff training (refer to clause 9.4 of the Management Agreement)

Time and materials



## **7. Price Variation**

The State may vary the fee for the Departmental Services with effect from the commencement of each Contract Year. An increase in the fee for the Departmental Services must be reasonably substantiated (including with reference to the Consumer Price Index, labour costs and/or other costs incurred by the State in providing the Departmental Services).

## **8. Payment and set-off**

- (a) The Operator shall, during the Term, or for a period not exceeding 3 months after the expiration of the Term within the meaning of Clause 35.2(b), pay within 20 Business Days of the end of each month of the Term the fee for the Departmental Services specified in this Schedule.
- (b) The State may set-off the against the Monthly Services Payment payable at the end of each month of the Term the fee for the Departmental Services specified in this Schedule.

# Schedule 5

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## MAINTENANCE STANDARDS

**1. Not used**

**2. Introduction**

These Maintenance Standards define a desired condition of facilities with respect to visual appearance, functionality, economic performance and legal compliance. The Maintenance Standards are outcome oriented and do not themselves dictate maintenance or cleaning tasks or budgets. Maintenance and cleaning standards influence planning, and establish quality and presentation levels, which maintenance and cleaning service providers are required to achieve.

The Maintenance Standards are defined at five levels, each referring to a category that may be allocated to individual facilities or parts of a facility. The five levels are:

Category	Standard
A	Exceptional
B	High
C	Standard
D	Minimal
E	Mothball

Areas or facilities may be allocated by the State to various categories at different points of their life cycle. As examples, the standard of some facilities may be raised by one level for the period of a special event or function, or reduced for a time prior to sale or demolition.

**3. Aims and usage**

Maintenance and cleaning standards are aimed at avoiding confusion and uncertainty about the overall level of condition to which a facility or part of a facility is to be maintained. The standards enable the development of maintenance and cleaning policies and practices to be negotiated and agreed between the State and the Operator. They can then be used to:

- set the type and frequency of cyclic maintenance and inspections
- define acceptable threshold levels of performance and presentation
- fix acceptable standards of workmanship, appearance and cleanliness
- establish acceptable response times for the correction of faults or for cleaning after special events or emergencies
- define performance criteria for maintenance or cleaning contracts.

The following pages describe the characteristics of each category.

**Category A - Exceptional**

**Characteristics:**

In such areas the requirement is to preserve the facility in "as new" condition continuously and indefinitely, and to correct unacceptable conditions swiftly and unobtrusively.

**Examples:**

Prestige areas with symbolic significance or with critically important functional needs. Examples include Parliament Houses (public areas, the chambers, and ministerial accommodation) and hospital operating theatres. The State has not currently adopted the use of an “A” standard in any area of its facilities.

**Performance Criteria:**

- Visual appearance* As new, or highest quality reasonably achievable.
- Function* All elements must function as intended at all times, with no down time tolerated during periods of intended use.
- Legal* All legal responsibilities must be met.
- Financial* Financial and economic criteria are not primary considerations in planning maintenance programs for buildings of this type. Maximum efficiency of maintenance and cleaning operations is required, to minimise expenditure in achieving the desired outcomes.

**Planning implications:**

A very high proportion of maintenance and cleaning in such areas must be undertaken on a pre-planned, regular basis. Inspections, maintenance tasks and cleaning operations must be scheduled outside normal working hours or when the facility is not in use, although cleaning staff must be on hand at all times for the regular and unobtrusive cleaning of items such as ash trays, rubbish containers, and areas subject to finger marking such as counter tops.

A rapid response capability must be available to respond to any failures which occur when the facility is in use, and on a round the clock basis if required. All essential spares must be kept in inventory or readily available at short notice elsewhere. Planned redundancy or duplication of items may be appropriate.

Comprehensive and regular inspections are carried out frequently and all existing or incipient defects rectified promptly.

Facilities in this category typically contain unusual special purpose finishes, structures and plant materials (marble cladding, tiling, integral sculptures, special paints, timbers or transplanted mature plant material) and may have to comply with heritage or other conservation criteria. Maintenance work orders must be fully detailed and include all necessary work practices and materials. Full reference manuals and instructions must be kept available for ready reference.

**Category B - High**

**Characteristics:**

In such areas the requirement is to preserve the facility in good condition both visually and functionally, and to respond promptly in the event of failures.

**Examples:**

For the State the “B” standard has been applied to food preparation areas and the key facility systems, security and communications, emergency power and fire.

These four areas are critical to day to day prisoner control and “duty of care”. For food preparation areas the focus is to maintain a clean hygienic area that complies with Legislative Requirements and to ensure all support systems function accordingly. For the building systems the “B” standard has a focus on functionality, legal compliance and prompt response

times. Visual appearance may not be a key focus, however this can be assumed to comply as the extent of preventive maintenance applied ensures only minor deterioration is allowed.

**Performance Criteria:**

<i>Visual appearance</i>	Minor signs of deterioration when viewed closely may be acceptable. No deterioration when viewed from normal distance. Some deterioration may be tolerated for short periods of time.
<i>Function</i>	All elements must function as intended during periods of intended use, with a low probability of failure.
<i>Legal</i>	All responsibilities should be met.
<i>Financial</i>	The primary aim in this category is to maximise the long term economic performance of the facility. Refurbishments, equipment replacements and maintenance planning should be in a strategic framework, and decisions taken on a life-cycle basis.

**Planning implications:**

A high proportion of maintenance should be undertaken on a cyclic basis, in order to reduce failures and maintain an adequate level of functionality and appearance. Cleaning, inspections and maintenance tasks should be planned in conjunction with the user to minimise disruption, but some interruptions to service can be tolerated. Arrangements may have to be made for the regular cleaning of such items as ash trays, rubbish containers and counter tops at regular intervals to maintain satisfactory standards of presentation.

A call out capability must be available when the facility is in use, in order to respond to failures reported by users. Unusual items should be kept in inventory, but some delays and certain substitutions may be acceptable.

Inspections should be carried out regularly and defects rectified as soon as possible.

**Category C - Standard**

**Characteristics:**

This standard is the "default" standard which should apply if no special conditions are present. It is aimed at preserving essential functionality, complying with statutory health, safety and environmental obligations, and rectifying faults before consequential damage incurs additional cost.

In such cases the requirement is to preserve the operational capacity of the facility as much as possible. This standard does not in itself require close attention to physical appearance except in so far as it is desirable in order to meet the other criteria.

**Examples:**

This standard applies to most areas under the State's control including, cells, administration offices, gate houses, armoury, recreation, residences and outer grounds. The standard is based on providing acceptable accommodation to inmates and staff. The "C" standard provides for some flexibility by example, some cells housing "A" or problem inmates may receive a higher level of attention (for example, repairs to cell call system and wall finishes). Other examples of the "C" standard include administrative office accommodation for business organisations or Government, the operational areas of manufacturing operations, most areas of universities, schools and gaols.

**Performance Criteria:**

<i>Visual appearance</i>	In this category physical appearance is not the major consideration and some minor signs of deterioration when viewed from normal distance are acceptable.
<i>Function</i>	All required elements should function as intended during periods of intended use. Minor failures, excluding those which bring a threat to safety or security, can be tolerated.
<i>Legal</i>	All requirements with respect to health, safety and the environment must be met. Other responsibilities should be achieved to the maximum extent feasible.
<i>Financial</i>	The primary aim in this category is to maximise the long term economic performance of the facility. Refurbishments, equipment replacements and maintenance planning should be in a strategic framework, and decisions taken on a life-cycle basis.

**Planning implications:**

Some maintenance is undertaken on a cyclic basis, in order to reduce failures and maintain an adequate level of functionality. Cleaning, inspections and maintenance tasks should be planned in conjunction with the user to minimise disruption, but interruptions to service are acceptable. A call out capability should be available in order to respond to emergency failures reported by users.

**Category D - Minimal**

**Characteristics:**

This standard applies to facilities that provide a basic utility function only and visual appearance and amenity are not critical. It can also be used for facilities which have a limited life or are in use on an interim basis. Maintenance is aimed at minimising current operational costs whilst continuing to preserve essential functionality for operational purposes and complying with statutory obligations to the maximum extent possible. The standard is normally applied where the expected remaining life of the facility is less than five years or where use is expected to meet basic operational needs only.

**Examples:**

Examples for the State include, industries production and stores. The standard requires only basic maintenance to ensure functionality, compliance with legal obligations and to minimise costs. Other examples might include buildings in an easement for a planned freeway, a bulk store, a school which is planned to be closed or replaced, or a commercial office building approaching refurbishment.

**Performance Criteria:**

<i>Visual appearance</i>	Some signs of deterioration are acceptable.
<i>Function</i>	All required elements should function as intended during periods of intended use. Minor failures will be tolerated except for security.
<i>Legal</i>	Legal responsibilities with respect to health, safety and the environment should be met.
<i>Financial</i>	Limitation of short term maintenance costs is the primary objective.

**Planning implications:**

Most maintenance in such areas is reactive, and planned to retain functionality for a limited period only. Cyclic maintenance is confined to specialist areas such as the maintenance of lifts and grass cutting, and at the minimum required to retain safety and compliance with regulations. Regular cleaning is undertaken.

**Category E - Mothball**

**Characteristics:**

This standard applies to facilities which have been closed or vacated, and are not in current use.

Maintenance is aimed at maintaining safety and security, protecting against vandalism or other damage, and limiting any cost penalties. Cleaning only takes place to ensure essential hygiene and safety.

**Examples:**

Facilities that are held vacant awaiting sale, demolition, or a decision about their future.

**Performance Criteria:**

<i>Visual appearance</i>	Not important.
<i>Function</i>	No requirement to retain any functional performance except to avoid degradation of asset value.
<i>Legal</i>	Only essential responsibilities with respect to safety and the environment should be met.
<i>Financial</i>	In this category the limitation of maintenance costs in the short term is the primary objective.

**Planning implications:**

Maintenance in such areas is confined to regular patrols and inspections, with only essential works undertaken such as the control of proclaimed noxious weeds or the removal of safety or fire hazards

## **Schedule 6 – [NOT USED]**

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## **Schedule 7**

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### **COMMUNITY TRANSPORT**

1. The Operator must provide a transport service for visitors of inmates from Sydney to Junee and return each weekend and public holiday.



## **Schedule 8 – [NOT USED]**

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## Schedule 9

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### STAFF DEPLOYMENT PLAN

1. The Operator must develop a Staff Deployment Plan for approval by the State incorporating the following specific service requirements:
2. The Operator must develop a staffing proposal, which includes:
  - (a) an outline of the proposed Inmate structured day;
  - (b) a plan which shows how staff will be deployed to:
    - (i) facilitate the structured day;
    - (ii) the delivery of correctional services and programs;
    - (iii) maintenance of appropriate levels of safety and security;
  - (c) the number and location of all custodial posts on each shift over a 24 hour period, indicating the number of days each post is staffed;
  - (d) the total number of custodial staff required to fill the approved custodial posts on the number of days required;
  - (e) the deployment of suitably qualified senior staff to meet the management needs of the Correctional Centre;
  - (f) the deployment of suitably qualified staff in sufficient numbers, to deliver correctional services and programs;
  - (g) the number of staff required to deliver correctional services and programs; and
  - (h) the total staff establishment by position and number of staff required,and must:
  - (i) describe strategies to ensure program and service delivery is not disrupted by staff shortages; and
  - (j) develop strategies which ensure that any changes to the staff deployment plan or staff numbers are submitted for the approval of the State before implementation.
3. The Operator's Staff Deployment Plan is attached to this Schedule 9 and incorporated by reference.

## Schedule 10

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### MATTERS RELATING TO TRANSITION OUT PLAN

The Transition Out Plan must:

- (a) specify the tasks, the resources and the personnel to be used to effect transition out and ensure the seamless migration of responsibility for the provision of the Services during the transition out period;
- (b) specify the assets, fitout, records, information, data and other tangible or intangible deliverables deliverable to the State on or prior to the last day of the transition out period; and
- (c) include a detailed description of the following:
  - (i) the items that make up the Handover Package;
  - (ii) the tasks to be performed to effect transition out;
  - (iii) the transition out deliverables to be delivered to the State on or prior to the last day of the transition out period;
  - (iv) the timing and methodology for undertaking a final survey of the Correctional Centre to ensure compliance with clause 19.4;
  - (v) a timetable (based on the likely scenarios) incorporating staged handovers of different parts of the Services;
  - (vi) key dependencies and risks;
  - (vii) risk mitigation planning including provision of the Services during the transition out period; and
  - (viii) the rights of access to, and use of, any premises owned or leased by the Operator and used in the provision of the Services by the State or other incoming party a new entity (together with the charges payable (if any)).

# Schedule 11

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## ROLES AND RELATIONSHIPS PROCEDURES

### 1. General Roles and Relationships Procedures

#### 1.1 Establishment

The Commissioner must ensure that a 'Strategic Planning Group' and a 'Contract Management Group' are established to provide direction on strategic and operational issues that affect the Management Agreement.

#### 1.2 Functions

The Strategic Planning Group (or **SPG**) will deal with issues such as:

- (a) providing strategic direction and high level implementation for the services;
- (b) making recommendations to the State;
- (c) resolving policy and strategic changes that affect Services;
- (d) resolving issues presented to it or not resolved by the Contract Management Group.

#### 1.3 Responsibilities

The Contract Management Group (or **CMG**) will be responsible to the Commissioner for issues such as:

- (a) resolving Services issues between the State and the Operator to ensure the effective and efficient delivery of the Services;
- (b) implementing changes to the Services;
- (c) monitoring and administering specific contract issues which are identified by the State Representative;
- (d) building a relationship between the State and the Operator;
- (e) ensuring that, as changes occur and issues are resolved, they are clearly communicated to the State, the Operator's Personnel and other stakeholders as appropriate; and
- (f) liaising with the Operator to ensure a safe working environment for Operator's Personnel.

### 2. Meetings

#### 2.1 The Strategic Planning Group (SPG)

The Strategic Planning Group shall include the State Representative, the Monitor and the Operator's Representative in addition to representatives from the State and Justice Health.

The membership of the SPG may vary from time to time during the term of the Management Agreement. The Operator shall attend meetings of the SPG as required by the Commissioner. The forum for meetings of the SPG shall be determined by the Commissioner.

The SPG must hold meetings, which may be held concurrently with other scheduled meetings if convenient and/or reflect the volume and urgency with which issues must be addressed.

The SPG meetings must have a published agenda issued by the Commissioner sufficiently in advance of the meeting to allow participants a reasonable opportunity to prepare for the meeting. Meeting minutes must be issued by the SPG within fourteen days after the meeting. The final minutes will be considered at the beginning of the next meeting.

The SPG meetings must be held in person, unless members decide that the meetings may be held by means of telephone or video conference. All "in person" meetings will be held at a place nominated by the Commissioner. Participation of the Operator's Representative at SPG meetings shall be at the cost of the Operator. Non-members may be invited from time to time to participate at SPG meetings to discuss specific issues. Attendance of non-members must be borne by the party inviting such persons.

## **2.2 Contract Management Group (CMG)**

The convenor of the CMG shall be the State Representative, and the other members shall be the Monitor, the Operator's Representative and other nominees of the State or the Operator. The quorum for meetings of the CMG shall be three members consisting of two representatives of the State and one of the Operator.

The State Representative will chair the meetings, and any member may be represented at a meeting by the member's designated delegate if that member is unable to attend the meeting in person.

The CMG must hold regular meetings which may be held concurrently with other scheduled meetings if convenient, and shall reflect the volume and urgency in which issues must be addressed.

The CMG meetings must have a published agenda issued by the State Representative sufficiently in advance of the meeting to allow participants a reasonable opportunity to prepare for the meeting. Minutes of the meeting shall be taken and must be issued by the CMG within fourteen days after the meeting. Final minutes must be considered at the beginning of the next meeting.

The CMG meetings must be held in person, unless members decide that the meetings are to be held by means of telephone or video conference. All "in person meetings" will be held at a place nominated by the State Representative. Participation of the Operator's Representatives at CMG meetings shall be at the cost of the Operator. Non-members may be invited from time to time to participate at CMG meetings to discuss specific issues. Expenses of attendance of non-members must be borne by the party inviting such persons.

## **2.3 Notice of meetings**

Notices between the parties must be in writing and shall be served by and upon the State Representative and the Operator's Representative, as the case may be. Notices must be served by either hand delivery or facsimile transmission.

## **3. Meetings and Other Events**

Attendance of Operator's Personnel at meetings and at all other events which are an inherent part of the State's approach to the provision of the Services shall be at the cost of the Operator unless otherwise stated or agreed.

## **Schedule 12 – [NOT USED]**

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## Schedule 13 – Monitor Functions

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### ROLE OF THE CONTRACT MONITOR

#### 1. LEGISLATIVE FRAMEWORK

The appointment and responsibilities of the Monitor are specified in section 242 of the *Crimes (Administration of Sentences) Act 1999* (NSW).

#### 2. DUTIES OF THE CONTRACT MONITOR

In carrying out the responsibilities specified in section 242 of the *Crimes (Administration of Sentences) Act 1999*, the Monitor will:

- 2.1 provide the communication and management link between the Commissioner and the Operator;
- 2.2 provide the communication link between the Chief Executive Officer, Justice Health and the Operator;
- 2.3 interpret and clarify issues impacting upon the management of the Correctional Centre and the Operator's obligations under the Management Agreement;
- 2.4 provide the contract manager advice on requests from the Operator for variations to the Management Agreement;
- 2.5 representing the State's viewpoint in all discussions;
- 2.6 ensuring open communication between the Operator and the State;
- 2.7 monitoring changes to Departmental policy and procedure which may impact upon the Management Agreement;
- 2.8 providing employment authorisations for the Operator's Personnel (as delegate of the Commissioner);
- 2.9 conduct performance audits on a random but regular basis to determine compliance by the Operator with the Output Specifications;
- 2.10 represent the Minister and the State on the Junee Advisory Council.

#### 3. PERFORMANCE AUDIT

The performance audit will be carried out using such resources as the Monitor may require and will involve:

##### 3.1 Application of Test

The audit test is applied in a number of ways which include personal observation, interviews with Operator's Personnel and Inmates, obtaining data and internal reports and gathering of information from other sources (eg. Official Visitors, Ombudsman)

##### 3.2 Recording

Following the application of a test the Monitor will submit a report detailing the results of the test to the Commissioner and the General Manager of the Correctional Centre. A comprehensive performance audit will be conducted annually, the results of which will form part of the Annual Report of Corrective Services NSW.

### 3.3 Remedial Action and Follow-up

If a deficit in performance is detected then the Monitor will initially discuss the issue with the general manager at an exit interview. During this discussion a suitable timeframe for curing the deficiency will be agreed. At the completion of this timeframe, a further application of the audit test will be undertaken to assess the remedial action. If the deficiency has not been cured, this will constitute a 'Major Default' and the State may issue the Operator with a Major Default Notice in accordance with the Management Agreement.



## **Schedule 15 – [NOT USED]**

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## **Schedule 16 – Plans and Reports Schedule**

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The purpose of this Schedule is to set out the Operator's obligations in respect of the Operating Plans and the Reports.

In this Schedule:

- each individual plan, program, protocol, report or notification forming part of the Operating Plans and Reports is referred to as an Operating Plan;
- capitalised terms have the meaning given to them in clause 1.1 of the Agreement unless otherwise defined or the context otherwise requires; and
- 'Amendment Start Date' has the meaning given to it in the Deed of Amendment and Extension.

## 1. Reports

**TABLE 1: CONTINUOUS ON-LINE REPORTING**

Report	Content of report	Time for provision
A. Performance data access	The Operator must provide the State with continuous read and print access to all information, reports and performance data used by the Operator in measuring its performance under the Performance Monitoring Program.	Continuous on-line access.

**TABLE 2: DAILY INMATE POPULATION REPORT**

Report	Content of report	Time for provision
A. Daily Inmate Population Report	The Daily Inmate Population Report must contain a summary of the number of Inmates and the Available Inmate Places (as defined in the Performance Regime) including a breakdown of the location of any vacant Available Inmate Places within the Correctional Centre. A template will be provided by the State to the Operator and the Operator must use that template as the basis for this report.	12.01 am daily from the Amendment Start Date

**TABLE 3: MONTHLY PERFORMANCE REPORT**

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

Report	Content of report	Time for provision
A. Key Performance Report	The Key Performance Report is to contain: <ol style="list-style-type: none"> <li>1) a holistic overview of the performance of the Operator in relation to the delivery of Services for the previous Month;</li> <li>2) information relating to the Operator's performance in delivering the Services in relation to the Month against all Key Performance Indicators in the Performance Regime;</li> <li>3) information relating to Aboriginal participation; and</li> <li>4) details of any stakeholder or communication matters, including complaints or concerns raised</li> </ol>	Within 5 Business Days after the end of the relevant Month

Report	Content of report	Time for provision
	<p>by the public or stakeholders and the status of the Operator's stakeholder and community involvement activities against the Communications and Community Relations Plan.</p>	
<p>B. Pharmaceuticals Reporting Spreadsheet</p>	<p>The Operator must complete and submit a Pharmaceuticals Reporting Spreadsheet in the form of Attachment 1 to this Schedule (as updated by the State from time to time).</p>	
<p>C. Case management programs and reintegration services update</p>	<p>The Operator must enter all information in relation to case planning, reintegration services and programs and interventions as specified in the Output Specification into the CSNSW Offender Integrated Management System (<b>OIMS</b>), including the following:</p> <ol style="list-style-type: none"> <li>1) the details and results of all assessments completed;</li> <li>2) formulated plans (as required in the Output Specification);</li> <li>3) details of every intervention offered to Inmates, including:               <ol style="list-style-type: none"> <li>a) date of offer;</li> <li>b) Inmate acceptance or non-acceptance of intervention; and</li> <li>c) reasons for Inmate non-acceptance of intervention;</li> </ol> </li> <li>4) details of all interventions, including:               <ol style="list-style-type: none"> <li>a) date of session attendances;</li> <li>b) duration of sessions;</li> <li>c) date of intervention completion; and</li> <li>d) reasons for non-completion of any intervention;</li> </ol> </li> <li>5) details of all health stream alcohol and other drugs programs, criminogenic stream programs and co-morbidity stream programs completed in the relevant Month, the number of Inmates who completed each program divided by the number of Inmates who commenced the program, expressed as a percentage;</li> <li>6) the average daily number of Inmates waiting for each of the program types listed in paragraph 5 above; and</li> </ol>	

Report	Content of report	Time for provision
	7) the total number of individual Inmate interventions provided by program type.	
D. Health Services update	<p>The Operator must provide a report to Justice Health and Forensic Mental Health Network in relation to Health Services that includes the following:</p> <ol style="list-style-type: none"> <li>1) end of Month Health Services Staff full time equivalent information, including designation of Health Services Staff reconciling inward and outward movements in Staff numbers to the previous Month; and</li> <li>2) non-admitted Custodial Patient occasions of service for the relevant Month.</li> </ol>	
E. Staff deployment	The Operator must provide end of month Staff full time equivalent information, reconciling inward and outward movements in Staff numbers to the previous Month.	
F. FM Services update report	<p>The Operator must provide details of any activation of the security systems (including false alarms and nuisance alarms) of any nominated alarm.</p> <p>The Operator must provide an Asset management report detailing as a minimum:</p> <ol style="list-style-type: none"> <li>1) works not completed in accordance with the planned maintenance schedule referred to in section 2.12(c)(x) and Annual Asset Works Plan in the Asset Management Plan (see section 2.12 below);</li> <li>2) the number, type and location of unscheduled maintenance activities; and</li> <li>3) inspections, statutory and regulatory tests undertaken.</li> </ol> <p>The Operator must provide a waste management and disposal update detailing, by waste stream, the volumes of all waste removed from the Site during the previous month and for the year in total.</p> <p>The Operator must provide a grounds maintenance report detailing planned and unscheduled work undertaken during the previous month and for the year in total.</p> <p>The Operator must provide a pest control report</p>	Within 5 Business Days after the end of the relevant Month

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

**TABLE 4: QUARTERLY PERFORMANCE REPORT**

Report	Content of report	Time for provision
<p>A. Quarterly Performance Report</p>	<p>The Quarterly Performance Report is to consolidate the information contained in the last three Monthly Performance Reports, including a consolidated Pharmaceuticals Reporting Spreadsheet.</p> <p>The Quarterly Performance Report must:</p> <ol style="list-style-type: none"> <li>1) identify areas or items of non-compliance with this Agreement and remedial actions;</li> <li>2) include a summary of the items that have been addressed and remediated since the Quality Assurance Plan submitted in the last Quarter;</li> <li>3) include a summary of the overall performance of the quality assurance systems;</li> <li>4) include a summary of Aboriginal participation;</li> <li>5) include Health Services specific reports including:                             <ol style="list-style-type: none"> <li>a) quarterly performance indicators for:                                     <ol style="list-style-type: none"> <li>i) mental health including:   <ol style="list-style-type: none"> <li>(1) percentage of Custodial Patients discharged from an acute mental health setting to the Correctional Centre who are seen within 7 days by a mental health clinician; and</li> <li>(2) number of Custodial Patients with a mental illness with at least one set of mental health outcome measures collected during a period of care (3 months);</li> </ol> </li> <li>ii) oral health including number of Dental Weighted Activity Units (DWAUs);</li> </ol> </li> </ol> </li> </ol>	<p>Within 5 Business Days of the end of each Calendar Quarter</p>

Report	Content of report	Time for provision
	<ul style="list-style-type: none"> <li>iii) drug and alcohol including:                             <ul style="list-style-type: none"> <li>(1) percentage of new Custodial Patients in this reporting period coming into the Correctional Centre who are maintained on an existing opiate treatment program, unless clinically contraindicated; and</li> <li>(2) percentage of Custodial Patients on Opiate Substitution Treatment (<b>OST</b>) engaged in community based services, post-release in relation to clients under the <i>Crimes (High Risk Offenders) Act 2006</i>;</li> </ul> </li> <li>iv) population health, including:                             <ul style="list-style-type: none"> <li>(1) number of initiations onto hepatitis C related services;</li> <li>(2) proportion of Custodial Patients initiated onto hepatitis C related services who are Aboriginal; and</li> <li>(3) number of Custodial Patients accepting an influenza vaccination as part of a winter immunisation program;</li> </ul> </li> <li>v) Aboriginal health including percentage of new Aboriginal Custodial Patients accessing a targeted Aboriginal chronic care program; and</li> <li>b) auditing requirements including:                             <ul style="list-style-type: none"> <li>i) monthly audits including:                                     <ul style="list-style-type: none"> <li>(1) accountable drug registers (schedule 8 and schedule 4 declared drugs);</li> <li>(2) end of Month vaccine refrigerator temperature monitoring (twice daily checks);</li> <li>(3) needle and syringe register checks (including dental room); and</li> <li>(4) maintenance checks of glucometers, INR machines, HbA1C machines;</li> </ul> </li> <li>ii) every 2<sup>nd</sup> month audits including:                                     <ul style="list-style-type: none"> <li>(1) work health and safety workplace inspection of all clinical areas;</li> <li>(2) therapeutic diet certificate audit; and</li> <li>(3) health record audits - 10 files per</li> </ul> </li> </ul> </li> </ul>	

Report	Content of report	Time for provision
	<p style="text-align: center;">Correctional Centre;</p> <p>iii) quarterly report on results of audits including:</p> <p style="padding-left: 40px;">(1) environmental cleaning audits of the health centre(s) and all satellite health centre(s); and</p> <p style="padding-left: 40px;">(2) medication charts (long stay medication charts) for 10% of the population;</p> <p>iv) annual audits including:</p> <p style="padding-left: 40px;">(1) biomedical equipment testing.</p>	

**TABLE 5: ANNUAL REPORT**

Report	Content	Time for provision
<p>A. Annual Report</p>	<p>The Operator must provide an Annual Report on the Operator's activities and performance for each Service bundle under this Agreement for the previous Calendar Year or part Calendar Year for any part Calendar Year at the end of the Term.</p> <p>The Annual Report will include:</p> <ol style="list-style-type: none"> <li>1) annualised Key Performance Indicators in relation to the Key Performance Indicators as defined in the Performance Regime;</li> <li>2) annualised information in relation to the number of Inmate Places that met the Available Inmate Place (as defined in the Performance Regime) standard on each day of the year;</li> <li>3) information required to be included by the Department in its Annual Report, which information will be notified to the Operator from time to time;</li> <li>4) annual financial statements for:               <ol style="list-style-type: none"> <li>a) the Operator;</li> <li>b) any other subcontractor or member of the Operator as requested by the State;</li> </ol> </li> <li>5) an annualised Pharmaceuticals Reporting Spreadsheet; and</li> <li>6) Annual Report on Health Services accreditation status.</li> </ol>	<p>60 Business Days after the end of each Calendar Year and on the last day of the Term</p>
<p>B. Aboriginal</p>	<p>The Aboriginal Participation Report must be in accordance</p>	<p>Annually, as</p>



Report	Content	Time for provision
Participation Report	with clause 5.16 of this Agreement.	required in accordance with this Agreement.
C. Health professional registration checks	Health professional registration checks with Australian Health Practitioner Regulation Agency .	Annually on 31 May
D. Condition Assessment	<p>The Operator must undertake annually a Condition Assessment of the Correctional Centre which must:</p> <ol style="list-style-type: none"> <li>1) assess the performance, condition and the remaining serviceable life of each Asset;</li> <li>2) detail any Assets which were identified as failed, defective or otherwise not in a satisfactory operational condition and the reason why planned preventative maintenance or unscheduled repairs did not address such condition and why the Assets are not subject to replacement and refurbishment;</li> <li>3) identify any Asset that does not comply, or is at any stage within the two years following the undertaking of Condition Assessment unlikely to comply with the requirements of the Maintenance Standards;</li> <li>4) identify any updates which the Operator would like to make to the Operator Equipment Register referred to in section 2.12;</li> <li>5) identify any Asset which was programmed to have maintenance or refurbishment undertaken and/or to be replaced in the two year period preceding the Condition Assessment and which has not been maintained, refurbished or replaced (as applicable);</li> <li>6) provide a brief scope of work required to bring the Asset in line with the requirements of the Maintenance Standards, including the nature of and timing of the maintenance, refurbishment or replacement (as applicable) required to be undertaken; and</li> <li>7) include a detailed justification of any proposed changes to the Asset Management Plan to improve the performance of the Assets and the Correctional Centre. The justification shall include a business case setting out:               <ol style="list-style-type: none"> <li>a) the cost, quality and time implications and any other effect on the Services of undertaking the proposed change; and</li> <li>b) the cost, quality and time implications and any other</li> </ol> </li> </ol>	30 Business Days after the end of each Calendar Year

Report	Content	Time for provision
	<p style="text-align: center;">effect on the Services if the proposed change is not undertaken.</p> <p>The Operator must invite the State Representative to attend the Condition Assessment surveys and investigations, and must permit the State Representative to observe surveys and investigations at the sole discretion of the State.</p>	

## 2. Operating Plans

### 2.1 Overview

The minimum requirements for Operating Plans for the Services are detailed in this Schedule.

Each first draft (or updated draft) of an Operating Plan must:

- (a) if there is a previous version of that plan, be consistent with and provide no lesser obligations or standards on the Operator than that previous version of the plan; or
- (b) otherwise, be to the satisfaction of the State.

To avoid repetition of content across multiple Operating Plans, the Operator may use cross-references.

The Operating Plans detailed in this Schedule must be submitted or updated:

- (c) in accordance with Table 6 and clauses 5.1 and 5.2 of this Agreement;
- (d) as required by the State Representative or any Authority;
- (e) to align with changes in:
  - (i) the management and operations of the Correctional Centre;
  - (ii) other related Plans; and
  - (iii) the Plans as requested by the State Representative under this Agreement; and
- (f) to include a methodology of regular reviews that considers:
  - (i) planned exercises; and
  - (ii) incorporation of lessons learned from actual incidents and events.

**TABLE 6 — SUBMISSION AND UPDATE OF OPERATING PLANS**

Plan	Plan submission date	Update frequency
Transition Plan	<p><b>1<sup>st</sup> draft</b> No later than 30 Business Days before the Amendment Start Date.</p> <p><b>Final version</b> No later than 10 Business Days before the Amendment Start Date.</p>	N/A
Safety and Security Plan Emergency Management Plan Staff Recruitment and Training Plan Health Services Plan Business Continuity Plan FM Services Plan Asset Management Plan	<p><b>1<sup>st</sup> draft</b> No later than 10 Business Days before the Amendment Start Date</p> <p><b>Final version</b> No later than 25 Business Days before the Date for Operational Readiness (EF)</p>	<b>Annually</b> (20 Business Days prior to the end of each Calendar Year)
Rehabilitation Plan Reintegration Plan Inmate Needs and Services Plan Governance and Administration Plan Quality Assurance Plan WHS Management Plan	<p><b>1<sup>st</sup> draft</b> No later than 10 Business Days before the Amendment Start Date</p> <p><b>Final version</b> No later than 20 Business Days before the Date for Operational Readiness (EF)</p>	
Environmental Management Plan Performance Monitoring Program Correctional Centre Access Protocols	<p><b>1<sup>st</sup> draft</b> No later than 10 Business Days before the Amendment Start Date</p> <p><b>Final version</b> No later than 5 Business Days before the Date for Operational Readiness (EF)</p>	
Aboriginal Participation Plan Local Industry	<p><b>1<sup>st</sup> draft</b> No later than 10 Business Days before the Operational Commencement Date (EF)</p>	

Plan	Plan submission date	Update frequency
Participation Plan	<b>Final version</b> No later than 30 Business Days after the Operational Commencement Date (EF).	
Communications and Community Relations Plan		
Handover Package		

## 2.2 Transition Plan

The Operator must develop, implement and update the Transition Plan so that it includes:

- (a) a strategy for the management and delivery of the transition activities related to the operation of the Expanded Facility, including:
  - (i) an organisational chart, which identifies the Operator's proposed transition team, including:
    - A. names and roles of key personnel of the Operator, subcontractors and suppliers who will hold positions of responsibility and accountability for the outcomes of the transition activities; and
    - B. lines of communication and interfaces with the State (including CSNSW, JHFMHN and the Justice Infrastructure and Assets division within the Department of Justice and other key stakeholders; and
    - C. CVs of the key people demonstrating relevant experience in transitioning the operations of facilities of a similar nature, size and complexity as the Correctional Centre or in managing and/or delivering activities similar to the transition activities; and
  - (b) governance arrangements; and
  - (c) a proposed strategy including details and methodology to:
    - (i) deliver the transition activities specified in Part B of the Output Specification including its approach to recruitment and compliance with the *Fair Work Act 2009* (Cth); and
    - (ii) achieve the general obligations specified in Part B of the Output Specification including any other acts, matters or things which the Operator will implement to achieve the general transition obligations.

## 2.3 Rehabilitation Plan

- (a) The Operator is to provide a Rehabilitation Plan in accordance with outcome 1 (Rehabilitation and Reintegration) of Part C of the Output Specification that sets out its detailed plans and activities.
- (b) As a minimum, this plan must contain:
  - (i) details on the services and reintegration services and programs model;

- (ii) types of interventions including those culturally specific for Aboriginal and Torres Strait Islander Inmates;
- (iii) details of offence related programs including delivery methodology and timetables;
- (iv) details of Vocational Education and Training courses and programs including delivery methodology and timetables; and
- (v) details of Inmate employment for all cohorts including timetables.

## **2.4 Reintegration Plan**

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

## **2.5 Safety and Security Plan**

- (a) The Operator is to provide a Safety and Security Plan in accordance with outcome 2 (Safety and Security) of Part C of the Output Specification that sets out its detailed plans and activities for the next year.
- (b) As a minimum, this plan must cover:
  - (i) secure perimeter and access control systems including testing regimes;
  - (ii) Inmate supervision;
  - (iii) Inmate accountability;
  - (iv) Inmate movement control;
  - (v) incident management and reporting;
  - (vi) work health and safety;
  - (vii) searching Inmates, Staff, Visitors, vehicles and the Correctional Centre including regimes and matrices;
  - (viii) contraband detection, prevention, management and disposal;
  - (ix) intelligence systems, function and strategies;
  - (x) use of force and security response;
  - (xi) firearms and security equipment including serviceability and accountability;
  - (xii) humane reception of Inmates;
  - (xiii) Inmate classification and placement;

- (xiv) Inmate discipline;
- (xv) drug and alcohol testing regime; and
- (xvi) external escorts.

## **2.6 Emergency Management Plan**

- (a) The Operator is to provide an Emergency Management Plan that sets out its detailed plans and activities for the next year.
- (b) As a minimum, this plan must cover:
  - (i) Critical Incidents;
  - (ii) evacuation;
  - (iii) bomb threat;
  - (iv) withdrawal of labour;
  - (v) natural disaster;
  - (vi) key lock compromise;
  - (vii) electronic security failure;
  - (viii) pandemic outbreak; and
  - (ix) public demonstration.

## **2.7 Inmate Needs and Services Plan**

- (a) The Operator must develop, implement and maintain an Inmate Needs and Services Plan in accordance with outcome 3 (Decency and Respect) of Part C of the Output Specification detailing plans and activities for the next year.
- (b) As a minimum, this plan must cover:
  - (i) a timetable for the delivery of Services activities;
  - (ii) Staff Inmate interaction;
  - (iii) Inmate induction program;
  - (iv) Inmate requests, enquiries and complaints process;
  - (v) visits regimes (all Inmate cohorts);
  - (vi) details of service provision for Inmates with specific needs;
  - (vii) time out of cells (all Inmate cohorts);
  - (viii) purposeful day routines (all Inmate cohorts);
  - (ix) religious and spiritual needs (services and timetables);

- (x) 'Food Services' (menus, cultural and lifestyle diet provision);
- (xi) clothing, bedding and hygiene requirements;
- (xii) Inmate communication via telephone and mail (all Inmate cohorts);
- (xiii) Inmate private property;
- (xiv) Inmate cash and purchasing of goods;
- (xv) library facilities and access to computers, newspapers and magazines; and
- (xvi) legal service including access to in person and telephone/video legal conferencing.

## **2.8 Governance and Administration Plan**

- (a) The Operator must develop, implement and maintain a Governance and Administration Plan in accordance with outcome 4 (Professionalism and Accountability) of Part C of the Output Specification detailing plans and activities for the next year.
- (b) As a minimum, this plan must cover:
  - (i) professional conduct;
  - (ii) standards of professional behaviour;
  - (iii) Staff recruitment;
  - (iv) Staff training programs and curriculum;
  - (v) Operating Manuals;
  - (vi) sentence administration;
  - (vii) Official Visitors;
  - (viii) requests for and disclosure of advice and information;
  - (ix) interface with CSNSW performance monitoring;
  - (x) interface with OIMS and other CSNSW corporate information systems;
  - (xi) records management;
  - (xii) protection of children and young people; and
  - (xiii) community engagement.

## **2.9 Staff Recruitment and Training Plan**

- (a) The Operator must develop, implement and maintain a Staff Recruitment and Training Plan in accordance with outcome 4 (Professionalism and Accountability) of Part C of the Output Specification detailing staff training plans and activities for the next year.
- (b) As a minimum this plan must cover:

- (i) process and methodology for selection of staff with appropriate aptitude and capability to perform the duties of a custodial officer;
- (ii) compliance with registered training organisation requirements for the delivery and assessment of current nationally accredited training programs including qualifications of staff delivering and assessing the training;
- (iii) curriculum and assessment activities from the Certificate III level of the correctional services training package for custodians of offenders and Certificate IV level of the correctional services training package for Inmate services and programs Staff (or equivalent at time of recruitment and/or training);
- (iv) annual staff training and development plans/matrices;
- (v) course content for any training plan or activity submitted annually for endorsement by the State;
- (vi) Staff skills and qualifications audit;
- (vii) records of Staff training activities/programs conducted over the previous year; and
- (viii) recruitment processes for appropriately qualified and credentialed health staff including medical & dental officers through the Justice Health & Forensic Mental Health Network Dental Appointment Advisory Committee (**MADAAC**).

## 2.10 Health Services Plan

- (a) The Operator is to provide a Health Services Plan in accordance with outcome 5 (Health Services) of Part C of the Output Specification that sets out its detailed plans and activities for the next year.
- (b) As a minimum, this plan must contain:
  - (i) details on all planned activities; and
  - (ii) a timetable for the delivery of Health Services activities.

## 2.11 Facilities Management (FM) Services Plan

- (a) The Operator is to provide an FM Services Plan that sets out its detailed plans and activities for the next year.
- (b) As a minimum, this plan must contain the following (to the extent not covered by the Asset Management Plan):
  - (i) details on all planned activities;
  - (ii) a timetable for the delivery of Service activities;
  - (iii) sub plans to address specific FM services:
    - A. a General Services Plan that provides the methodology, mechanisms and procedures to address the requirements of section 2.1 of Attachment C.1 to Part C of the Output Specification;



- B. a Utilities Management Plan that provides the methodology, mechanisms and procedures to address the requirements of section 2.3 of Attachment C.1 to Part C of the Output Specification;
- C. a Waste Management and Disposal Plan including clinical waste that provides the methodology, mechanisms and procedures to address the requirements of section 2.4 of Attachment C.1 to Part C of the Output Specification;
- D. a Grounds Maintenance Plan that provides the methodology, mechanisms and procedures to address the requirements of section 2.5 of Attachment C.1 to Part C of the Output Specification;
- E. a Pest Control Plan that provides the methodology, mechanisms and procedures to address the requirements of section 2.6 of Attachment C.1 to Part C of the Output Specification; and
- F. a Cleaning Plan, including environmental cleaning of the health centre(s) that provides the methodology, mechanisms and procedures to address the requirements of section 2.7 of Attachment C.1 to Part C of the Output Specification.

## 2.12 Asset Management Plan

- (a) The Operator must develop, implement and update an Asset Management Plan in accordance with the requirements of this Agreement.
- (b) The Asset Management Plan is to be updated in accordance with the update frequency, as identified in Table 6, with any amendments agreed by the State's Representative and justified by the results of the Condition Assessment. The State (acting reasonably) may instruct the Operator to accelerate or delay the replacement of Assets (as part of the Services), as justified by the Condition Assessment. The Operator must update the Asset Management Plan and undertake the lifecycle works in accordance with those instructions.
- (c) The Asset Management Plan must address the requirements of section 2.2 of Attachment C.1 to Part C of the Output Specification and must include:
  - (i) the approach the Operator will undertake to interface and communicate on FM Services matters with the State;
  - (ii) the management structure, responsibilities and lines of communication put in place by the Operator for the management and delivery of the FM Services;
  - (iii) the systems which will be implemented in the delivery of the FM Services, including:
    - A. the Operator's approach to the development of an Asset Management System that meets the requirements of the ISO 55001 including details on how:
      - (I) the Asset Management System will be used to support organisational requirements;
      - (II) the Asset Management System will be updated as the Asset changes; and

- (III) the Asset Management System will be used as a resource for the Operator;
- B. details on the systems that will be used to monitor and facilitate FM Service Failure (as that term is defined in the Payment Schedule) reporting and rectification monitoring including:
  - (I) how the Operator will log, manage, respond, rectify and report Service Failures, queries and requests relating to the FM Services;
  - (II) notification of and progress updates regarding faults, complaints, maintenance events and FM Services Failures;
  - (III) requests for temporary changes to the delivery and scope of the FM Services;
  - (IV) the approach to the delivery of soft FM Services, planned and unscheduled maintenance in the state management unit during business hours and after business hours;
  - (V) the approach to monitoring and response to security systems, fire systems and building systems alarm response; and
  - (VI) requests for information and additional Monthly reporting if required by the State;
- (iv) details of the qualifications and experience of the Staff providing the FM Services;
- (v) details of the collection and storage of FM Services records;
- (vi) an asset register of all Assets within the Site in a format agreed by the State (**Asset Register**);
- (vii) the Operator's Equipment register which identifies all the Operator's Equipment, as agreed by the State (**the Operator Equipment Register**);
- (viii) an annual Asset works plan, covering refurbishment and replacement and augmentation of those Assets detailed on the Asset Register for the coming year (**Annual Asset Works Plan**);
- (ix) a 12 year Asset works plan, covering refurbishment and replacement and augmentation of those Assets detailed on the Asset Register for the coming 12 years (**12 Year Asset Works Plan**);
- (x) a consolidated programmed planned maintenance schedule for each Asset which must:
  - A. list each planned preventative maintenance activity and show the frequency at which each maintenance activity is to be undertaken over the coming year;
  - B. be developed to satisfy the FM Services Specification (as that term is defined in the Output Specification) and in particular the Maintenance Standards; and

- C. be entered into the Asset Management System to facilitate electronic tracking and storage of maintenance information, include the following:
  - (I) timing of renewal with supporting justification;
  - (II) location and maintenance type;
  - (III) nature and frequency of the maintenance activity;
  - (IV) duration of work and potential disruption to operations/Inmates; and
  - (V) options to minimise disruption to operations/Inmates;
- (xi) an inspection and testing schedule which includes all inspections, statutory and regulatory tests that will be required to be carried out in relation to the Site, and biomedical testing of all medical equipment;
- (xii) a whole-of-life assessment, containing a consolidated current and predicted whole-of-life refurbishment and replacement schedule for all Assets for the balance of the Term; and
- (xiii) a list of consumables and chemical agents to be used in the provision of FM Services including storage and security requirements.

## 2.13 Communications and Community Relations Plan

The Operator is to provide a comprehensive Communications and Community Relations Plan which includes:

- (a) how the Operator intends to respond to media enquiries regarding operational issues, including a protocol for liaison with the State and confirmation that media enquiries regarding operational issues must be handled by the Operator in consultation with the State;
- (b) the identification of risks involved with the management of each particular stakeholder, highlighting critical issues that may arise and the proposed approaches to managing these risks and strategies to maintain stakeholder relationships;
- (c) the interface protocols which will be implemented by the Operator with respect to interactions with the Community Advisory Council appointed under s243 of the Corrections Act to monitor the Correctional Centre;
- (d) a strategy for the Operator's interaction with the local community;
- (e) a process for identifying and managing key communication risks and issues including:
  - (i) a process for identifying and responding to potential issues and risks;
  - (ii) an approach for dealing with unplanned events; and
  - (iii) a process for providing timely advice to the State in relation to issues and risks;
- (f) an approach to media engagement including both proactive and reactive media, as well as designated media spokespeople;

- (g) how the Operator will address the State's proposed community and communications activities (if any) as provided by the State (from time to time); and
- (h) a process of regular review of the Communications and Community Relations Plan during the year to ensure it remains relevant.

## **2.14 Quality Assurance Plan**

- (a) The Operator must develop, implement and update a Quality Assurance Plan for the Services.
- (b) The Quality Assurance Plan must satisfy the requirements of the Output Specification.
- (c) The Quality Assurance Plan must include the:
  - (i) organisational structure identifying the Operator's key personnel with quality management responsibilities and accountabilities, including:
    - A. lines of communication and interfaces with the Operator's overall organisational structure; and
    - B. minimum skill levels required;
  - (ii) the interfaces of the Quality Assurance Plan with other Plans;
  - (iii) strategy for inspection, witnessing, monitoring and reporting;
  - (iv) auditing procedures for the Quality Assurance Plan;
  - (v) process for developing and managing quality records;
  - (vi) procedures for rectifying non-conformances and managing improvement opportunities, corrective action and preventative action to prevent occurrence and recurrence; and
  - (vii) reporting requirements.

## **2.15 Environmental Management Plan**

- (a) The Operator must develop, maintain and update an Environmental Management Plan, which complies with the requirements of this Agreement.
- (b) The Environmental Management Plan must include:
  - (i) the organisational structure identifying the Operator's key environmental personnel and personnel with environmental management responsibilities and accountabilities, including:
    - A. lines of communication and interfaces with the Operator's overall organisational structure; and
    - B. minimum skill levels required.
  - (ii) the interfaces of the Environmental Management Plan with other Plans;
  - (iii) a policy or strategy that adheres to ecological sustainable development;

- (iv) environmental and sustainability initiatives;
- (v) energy monitoring and reporting; and
- (vi) environmental management systems and processes to review and monitor performance.

## 2.16 Business Continuity Plan

The Operator must develop, implement and update a Business Continuity Plan, which includes:

- (a) organisational structure identifying the Operator's key personnel with business continuity responsibilities, including:
  - (i) roles;
  - (ii) lines of communication and interfaces with the Operator's overall organisational structure; and
  - (iii) minimum skill levels and training required;
- (b) processes and procedures for management and communication of critical information;
- (c) assessment of damage and control measures; and
- (d) the management of critical business processes including work health and safety, security of Inmates, operational performance of the Correctional Centre, human resources and payroll.

## 2.17 Local Industry Participation Plan

The Operator must develop, implement and update a Local Industry Participation Plan, which meets the requirements set out in outcome 4 (Professionalism and Accountability) of Part C of the Output Specification and includes:

- (a) strategies to ensure economic and business opportunities for local goods and service providers are promoted; and
- (b) the extent to which local goods and services providers will participate in the operation of the Correctional Centre.

## 2.18 Performance Monitoring Program

- (a) The Operator must prepare a Performance Monitoring Program (**PMP**) containing all the performance monitoring activities (including frequencies, systems, methods and audit tools) that the Operator must undertake:
  - (i) to collect performance data;
  - (ii) monitor the quality of the Services; and
  - (iii) to ensure that the Services are being carried out to the level and quality required by this Agreement (including the Services Requirements).
- (b) The PMP must be compatible with the Monthly Performance Report as set out in Table 3. The PMP must include the following:

- (i) the monitoring and reporting frequencies, systems, methods and tools that will be used to monitor the delivery of each Service bundle;
- (ii) the monitoring and reporting frequencies, systems, methods and tools that will be used to monitor the Operator's performance against the various elements of the payment structure (including Key Performance Indicators) and the Outcome Specification;
- (iii) the remediation process should there be a failure to accurately measure the performance standards specified in the Output Specification;
- (iv) a coherent process and procedures to assess, monitor and calculate payment adjustments for failure to meet the Key Performance Indicator benchmarks and Available Inmate Place requirements;
- (v) the nominated Staff member responsible for the monitoring of each Key Performance Indicator; and
- (vi) the approach, systems, methods and tools to ensure that:
  - A. all required performance information is entered into the CSNSW OIMS as required in the Output Specification;
  - B. all records, statistics, registers and journals are maintained, as required in the Output Specification; and
  - C. all original performance reports for monitoring and auditing are maintained.

## 2.19 Aboriginal Participation Plan

- (a) The Operator must develop, implement and update an Aboriginal Participation Plan for the Services showing how the Operator intends to direct the target project spend to appropriate Aboriginal education and employment opportunities which must, as a minimum, meet the standards as specified in clause 5.16 of this Agreement using the template provided at: <https://www.procurepoint.nsw.gov.au/before-you-supply/policy-framework-construction>;
- (b) The Operator must provide details on the methodology, programs and initiatives they will implement in order to achieve and maintain the minimum level of workforce participation which must be no less than 6%; and
- (c) The Operator must detail the steps it will take to increase the engagement of Aboriginal owned businesses by the Operator and by its subcontractors.

## 2.20 Correctional Centre Access Protocols

The Correctional Centre Access Protocols must contain:

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

## 2.21 WHS Management Plan

The WHS Management Plan must be a documented work health and safety management plan which includes the content required to be included in a WHS Management Plan prepared under the WHS Legislation (even if the Operator is not a principal contractor under the WHS Legislation) and also provides for:

- (a) arrangements in relation to general industry training, work activity based health and safety training and site specific health and safety training;
- (b) arrangements for employees, agents and contractors of the Operator to be made aware of the content of the WHS Management Plan;
- (c) arrangements for review of the WHS Management Plan as the Services change;
- (d) a statement that the WHS Management Plan is available for inspection at the Site; and
- (e) arrangements for auditing and monitoring of work health safety and rehabilitation at the Site (including of any subcontractors).

For the purposes of this section, '**WHS Legislation**' means Legislative Requirements relating to health and safety at work including:

- (a) the *Work Health and Safety Act 2011* (NSW); and
- (b) the *Work Health and Safety Regulation 2017* (NSW).

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

## 2.22 Handover Package

The Handover Package is to contain key information to enable the State or other incoming party to take over operations of the Correctional Centre. As a minimum, this plan is to contain the following information:

- (a) **(Contracts)**: a list of all agreements, permits, licences or other documents which are material to the delivery of the Services, including (as appropriate) the contact number, name, address, email address, telephone and facsimile numbers of counterparties, contract price, value and subject matter;
- (b) **(Systems)**: a list of systems (including communication systems) used (computer and otherwise) for the delivery of the Services, together with a description of the systems and master passwords where applicable. Software licences for any software required for continued operation and management of the systems must be transferred to the State at the end of the Term as part of the final Handover Package or following the State exercising intervention rights in accordance with this Agreement;
- (c) **(Daily operations)**: a list of any other information key to the daily operation of the Services, including:
  - (i) updated Plans;
  - (ii) details of the location of keys and access cards to the Correctional Centre; and

- (iii) lists of plant and other Assets relevant to delivery of the Services to the Correctional Centre;
- (d) **(Staff)**: details of each member of Staff, including:
  - (i) names, work email addresses, work telephone numbers, roles and responsibilities;
  - (ii) the date on which the person became a member of Staff;
  - (iii) evidence of security checks undertaken;
  - (iv) terms and conditions of employment or other contract; and
  - (v) all payments, benefits or changes to terms and conditions of employment or other contract promised to any member of Staff;
- (e) **(Correctional Centre information)**:
  - (i) records relevant to location plans, boundaries and titles to the Site;
  - (ii) current and accurate 'as built' and 'as installed' drawings and specifications showing all modifications and augmentations, constructed or installed during the Term, stored in editable electronic format;
  - (iii) all area and buildings volume data;
  - (iv) Condition Assessments;
  - (v) CAD drawings for architectural, civil/structural, mechanical, electrical and engineering elements ensuring that all systems provided are compatible for access of information by the State; and
  - (vi) records relevant to compliance with Law, Policy and Authorisations, licences and registrations maintained by the Operator; and
- (f) **(Authorisations correspondence)**: copies of all:
  - (i) correspondence with all relevant Authorities, the State, consultants, contractors in relation to Authorisations as required under the Communications and Community Relations Plan;
  - (ii) Authorisations correspondence related to subsequent building works and alterations and additions to the Services; and
  - (iii) records relevant to any Authorisations obtained by the Operator in respect of the Site or the delivery of the Services.



## Attachment 1 – Pharmaceuticals Reporting Spreadsheet

Pharmacy Pass Through Costs																	
Supplier	Invoice date	Invoice number	Product ID	Ordered Date	Medication Name	Generic Medication Name	Form or Strength	QTY Dispensed or Supplied	Unit of Measurement	Qty Administered	Unit Price	GST	Credit	Debit	Nett Inc GST	Patient Name	CRN

## **Schedule 17 – [NOT USED]**

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## **Schedule 18 – [NOT USED]**

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## **Schedule 19 – Performance Regime**

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## 1. Introduction

This Schedule sets out:

- (i) the Charge Events; and
- (ii) the Key Performance Indicators.

From the Amendment Start Date, the Operator will be required to report its performance against each of these components Monthly.

The charges specified for each Charge Event will be Indexed by the CPI Annual Multiplier.

### 1.2 Format of Performance Regime

For the purpose of providing context only, the State has set out below:

- (a) a summary of the format which has been used in respect of each Charge Event or Key Performance Indicator; and
- (b) a description of how each element of the Charge Event or Key Performance Indicator is intended to operate.

<b>Charge Event / KPI number</b>	Title of Charge Event or Key Performance Indicator
<b>Formula</b>	<p>Sets out the formula which will be used to calculate the relevant Charge Event or Key Performance Indicator.</p> <p>Where this formula includes “x 100”, this is to convert the result from a decimal number into a percentage (as indicated in the example set out in section 1.3) to align with the Target Performance Range, Level 1 Performance Range and Level 2 Performance Range (as the case may be) for the purposes of calculating Quality Failure Points.</p>
<b>Charge / Calculation of Quality Failure Points</b>	Sets out the charge associated with the Charge Event or, in the case of Key Performance Indicators, the methodology for determining the applicable number of Quality Failure Points (if any) for that Key Performance Indicator for the purpose of calculating Quality Failure Abatements in accordance with the Payment Schedule.
<b>Definitions</b>	Sets out definitions which are relevant to the Charge Event or Key Performance Indicator.
<b>Counting rules</b>	Sets out the rules which will be used to determine the Operator's performance in respect of the Charge Event or Key Performance Indicator. Examples used in the counting rules may be used as an aid to interpretation.
<b>Reporting requirements of the</b>	Sets out the Operator's non-exhaustive reporting obligations in

<b>Operator</b>	respect of the relevant Charge Event or Key Performance Indicator.
<b>Reporting Period</b>	Sets out the period in which the Operator is required to report in respect of the relevant Charge Event or Key Performance Indicator.

### 1.3 Calculation of Quality Failure Points - example

For the purpose of aiding interpretation, the State has set out below an example of the calculation of Quality Failure Points where percentage thresholds apply.

#### Example: KPI 1: Current Case Plans

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

KPI 1	Performance Range	Quality Failure Points
<b>Target</b>	98 – 100%	0
<b>Level 1</b>	80 – <98%	1,500 per failure in this range
<b>Level 2</b>	<80%	2,250 per failure in this range

The formula is as follows:

$$\text{(Number of Eligible Inmates with a Current Case Plan) / (Number of Eligible Inmates) x 100}$$

Assume that for Month n:

- (a) The number of Eligible Inmates with a Current Case Plan is equal to 225; and
- (b) The number of Eligible Inmates is equal to 300.

The KPI result is 75% (i.e.  $225/X \times 300$ ) which represents X failures (i.e. 300 less 225). In this case, this represents Level 2 Performance Range. The Quality Failure Points are calculated to be X based on the methodology set out below:

	Failures in this Range <sup>1</sup>	Applicable Failures in this Range	Calculated Quality Failure Points
<b>Target</b>	0 – 6	6	$6 \times 0 = 0$
<b>Level 1</b>	7 – 60	54	$54 \times 1,500 = 81,000$
<b>Level 2</b>	61 - 300	15	$15 \times 2,250 = 33,750$
<b>Total</b>		<b>75</b>	<b>114,750</b>
<sup>1</sup> Calculated by reference to the KPI denominator – 300 in this example			

## 1.4 Definitions

For the purposes of this Schedule, the definitions in clause 1.1 of this Agreement will apply as supplemented by the following definitions:

**Assault** means:

- (a) physical violence that results in physical injury but does not require admission to hospital or any off Site medical centre that serves as an equivalent of a hospital;
- (b) indecent assault; or
- (c) deliberate transfer (e.g. spitting) of blood or other bodily fluids which is not captured within the definition of Serious Assault or Significant Assault.

**CPI Annual Multiplier** has the meaning given in the Payment Schedule.

**Custodial Patients** means all Inmates.

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

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

Total number of days in the reporting period

**JHeHS** means the Justice Health electronic Health Service.

**OIMS** means the CSNSW Offender Integrated Management System.

**Open Custody** means any Correctional Centre classified by the State as minimum security.

**PAS** means the Patient Administration System.

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

**Secure Custody** means any Correctional Centre classified by the State as maximum security or medium security.

**Serious Assault** means physical violence that results in physical injury requiring:

- (a) immediate transfer to hospital or any off Site medical centre that serves as an equivalent of a hospital for the Inmates; and
- (b) medical treatment as an inpatient (regardless of whether this treatment is received in the emergency department or otherwise).

Notwithstanding the previous sentence, Serious Assault is deemed to include:

- (d) any instance of sexual intercourse without consent;
- (e) deliberate transfer (e.g. spitting) of blood or other bodily fluids or matter that results in infection or the transmittal of disease; or
- (f) any deliberate incident of skin being punctured with a syringe (i.e. "a needle stick injury").



**Significant Assault** means the deliberate transfer of blood or other bodily fluids or matter that has the potential to cause infection or transmit disease where the transfer has occurred by:

- (a) spitting or transferring by another means the relevant blood or other bodily fluid or matter into a person's face or on an unhealed (e.g. open) wound; or
- (b) biting.

**Substantiated** means:

- (a) there is evidence that a Serious Assault, Significant Assault or Assault (as the case may be) took place because at least one of the following circumstances applies:
  - (i) there is at least one witness to the Serious Assault, Significant Assault or Assault (as the case may be) or there is other evidence of the Serious Assault, Significant Assault or Assault (as the case may be) (such as CCTV footage); or
  - (ii) the victim claims that a Serious Assault, Significant Assault or an Assault (as the case may be) has occurred and there is no obvious reason to doubt this claim; or
- (b) the victim has a visible injury and claims that a Serious Assault, Significant Assault or Assault (as the case may be) has occurred and there is sufficient circumstantial or other evidence to conclude that a Serious Assault, Significant Assault or an Assault (as the case may be) is the most likely cause of the injury on the balance of probabilities.

## 1.5 OIMS

Unless this Schedule or the Output Specification expressly provides otherwise all information, data or reports which are to be submitted by Operator in accordance with this Schedule are to be entered in OIMS.

## 2. Charge Events

### 2.1 Charge Event 1 – Unnatural Deaths

<b>Charge Event 1</b>	<b>Unnatural Deaths</b>
<b>Formula</b>	<b>Number of Unnatural Deaths</b>
<b>Charge</b>	Each Unnatural Death results in a charge of \$500,000.
<b>Definitions</b>	<p><b>Unnatural Death</b> means a death of an Inmate:</p> <ul style="list-style-type: none"> <li>• in the Correctional Centre or when escorting an Inmate, which the State Coroner or the Commissioner determines is the result of an Unnatural Cause; or</li> <li>• in Correctional Centre Custody, which the State Coroner or the Commissioner determines is the result of an Unnatural Cause.</li> </ul> <p><b>Correctional Centre Custody</b> means in the Correctional Centre, or outside the Correctional Centre during participation in a temporary leave program or when the Inmate is being (or is required to be) escorted by Operator or its Associates.</p> <p><b>Unnatural Cause</b> includes homicide, suicide, accidental cause or drug overdose.</p>
<b>Counting Rules</b>	<p>Count the number of Unnatural Deaths in the reporting period. If there is an Unnatural Death in, or on route to a hospital or any off Site medical centre that serves as an equivalent of a hospital for the Inmates (whether the Inmate is or is not in the legal or physical custody of Operator or its Associates at the time), and the Unnatural Death was caused by something that occurred in Correctional Centre Custody or in the Correctional Centre, the Unnatural Death is to be counted.</p> <p>Where more than one Unnatural Death occurs during the one incident or event, the death of each individual will be recorded as an individual death.</p>
<b>Reporting Requirements of Operator</b>	<ul style="list-style-type: none"> <li>• Compliance with the Output Specification.</li> <li>• A summary of the Unnatural Death, including its cause, its discovery and the response by Operator or its Associates.</li> <li>• Operator's intended action to enhance the levels of safety and security to prevent future Unnatural Deaths of a similar nature from occurring (including having regard to any report or recommendations of the Commissioner). If none, a detailed rationale supporting this decision is required.</li> <li>• A report from the General Manager of the Correctional Centre regarding the Unnatural Death.</li> </ul>
<b>Reporting Period</b>	Monthly

## 2.2 Charge Event 2 – Escapes

<b>Charge Event 2</b>	<b>Escapes</b>
<b>Formulae</b>	<p><b>Number of Escapes from Secure Custody</b></p> <p><b>Number of Escapes from Open Custody</b></p>
<b>Charge</b>	<p>Each Escape from Secure Custody results in a charge of \$500,000.</p> <p>Each Escape from Open Custody results in a charge of \$200,000.</p>
<b>Definitions</b>	<p><b>Escape</b> means the departure (regardless of duration), without lawful authority, of an Inmate:</p> <ul style="list-style-type: none"> <li>from the perimeter or declared boundary of a Correctional Centre, regardless of whether or not there was a breach of a physical barrier; or</li> <li>from any approved locations when outside of the perimeter or declared boundary of a Correctional Centre when the Inmate is being (or is required to be) escorted by Operator or its Associates.</li> </ul>
<b>Counting Rules</b>	<p>Count the number of each type of Escape during the reporting period. If two or more Inmates Escape at the same time or together, then this is counted as two or more Escapes (as the case may be).</p> <p>If an Inmate Escapes, the Escape is classified as an Escape from Open Custody or Secure Custody depending on the security level of the area of the Correctional Centre at which the Inmate was held immediately prior to the Escape except for Escapes by female Inmates which are always to be classified as Escapes from Secure Custody. For example, where a male Inmate with an individual security classification of Minimum Security is held in the Secure Custody area of the Correctional Centre prior to Escape, that Escape is to be counted as a Secure Custody Escape. Where a female Inmate is held in an Open Custody area of the Correctional Centre prior to Escape, the Escape is to be counted as an Escape from Secure Custody.</p> <p>If an Inmate Escapes whilst being escorted by Operator or its Associates, the Escape is classified as an Escape from Open Custody or Secure Custody depending on the security level of the area of the Correctional Centre at which the Inmate was held immediately prior to the commencement of the escort by Operator or its Associates except for Escapes by female Inmates which are always to be classified as Escapes from Secure Custody.</p>

<p><b>Reporting Requirements of Operator</b></p>	<ul style="list-style-type: none"> <li>• Compliance with the Output Specification.</li> <li>• Summary of the Escape, the events preceding the Escape, detection and the response by Operator or its Associates.</li> <li>• Operator or its Associates' intended actions to enhance the levels of safety and security to prevent future Escapes from occurring. If none, the rationale for this decision.</li> <li>• A report from the General Manager of the Correctional Centre regarding the Escape.</li> </ul>
<p><b>Reporting Period</b></p>	<p>Monthly</p>

### 2.3 Charge Event 3 - Major Disruption to Correctional Operations

<b>Charge Event 3</b>	<b>Major Disruption to the operation of the Correctional Centre</b>
<b>Formulae</b>	<b>Number of Major Disruptions to the operation of the Correctional Centre</b>
<b>Charge</b>	Each Major Disruption results in a charge of \$250,000 per day.
<b>Definitions</b>	<p><b>Major Disruption</b> means an incident involving defiance or disorder by one or more Inmates which results in:</p> <ul style="list-style-type: none"> <li>(a) a loss of effective control by Operator or its Associates (whether or not by physical or electronic failure or otherwise) of any part of a Correctional Centre or Correctional Centre (such as an accommodation area, common area, recreational area, work area or yard, rather than a cell), or the effective control of an Inmate while that Inmate is on temporary leave or is being (or required to be) escorted by Operator or its Associates;</li> <li>(b) the taking of a hostage (whether an Inmate or Non-Inmate);</li> <li>(c) a riot in the Correctional Centre; or</li> <li>(d) the State lawfully intervening to restore good order or security to any part of the Correctional Centre or Correctional Centre (such as an accommodation area, common area, recreational area, work area or yard, rather than a cell), or any other location while an Inmate is on temporary leave or being (or is required to be) escorted by Operator or its Associates.</li> </ul>
<b>Counting Rules</b>	<p>Count any incident of Major Disruption that occurred during the reporting period. Count the number of consecutive 24 hour periods for which a Major Disruption subsisted, rounded up to the nearest whole 24 hour period.</p> <p>Count the number of incidents, not the number of Inmates involved in the incident. For example, if three Inmates assume control of the roof of one of the Correctional Centres from Thursday afternoon until Saturday morning, count one incident for two days.</p>

<p><b>Reporting Requirements by Operator</b></p>	<ul style="list-style-type: none"> <li>• Complete CSNSW Offender Integrated Management System Incident Report Module requirements (as set out in the Output Specification).</li> <li>• Date and time of incident.</li> <li>• Location of incident.</li> <li>• Events preceding the incident.</li> <li>• Inmates, Non-Inmates or any other person involved in the incident.</li> <li>• Details of any injuries to Inmates, Non-Inmates or any other person.</li> <li>• Details of any hostages involved.</li> <li>• Attempted interventions to resolve incident.</li> <li>• Details on how the incident was resolved.</li> <li>• Damage to the Correctional Centre or any other location where the incident occurred.</li> </ul>
<p><b>Reporting Period</b></p>	<p>Monthly</p>

## 2.4 Charge Event 4 - Compliance with Release Dates

<b>Charge Event 4</b>	<b>Compliance with Release Dates Formulae</b>
<b>Formulae</b>	<p><b>Number of Erroneous Releases</b></p> <p><b>Number of Erroneous Detentions</b></p>
Charge	<p>Each Erroneous Release results in a charge of \$10,000 per day from the date of the Erroneous Release until the Inmate is taken into physical custody, up to a maximum of \$500,000.</p> <p>Each Erroneous Detention results in a charge of \$10,000 per day from the date of the Erroneous Detention until the Inmate is released from custody.</p>
<b>Definitions</b>	<p><b>Erroneous Release</b> means an Inmate is released from custody prior to the date on which the Inmate was legally entitled to be released, except to the extent this is the direct result of an act or omission of the State or its Associates.</p> <p><b>Erroneous Detention</b> means an Inmate is held in custody after the date from when the Inmate should have been legally released, except to the extent this is the direct result of an act or omission of the State or its Associates.</p>
<b>Counting Rules</b>	<p>For Erroneous Release, count the number of Inmates that are released from custody prior to the date on which they were legally entitled to be released and the number of days for which they have been released.</p> <p>For Erroneous Detention, count the number of Inmates that are held beyond the date from when they should have been legally released and the number of days for which they have been detained.</p>
<b>Reporting Requirements</b>	<p>For each Erroneous Detention:</p> <ul style="list-style-type: none"> <li>• details of the Inmate;</li> <li>• details of the legal release date and actual release date; and</li> <li>• reason for Erroneous Detention.</li> </ul> <p>For each Erroneous Release:</p> <ul style="list-style-type: none"> <li>• details of relevant Inmate;</li> <li>• details of the legal release date, actual release date, and date when the Inmate is taken into legal custody following the Erroneous Release;</li> <li>• details of the period during which the Inmate was erroneously released; and</li> <li>• reason for Erroneous Release.</li> </ul>
<b>Reporting Period</b>	Monthly

### 3. Key Performance Indicators

#### 3.1 KPI 1 – Current Case Plans

<b>KPI 1</b>	<b>Current Case Plans</b>
<b>Formulae</b>	<b>(Number of Eligible Inmates with a Current Case Plan) / (Number of Eligible Inmates) x 100</b>

<b>KPI 1</b>	<b>Current Case Plans</b>												
<b>Calculation of Quality Failure Points</b>	<p>The following table sets out the Quality Failure Points which Operator will accrue each Month depending on its performance relative to the Target Performance Range, Level 1 Performance Range and Level 2 Performance Range.</p> <table border="1"> <thead> <tr> <th></th> <th><b>Performance Range</b></th> <th><b>Quality Failure Points</b></th> </tr> </thead> <tbody> <tr> <td><b>Target</b></td> <td>98 – 100%</td> <td>0</td> </tr> <tr> <td><b>Level 1</b></td> <td>80 – &lt;98%</td> <td>1,500 per failure in this range</td> </tr> <tr> <td><b>Level 2</b></td> <td>&lt;80%</td> <td>2,250 per failure in this range</td> </tr> </tbody> </table>		<b>Performance Range</b>	<b>Quality Failure Points</b>	<b>Target</b>	98 – 100%	0	<b>Level 1</b>	80 – <98%	1,500 per failure in this range	<b>Level 2</b>	<80%	2,250 per failure in this range
	<b>Performance Range</b>	<b>Quality Failure Points</b>											
<b>Target</b>	98 – 100%	0											
<b>Level 1</b>	80 – <98%	1,500 per failure in this range											
<b>Level 2</b>	<80%	2,250 per failure in this range											
<b>Definitions</b>	<p><b>Current Case Plan means:</b></p> <p>(a) a Complete Case Plan which exists within six weeks of the date of:</p> <ul style="list-style-type: none"> <li>(i) sentence, for newly sentenced Inmates who were on remand at the Correctional Centre; or</li> <li>(ii) reception into the Correctional Centre, for sentenced Inmates transferred to the Correctional Centre; and</li> </ul> <p>(b) a Complete Case Plan which has been reviewed and updated as required by the Output Specification and, in any case, no less frequently than once every six Months.</p> <p><b>Eligible Inmates</b> means all sentenced Inmates at the Correctional Centre who have three Months or more remaining on their sentence (before the earliest possible release date) and who have been at the Correctional Centre under sentence for at least 6 weeks.</p> <p><b>Complete Case Plan</b> means a case plan for each sentenced Inmate which complies with the Corrections Legislation and the Output Specification and is entered in OIMS.</p>												



<b>Counting Rules</b>	<p><u>Numerator</u>: Number of Eligible Inmates with a Current Case Plan</p> <p><u>Denominator</u>: Number of Eligible Inmates.</p>
<b>Reporting Requirements</b>	<p>For each Eligible Inmate:</p> <ul style="list-style-type: none"> <li>• date of Case Plan assessments;</li> <li>• results of Case Plan assessments;</li> <li>• date the Case Plan was finalised and the date the Case Plan should have been finalised in accordance with the Output Specification;</li> <li>• Case Plan goals including priority rating;</li> <li>• formulated interventions for each Case Plan goal;</li> <li>• date expected to complete each intervention; and</li> <li>• dates Case Plan reviewed.</li> </ul>
<b>Reporting Period</b>	Monthly

### 3.2 KPI 2 – Outstanding Case Plan Interventions

<b>KPI 2</b>	<b>Outstanding Case Plan Interventions</b>																		
<b>Formulae</b>	<p><b>A. (Number of Outstanding Case Plan Interventions for High/Medium Risk Inmates) / (Number of Case Plan Interventions scheduled to be Completed for High/Medium Risk Inmates) x 100</b></p> <p><b>B. (Number of Outstanding Case Plan Interventions for Low Risk Inmates) / (Number of Case Plan Interventions scheduled to be Completed for Low Risk Inmates) x 100</b></p>																		
<b>Calculation of Quality Failure Points</b>	<p>The following table sets out the Quality Failure Points which Operator will accrue each Month for A and B depending on its performance against each sub-component relative to the Target Performance Range, Level 1 Performance Range and Level 2 Performance Range.</p> <table border="1"> <thead> <tr> <th><b>A – Medium/High Risk</b></th> <th><b>Performance Range</b></th> <th><b>Quality Failure Points</b></th> </tr> </thead> <tbody> <tr> <td><b>Target</b></td> <td>0 – 3%</td> <td>0</td> </tr> <tr> <td><b>Level 1</b></td> <td>&gt;3 – 10%</td> <td>2,000 per failure in this range</td> </tr> <tr> <td><b>Level 2</b></td> <td>&gt;10%</td> <td>3,000 per failure in this Range</td> </tr> </tbody> </table> <table border="1"> <thead> <tr> <th><b>B – Low Risk</b></th> <th><b>Performance Range</b></th> <th><b>Quality Failure Points</b></th> </tr> </thead> <tbody> <tr> <td><b>Target</b></td> <td>0 – 3%</td> <td>0</td> </tr> </tbody> </table>	<b>A – Medium/High Risk</b>	<b>Performance Range</b>	<b>Quality Failure Points</b>	<b>Target</b>	0 – 3%	0	<b>Level 1</b>	>3 – 10%	2,000 per failure in this range	<b>Level 2</b>	>10%	3,000 per failure in this Range	<b>B – Low Risk</b>	<b>Performance Range</b>	<b>Quality Failure Points</b>	<b>Target</b>	0 – 3%	0
<b>A – Medium/High Risk</b>	<b>Performance Range</b>	<b>Quality Failure Points</b>																	
<b>Target</b>	0 – 3%	0																	
<b>Level 1</b>	>3 – 10%	2,000 per failure in this range																	
<b>Level 2</b>	>10%	3,000 per failure in this Range																	
<b>B – Low Risk</b>	<b>Performance Range</b>	<b>Quality Failure Points</b>																	
<b>Target</b>	0 – 3%	0																	

KPI 2	Outstanding Case Plan Interventions		
	<b>Level 1</b>	>3 – 10%	1,000 per failure in this range
	<b>Level 2</b>	>10%	1,500 per failure in this range
<b>Definitions</b>	<p><b>Case Plan Interventions means:</b></p> <ul style="list-style-type: none"> <li>(a) <b>Offence Related Programs:</b> a structured intervention that addresses the factors directly linked to offending behaviour.</li> <li>(b) <b>Adult Basic Education (ABE):</b> a structured intervention that develops skills to improve reading, writing, oral communication and numeracy.</li> <li>(c) <b>Vocational Education and Training (VET):</b> a course or traineeship that teaches skills and qualifications for employment.</li> <li>(d) <b>Services that support Inmate wellbeing:</b> one-to-one services that address psychological, motivational or welfare factors that impact on an Inmate’s well-being.</li> <li>(e) <b>Personal Development and Life Skills Programs:</b> a structured program that addresses the life skills and well-being of the Inmate's needs.</li> <li>(f) <b>Reintegration Services and Community Referrals:</b> provision of services and referrals to service providers to assist the Inmate to successfully reintegrate into the community upon release.</li> </ul> <p><b>Outstanding Case Plan Interventions</b> means Case Plan Interventions scheduled to be completed in the reporting period where Completion of Case Plan Interventions has not been achieved by the time contemplated in the Case Plan.</p> <p><b>Completion of Case Plan Interventions or Completed Case Plan Interventions means:</b></p> <ul style="list-style-type: none"> <li>(a) in respect of an Offence Related Program: <ul style="list-style-type: none"> <li>(i) determination in writing by the program facilitator that the participating Inmate has satisfied the components of the program; and</li> <li>(ii) the Inmate attended at least the percentage of program sessions as required by the accredited program;</li> </ul> </li> <li>(b) in respect of Adult Basic Education, attainment by the participating Inmate of a higher level on the Australian Core Skills Framework;</li> <li>(c) in respect of Vocational Education and Training, attainment by the participating Inmate of a course module or attainment of a recognised</li> </ul>		

KPI 2	Outstanding Case Plan Interventions
	<p>qualification;</p> <p>(d) in respect of services that support Inmate wellbeing, evidence that contact between the participating Inmate and the relevant service provider has taken place that addresses psychological, motivation or welfare factors for the participating Inmate and the relevant service provider determines in writing that the intervention is complete; and</p> <p>(e) in respect of a Personal Development and Life Skills Program:</p> <p>(i) determination in writing by the program facilitator that the participating Inmate has satisfied the components of the program; and</p> <p>(ii) the Inmate attended at least the percentage of program sessions as required by the accredited program; and</p> <p>(f) in respect of Reintegration Services and Community Referrals, evidence of referral of the participating Inmate to a relevant service, and in each case entered in OIMS.</p> <p><b>High/Medium Risk Inmates</b> means the Inmates in the Correctional Centre who are assessed by Operator or its Associates as having a high or medium Likelihood of Reoffending having regard to the requirements of the Corrections Legislation and the Output Specification.</p> <p><b>Likelihood of Reoffending</b> means the risk of the Inmate further offending. It does not take into account the seriousness of further offending or the degree of damage it may cause.</p> <p><b>Low Risk Inmates</b> means the Inmates in the Correctional Centre who are assessed by Operator or its Associates as having a low Likelihood of Reoffending having regard to the requirements of the Corrections Legislation and the Output Specification.</p>
<p><b>Counting Rules</b></p>	<ul style="list-style-type: none"> <li>• <u>Numerator</u>: Count the number of Case Plan Interventions scheduled to be completed but not completed in the reporting period for High/Medium Risk Inmates or Low Risk Inmates (as the case may be).</li> <li>• <u>Denominator</u>: Count the number of Case Plan Interventions scheduled to be completed in the reporting period for High/Medium Risk Inmates or Low Risk Inmates (as the case may be).</li> </ul> <p>Details of each failure to complete a Case Plan Intervention in the reporting period including:</p> <ul style="list-style-type: none"> <li>• scheduled date of Case Plan Intervention;</li> <li>• type and nature of Case Plan Intervention;</li> <li>• attendance by the Inmate at each session of intervention (if applicable);</li> </ul>

<b>KPI 2</b>	<b>Outstanding Case Plan Interventions</b>
	<ul style="list-style-type: none"> <li>• reason(s) for non-completion of the Case Plan Intervention; and</li> <li>• revised scheduled date for completion of the Case Plan Interventions.</li> </ul>
<b>Reporting Period</b>	Monthly

### 3.3 KPI 3 – Specified Serious Incidents

<b>KPI 3</b>	<b>Specified Serious Incidents</b>
Formulae	<p>A. Number of Deliberately Lit Fires, Security Breaches and Non-Fatal Drug Overdoses</p> <p>B. Number of Serious Contraband Breaches identified by the State</p>
<b>Calculation of Quality Failure Points</b>	<p>The Quality Failure Points which Operator will accrue each Month are as follows:</p> <p>(a) Deliberately Lit Fires, Security Breaches and Non-Fatal Drug Overdoses – 25,000 per incident</p> <p>(b) Serious Contraband Breaches – 2,000 per item, excluding the first three items per search, subject to a cap of 25,000 per search.</p>
<b>Definitions</b>	<p><b>Serious Contraband</b> means any contraband which has the potential to threaten the security or good order of any part of the Correctional Centre or the secure custody of an Inmate, and is deemed to include mobile phones or any part of them, illicit drugs, alcohol, matches, lighters, syringes, illegal pornographic material and Weapons.</p> <p><b>Serious Contraband Breach</b> means the identification of an item of Serious Contraband within the Correctional Centre by the State as part of a random search carried out in accordance with this Agreement, the Corrections Legislation or a Government and Department Policy.</p> <p><b>Deliberately Lit Fire</b> means a fire that causes injury or death to a person, or damage to any part of the Correctional Centre (such as an accommodation area, common area, recreational area, work area or yard, rather than a cell), that was, in the opinion of the State or the General Manager, deliberately lit.</p> <p><b>Non-Fatal Drug Overdose</b> means an Inmate requires medical intervention and is admitted to hospital (including a correctional centre hospital or clinic, infirmary or any off Site medical centre that serves as an equivalent of a hospital for the Inmates) after ingesting an illicit substance including non-prescription medication, prescription medication not prescribed to the Inmate or in quantities other than as prescribed, illicit drugs, chemicals or fermented substances.</p> <p><b>Security Breach</b> means an incident or event that has the potential to</p>

KPI 3	Specified Serious Incidents
	<p>seriously affect the security or good order of any part of the Correctional Centre or Correctional Centre or the secure custody of an Inmate and is deemed to include:</p> <ul style="list-style-type: none"> <li>(a) where an Inmate is found in an unauthorised area of the Correctional Centre (but does not breach or otherwise pass the outer most secure perimeter of the Correctional Centre) or breaches a Security Barrier in the Correctional Centre;</li> <li>(b) a failure for any reason to secure an Inmate during lock-in;</li> <li>(c) failure by Operator or its Associates to account for an Inmate at the times required in accordance with the Output Specification; or</li> <li>(d) an unauthorised discharge of a firearm by any person within the Correctional Centre or while an Inmate is on temporary leave or being (or required to be) escorted by Operator or its Associates.</li> </ul> <p><b>Security Barrier</b> means a physical structure designed to limit movement to and from a secure area.</p> <p><b>Specified Serious Incident</b> means a Deliberately Lit Fire, Security Breach, Serious Contraband Breach or Non-Fatal Drug Overdose.</p> <p><b>Weapons</b> means any offensive weapon or instrument (as defined by the <i>Crimes Act 1900</i> (NSW)).</p>
<p><b>Counting Rules</b></p>	<p><b>Deliberately Lit Fire</b></p> <p>Count the number of Deliberately Lit Fires during the reporting period, regardless of the number of Inmates or Non-Inmates involved in the incident.</p> <p><b>Security Breach</b></p> <p>Count the number of Security Breaches by reference to the number of Inmates involved in each and every incident or event during the reporting period, except in relation to the unauthorised discharge of a firearm, which will be counted with reference to the number of events or incidents during the reporting period. For example:</p> <ul style="list-style-type: none"> <li>(a) if two Inmates are found together in unauthorised areas of the Correctional Centre, then count two Security Breaches;</li> <li>(b) if there were two lock-ins during the reporting period and each time two Inmates were not secured, count four Security Breaches;</li> <li>(c) if there are three incidents whereby Operator or its Associates cannot account for two Inmates, count six Security Breaches; or</li> <li>(d) if one incident results in the unauthorised discharge of multiple firearms then count this as one Security Breach.</li> </ul>

<b>KPI 3</b>	<b>Specified Serious Incidents</b>
	<p><b>Serious Contraband Breach</b></p> <p>Count the number of Serious Contraband identified by the State during the reporting period. For example, if 10 mobile phones are found by the State within the Correctional Centre within a reporting period (whether they are found during one inspection or on multiple occasions), count 10 Serious Contraband Breaches during the reporting period.</p> <p><b>Non-Fatal Drug Overdose</b></p> <p>Count the number of Inmates that suffer a Non-Fatal Drug Overdose during the reporting period.</p>
<b>Reporting Requirements</b>	<p>Details of each Specified Serious Incident must include:</p> <ul style="list-style-type: none"> <li>• date and time of the Specified Serious Incident;</li> <li>• location of the Specified Serious Incident;</li> <li>• details of Inmate(s) involved in the Specified Serious Incident;</li> <li>• details of Non-Inmate(s) involved in the Specified Serious Incident;</li> <li>• summary of incident or event;</li> <li>• details of response to the Specified Serious Incident;</li> <li>• Operator’s or its Associates’ intended actions to minimise future risk of Specified Serious Incidents; and</li> <li>• General Manager’s report regarding the Specified Serious Incident in accordance with the Corrections Legislation.</li> </ul>
<b>Reporting Period</b>	Monthly

### 3.4 KPI 4 – Assaults on Non-Inmates

<b>KPI 4</b>	<b>Assaults on Non-Inmates</b>
<b>Formulae</b>	<p><b>A. Number of Non-Inmate victims of Substantiated Serious Assault.</b></p> <p><b>B. Number of Non-Inmate victims of Substantiated Significant Assault.</b></p> <p><b>C. Number of Non-Inmate victims of Substantiated Assault by Inmates.</b></p>
<b>Calculation of Quality Failure Points</b>	<p>The Quality Failure Points which Operator will accrue each Month is as follows:</p> <ul style="list-style-type: none"> <li>A. Substantiated Serious Assaults – 250,000 per Non-Inmate victim</li> <li>B. Substantiated Significant Assaults – 25, 000 per Non-Inmate victim</li> <li>C. Substantiated Assault – the following table sets out the Quality Failure Points which Operator will accrue each Month depending on its</li> </ul>

<b>KPI 4</b>	<b>Assaults on Non-Inmates</b>												
	<p>performance relative to the Target Performance Range, Level 1 Performance Range and Level 2 Performance Range.</p> <table border="1" data-bbox="475 331 1417 685"> <thead> <tr> <th data-bbox="475 331 802 398"></th> <th data-bbox="802 331 1098 398">Performance Range</th> <th data-bbox="1098 331 1417 398">Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td data-bbox="475 398 802 465"><b>Target</b></td> <td data-bbox="802 398 1098 465">0</td> <td data-bbox="1098 398 1417 465">0</td> </tr> <tr> <td data-bbox="475 465 802 577"><b>Level 1</b></td> <td data-bbox="802 465 1098 577">1</td> <td data-bbox="1098 465 1417 577">1,000 points per failure in this range</td> </tr> <tr> <td data-bbox="475 577 802 685"><b>Level 2</b></td> <td data-bbox="802 577 1098 685">&gt;1</td> <td data-bbox="1098 577 1417 685">2,500 points per failure in this range</td> </tr> </tbody> </table>		Performance Range	Quality Failure Points	<b>Target</b>	0	0	<b>Level 1</b>	1	1,000 points per failure in this range	<b>Level 2</b>	>1	2,500 points per failure in this range
	Performance Range	Quality Failure Points											
<b>Target</b>	0	0											
<b>Level 1</b>	1	1,000 points per failure in this range											
<b>Level 2</b>	>1	2,500 points per failure in this range											
<b>Definitions</b>	N/A												
<b>Counting Rules</b>	<p><b>Serious Assault</b></p> <p>Count the number of Non-Inmates who were victims of a Serious Assault that was Substantiated during the reporting period. For example, if two Inmates perpetrate a Serious Assault on one Non-Inmate, count one Non-Inmate. If a Serious Assault takes place in a reporting period but this is not Substantiated until another reporting period, count the Serious Assault in the period in which it is Substantiated.</p> <p><b>Serious Assault</b></p> <p>Count the number of Non-Inmates who were victims of a Serious Assault that was Substantiated during the reporting period. For example, if two Inmates perpetrate a Serious Assault on one Non-Inmate, count one Non-Inmate. If a Serious Assault takes place in a reporting period but this is not Substantiated until another reporting period, count the Serious Assault in the period in which it is Substantiated.</p> <p><b>Significant Assault</b></p> <p>Count the number of Non-Inmates who were victims of a Significant Assault that was Substantiated during the reporting period. For example, if two Inmates perpetrate a Significant Assault on one Non-Inmate, count one Non-Inmate. If a Significant Assault takes place in a reporting period but this is not Substantiated until another reporting period, count the Significant Assault in the period in which it is Substantiated.</p> <p><b>Assault</b></p> <p>Count the number of Non-Inmates who were victims of an Assault during the reporting period. If two Inmates perpetrate an Assault on one Non-Inmate, count one Non-Inmate. If an Assault takes place in a reporting period but is not Substantiated until another reporting period, count the Assault in the period in which it was Substantiated.</p>												
<b>Reporting</b>	Details of each Substantiated Serious Assault, Significant Assault or Assault												

<b>KPI 4</b>	<b>Assaults on Non-Inmates</b>
<b>Requirements</b>	<p>(as the case may be) must include:</p> <ul style="list-style-type: none"> <li>• date and time of the Substantiated Serious Assault, Significant Assault or Assault (as the case may be);</li> <li>• location of the Substantiated Serious Assault, Significant Assault or Assault (as the case may be);</li> <li>• details of Inmates involved in the Substantiated Serious Assault, Significant Assault or Assault (as the case may be);</li> <li>• details of Non-Inmates involved in the Substantiated Serious Assault, Significant Assault or Assault (as the case may be), including as victim;</li> <li>• summary of the Substantiated Serious Assault, Significant Assault or Assault (as the case may be);</li> <li>• details of Operator's or its Associates' response to the Substantiated Serious Assault, Significant Assault or Assault (as the case may be);</li> <li>• details of Non-Inmate injury;</li> <li>• Operator's intended actions to minimise future risk to Non-Inmates; and</li> <li>• General Manager's report regarding the Substantiated Serious Assault, Significant Assault or Assault (as the case may be) in accordance with the Corrections Legislation.</li> </ul>
<b>Reporting Period</b>	Monthly

### 3.5 KPI 5 – Assaults on Inmates by other Inmates

<b>KPI 5</b>	<b>Assaults on Inmates by other Inmates</b>						
<b>Formulae</b>	<p><b>A. Number of Inmate victims of Substantiated Serious Assault.</b></p> <p><b>B. Number of Inmate victims of Substantiated Significant Assault</b></p> <p><b>C. (Number of Inmate victims of Substantiated Assault by Inmates) / (Daily Average Inmate Population) x 100.</b></p>						
<b>Calculation of Quality Failure Points</b>	<p>The Quality Failure Points which Operator will accrue each Month is as follows:</p> <p>A. Substantiated Serious Assaults – 30,000 per Inmate victim</p> <p>B. Substantiated Significant Assaults – 3000 per Inmate victim</p> <p>C. Substantiated Assault - The following table sets out the Quality Failure Points which Operator will accrue each Month depending on its performance relative to the Target Performance Range, Level 1 Performance Range and Level 2 Performance Range.</p> <table border="1" data-bbox="475 1921 1417 2060"> <thead> <tr> <th></th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td>Target</td> <td>0 – 1.5%</td> <td>0</td> </tr> </tbody> </table>		Performance Range	Quality Failure Points	Target	0 – 1.5%	0
	Performance Range	Quality Failure Points					
Target	0 – 1.5%	0					



<b>KPI 5</b>	<b>Assaults on Inmates by other Inmates</b>		
	<b>Level 1</b>	>1.5 – 5%	750 points per incident in this range
	<b>Level 2</b>	>5%	1,000 points per failure in this range
<b>Definitions</b>	N/A		
<b>Counting Rules</b>	<p><b>Serious Assault</b></p> <p>Count the number of Inmates who were victims of a Serious Assault that was Substantiated during the reporting period. For example, if two Inmates perpetrate a Serious Assault on three Inmates, count three Inmates. If a Serious Assault takes place in a reporting period but this is not Substantiated until another reporting period, count the Serious Assault in the period in which it is Substantiated.</p> <p><b>Significant Assault</b></p> <p>Count the number of Inmates who were victims of a Significant Assault that was Substantiated during the reporting period. For example, if two Inmates perpetrate a Significant Assault on three Inmates, count three Inmates. If a Significant Assault takes place in a reporting period but this is not Substantiated until another reporting period, count the Significant Assault in the period in which it is Substantiated.</p> <p><b>Assault</b></p> <p>Count the number of Inmates who were victims of an Assault during the reporting period. If four Inmates perpetrate an Assault on one Inmate, count one Inmate. If an Assault takes place in a reporting period but is not Substantiated until another reporting period, count the Assault in the period in which it was Substantiated.</p>		
<b>Reporting Requirements</b>	<p>Details of each Substantiated Serious Assault, Significant Assault or Assault (as the case may be) must include:</p> <ul style="list-style-type: none"> <li>• date and time of the Substantiated Serious Assault, Significant Assault or Assault (as the case may be);</li> <li>• location of the Substantiated Serious Assault, Significant Assault or Assault (as the case may be);</li> <li>• details of Inmate(s) involved in the Substantiated Serious Assault, Significant Assault or Assault (as the case may be), including as victim(s).</li> <li>• details of Non-Inmate(s) involved in the Substantiated Serious Assault, Significant Assault or Assault (as the case may be);</li> <li>• summary of the Substantiated Serious Assault, Significant Assault or Assault (as the case may be);</li> </ul>		

<b>KPI 5</b>	<b>Assaults on Inmates by other Inmates</b>
	<ul style="list-style-type: none"> <li>• details of response to the Substantiated Serious Assault, Significant Assault or Assault (as the case may be);</li> <li>• details of any injury;</li> <li>• Operator’s or its Associates’ intended actions to minimise future risk to Inmates; and</li> <li>• General Manager’s report regarding the Substantiated Serious Assault, Significant Assault or Assault (as the case may be) in accordance with the Corrections Legislation.</li> </ul>
<b>Reporting Period</b>	Monthly

### 3.6 KPI 6 – Illicit Drug Use

<b>KPI 6</b>	<b>Illicit Drug Use</b>												
<b>Formulae</b>	<b>(Number of Positive Random Drug Tests) / (Number of Random Drug Tests) x 100.</b>												
<b>Calculation of Quality Failure Points</b>	<p>The following table sets out the Quality Failure Points which Operator will accrue each Month depending on its performance relative to the Target Performance Range, Level 1 Performance Range and Level 2 Performance Range.</p> <table border="1"> <thead> <tr> <th></th> <th><b>Performance Range</b></th> <th><b>Quality Failure Points</b></th> </tr> </thead> <tbody> <tr> <td><b>Target</b></td> <td>0- - 6%</td> <td>0</td> </tr> <tr> <td><b>Level 1</b></td> <td>&gt;6 - 12%</td> <td>5,000 points per positive test in this range</td> </tr> <tr> <td><b>Level 2</b></td> <td>&gt;12%</td> <td>12,000 points per positive test in this range</td> </tr> </tbody> </table>		<b>Performance Range</b>	<b>Quality Failure Points</b>	<b>Target</b>	0- - 6%	0	<b>Level 1</b>	>6 - 12%	5,000 points per positive test in this range	<b>Level 2</b>	>12%	12,000 points per positive test in this range
	<b>Performance Range</b>	<b>Quality Failure Points</b>											
<b>Target</b>	0- - 6%	0											
<b>Level 1</b>	>6 - 12%	5,000 points per positive test in this range											
<b>Level 2</b>	>12%	12,000 points per positive test in this range											
<b>Definitions</b>	<p><b>Random Drug Test</b> means a random drug test to identify illicit drug use conducted by Operator or its Associates in respect of a 5% sample of the population of Eligible Inmates as randomly selected by the State each Month and notified to Operator in accordance with this Agreement.</p> <p><b>Eligible Inmates</b> include all Inmates except Inmates who have been in custody for less than 30 days.</p> <p><b>Positive</b> means samples for which the pathology identifies positive findings for drug use except positive findings attributed to prescribed medication for that Inmate, Residual Effects, Nil Creatinine Detected or Window Periods.</p> <p><b>Nil Creatinine Detected</b> means the pathology results find that the sample does not</p>												

<b>KPI 6</b>	<b>Illicit Drug Use</b>
	<p>contain the enzyme found in urine and cannot be tested.</p> <p><b>Residual Effects</b> means where the pathology results find a positive result but the drug use by the Inmate has previously been detected and on subsequent testing the level is shown to be less than the previous pathology results.</p> <p><b>Window Periods</b> means that the pathology results find that the drug use was due to drugs taken by the relevant Inmate prior to reception into the Correctional Centre.</p>
<b>Counting Rules</b>	<p><u>Numerator</u>: Count the number of Positive Random Drug Test samples collected during the reporting period.</p> <p><u>Denominator</u>: The number of Random Drug Tests collected at the Correctional Centre during the reporting period.</p>
<b>Reporting Requirements</b>	<ul style="list-style-type: none"> <li>• Date Random Drug Test was administered</li> <li>• Details of each Inmate tested;</li> <li>• Results of each Random Drug Test; and</li> <li>• Details of each Inmate who refused testing.</li> </ul>
<b>Reporting Period</b>	Monthly

### 3.7 KPI 7 – Serious Self Harm

<b>KPI 7</b>	<b>Serious Self Harm</b>												
<b>Formulae</b>	<b>Number of incidents of Serious Self-Harm.</b>												
<b>Calculation of Quality Failure Points</b>	<p>The following table sets out the Quality Failure Points which Operator will accrue each Month depending on its performance relative to the Target Performance Range, Level 1 Performance Range and Level 2 Performance Range.</p> <table border="1"> <thead> <tr> <th></th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td><b>Target</b></td> <td>0 - 1</td> <td>0</td> </tr> <tr> <td><b>Level 1</b></td> <td>2 - 3</td> <td>15,000 points per incident in this range</td> </tr> <tr> <td><b>Level 2</b></td> <td>&gt;3</td> <td>30,000 points per incident in this range</td> </tr> </tbody> </table>		Performance Range	Quality Failure Points	<b>Target</b>	0 - 1	0	<b>Level 1</b>	2 - 3	15,000 points per incident in this range	<b>Level 2</b>	>3	30,000 points per incident in this range
	Performance Range	Quality Failure Points											
<b>Target</b>	0 - 1	0											
<b>Level 1</b>	2 - 3	15,000 points per incident in this range											
<b>Level 2</b>	>3	30,000 points per incident in this range											
<b>Definitions</b>	<p><b>Serious Self-Harm</b> means deliberate injury to oneself that results in:</p> <p>(a) immediate transfer to hospital or any off Site medical centre that serves as an equivalent of a hospital for the Inmates; and</p> <p>(b) medical treatment as an inpatient (regardless of whether this treatment is</p>												

<b>KPI 7</b>	<b>Serious Self Harm</b>
	received in the emergency department or otherwise),  but excluding Unnatural Deaths (as defined in Charge Event 1 (Unnatural Deaths)) and Non-Fatal Drug Overdoses (as defined in KPI 3 (Specified Serious Incidents)).
<b>Counting Rules</b>	Count the number of incidents of Serious Self-Harm that occur during the reporting period.  If an Inmate suffers multiple separate injuries that results in one Serious Self-Harm incident, then count as one incident. If an Inmate suffers multiple incidents in the reporting period, each incident is counted separately.
<b>Reporting Requirements</b>	<ul style="list-style-type: none"> <li>• Date and time of the Serious Self-Harm.</li> <li>• Location of the Serious Self-Harm.</li> <li>• Details of each Inmate involved in the Serious Self-Harm.</li> <li>• Summary of the Serious Self-Harm.</li> <li>• Details of response to the Serious Self-Harm.</li> <li>• Report from the medical professional attending to the Inmate injury including where an Inmate is admitted to hospital, correctional centre clinic, infirmary or correctional centre hospital.</li> <li>• Details of the Inmate injury.</li> <li>• Operator's intended action to minimise or avoid the future risk to Inmates.</li> <li>• Report from the General Manager of the Correctional Centre in respect of the Serious Self-Harm.</li> </ul>
<b>Reporting Period</b>	Monthly

### 3.8 KPI 8 – Temporary Leave Programs

<b>KPI 8</b>	<b>Temporary Leave Programs and Compliance with Temporary Leave Orders</b>
<b>Formulae</b>	<p><b>A. (Number of Inmates participating in Temporary Leave Programs) / (Number of Inmates Eligible for Temporary Leave Programs) x 100</b></p> <p><b>B. Number of Temporary Leave Orders Breached</b></p>
<b>Calculation of Quality Failure Points</b>	<p>A. The following table sets out the Quality Failure Points which Operator will accrue each Month for A and B depending on its performance against each sub-component relative to the Target Performance Range, Level 1 Performance Range and Level 2 Performance Range.</p> <p>B. Temporary Leave Orders Breached – 15,000 points per breach</p>

KPI 8	Temporary Leave Programs and Compliance with Temporary Leave Orders		
		Performance Range	Quality Failure Points
	<b>Target</b>	85 - 100%	(1,000) points per Inmate in this range
	<b>Level 1</b>	70 - <85%	0 points
	<b>Level 2</b>	<70%	1,500 points per Inmate in this range
<b>Definitions</b>	<p><b>A. Temporary Leave Programs</b></p> <p><b>Temporary Leave Program</b> means the following programs for Inmates Eligible for Temporary Leave Programs:</p> <ul style="list-style-type: none"> <li>(a) weekend and day leave;</li> <li>(b) external work release program; or</li> <li>(c) education release under a local leave permit for education.</li> </ul> <p><b>Inmates Eligible for Temporary Leave Programs</b> means Inmates who are identified as being eligible for Temporary Leave Programs in accordance with the Output Specification and the Corrections Legislation, and Eligible Inmates will be construed accordingly.</p> <p><b>B. Temporary Leave Orders Breached</b></p> <p><b>Temporary Leave Order Breached</b> means an Inmate has failed to comply with the conditions of the Inmate's temporary leave order except to the extent that the failure relates to the late return by an Inmate:</p> <ul style="list-style-type: none"> <li>(a) arising from circumstances which are beyond the reasonable control of the Inmate, except to the extent that such failure was caused by a failure by Operator or its Associates to provide the Services in accordance with this Agreement;</li> <li>(b) during the period which is up to X minutes after the designated return time specified in the temporary leave order; or</li> <li>(c) arising from an Escape from Temporary Leave (as defined in KPI 12).</li> </ul>		
<b>Counting Rules</b>	<p>A. <u>Numerator</u>: Number of Eligible Inmates participating in a Temporary Leave Program.</p> <p><u>Denominator</u>: Number of Inmates Eligible for Temporary Leave Programs.</p> <p>B. Temporary Leave Orders - Count the number of Temporary Leave Orders Breached in the reporting period.</p> <p>If an Inmate has multiple Temporary Leave Orders Breached, each Temporary</p>		

<b>KPI 8</b>	<b>Temporary Leave Programs and Compliance with Temporary Leave Orders</b>
	Leave Order Breached is counted separately.
<b>Reporting Requirements</b>	<p><b>A. Temporary Leave Programs</b></p> <ul style="list-style-type: none"> <li>• Details of Temporary Leave Program participation.</li> </ul> <p><b>B. Temporary Leave Orders</b></p> <ul style="list-style-type: none"> <li>• Date of the Temporary Leave Order Breached.</li> <li>• Details of the conditions the Inmate failed to comply with that resulted in the Temporary Leave Order Breached.</li> <li>• Assessment of suitability for Temporary Leave Program for those Inmates who have a Temporary Leave Order Breached during the reporting period.</li> </ul>
<b>Reporting Period</b>	Monthly

### 3.9 KPI 9 - Time out of cells

<b>KPI 9</b>	<b>Time out of Cells</b>
Formulae	<p><b>A. The number of Out of Cell Hour Failure Periods – Secure Custody</b></p> <p><b>B. The number of Out of Cell Hour Failure Periods – Open Custody</b></p>
<b>Calculation of Quality Failure Points</b>	10 Quality Failure Points per Failure Period
<b>Definitions</b>	<p><b>Failure Periods</b> are calculated as <math>(A - B)</math>, rounded up to the nearest whole number where:</p> <p><b>A</b> = the sum of the Variance in Out of Cell Hours per day per Secure Custody or Open Custody Inmate over the course of the Month</p> <p><b>B</b> = 2 x Daily Average Inmate Population for the Month, which is the minimum threshold for Failure Periods.</p> <p>The minimum number of Failure Periods is zero i.e. Failure Periods cannot be negative.</p> <p><b>Variance in Out of Cell Hours</b> is calculated on a daily basis for each Secure Custody or Open Custody Inmate as the Minimum Out of Cell Hours less the Actual Out of Cell Hours, expressed in 30 minute intervals or part thereof. The minimum number of Variance in Out of Cell Hours is zero i.e. Variance in Out of Cell Hours cannot be a negative number.</p> <p><b>Actual Out of Cell Hours</b> is calculated on a daily basis for each Secure Custody or Open Custody Inmate as the number of hours that the Secure Custody or Open Custody Inmate is not confined to their cell, subject to Approved Exceptions. If an</p>

KPI 9	Time out of Cells
	<p>Inmate opts to remain in the Inmate's cell during a time when the Inmate is permitted to leave the cell, that period is included in the calculation of Actual Out of Cell Hours.</p> <p><b>Minimum Out of Cell Hours</b> for Inmates is specified in section 3.7.2.1 of Part C of the Output Specification, subject to Approved Exceptions.</p> <p><b>Approved Exceptions</b> means:</p> <ul style="list-style-type: none"> <li>(a) Monthly scheduled searches of the Correctional Centre in accordance with this Agreement;</li> <li>(b) Inmates in segregated custody;</li> <li>(c) variations to the daily operating routine following a Critical Incident, Serious Incident (as specified in the Output Specification) or Serious Assault, provided these affect the fewest number of Inmates and for the shortest period practicable.</li> </ul>
<p><b>Counting Rules</b></p>	<p>Example:</p> <ul style="list-style-type: none"> <li>• Minimum Out of Cell Hours for 1,000 Secure Custody Inmates per day for Secure Custody Inmate = 9 hours</li> <li>• Actual Out of Cell Hours for 1,000 Secure Custody Inmates per day in January = 6.5 hours</li> <li>• Assume the Daily Average Inmate Population for January is 1,700</li> <li>• The Variance in Out of Cell Hours for each of those 1,000 Secure Custody Inmates for each day in January is calculated as <math>(9 - 6.5) = 2.5</math> hours = 5 x 30 minute intervals</li> <li>• Failure Periods = <math>(5 \times 1,000 \text{ Secure Custody Inmates} \times 31 \text{ days}) - (2 \times 1,700) = 151,600</math></li> <li>• Quality Failure Points are calculated as <math>10 \times 151,600 = 1,561,000</math></li> <li>• Actual Out of Cell Hours based on the approved Correctional Centre routine for Inmates.</li> </ul>
<p><b>Reporting Requirements</b></p>	<ul style="list-style-type: none"> <li>• Details of all irregular lockdowns, including: <ul style="list-style-type: none"> <li>○ Date of lockdown;</li> <li>○ Area of lockdown and Inmates affected by lockdown;</li> <li>○ Reason for lock down;</li> <li>○ Number of Inmates affected by lock-down; and</li> <li>○ Duration of the lockdown.</li> </ul> </li> </ul>

<b>KPI 9</b>	<b>Time out of Cells</b>
<b>Reporting Period</b>	Monthly

### 3.10 KPI 10 – Purposeful Activity

<b>KPI 10</b>	<b>Purposeful Activity</b>																					
<b>Formulae</b>	<p><b>A. (Total sentenced Inmate hours in Purposeful Activity - Sentenced Inmate hours in Purposeful Activity that are exempt) / (Daily average sentenced Inmate population - Daily average sentenced Inmate population that are exempt) / (Number of days in reporting period)</b></p> <p><b>B. (Total remand Inmate hours in Purposeful Activity - Remand Inmate hours in Purposeful Activity that are exempt) / (Daily average remand Inmate population - Daily average remand Inmate population that are exempt) / (Number of days in reporting period)</b></p>																					
<b>Calculation of Quality Failure Points</b>	<p>The following table sets out the Quality Failure Points which Operator will accrue each Month for A and B depending on its performance against each sub-component relative to the Target Performance Range, Level 1 Performance Range and Level 2 Performance Range.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">A.</th> <th style="width: 40%;">Performance Range</th> <th style="width: 50%;">Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td><b>Target</b></td> <td>4.8 - 6 hours</td> <td>0 points x daily Average sentenced Inmate population x number of days in reporting period</td> </tr> <tr> <td><b>Level 1</b></td> <td>2 - &lt;4.8 hours</td> <td>1 point for hours (or part thereof) in this range x daily average sentenced Inmate population x number of days in reporting period</td> </tr> <tr> <td><b>Level 2</b></td> <td>&lt;2 hours</td> <td>2 points for hours (or part thereof) in this range x daily average sentenced Inmate population x number of days in reporting period</td> </tr> </tbody> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">B.</th> <th style="width: 40%;">Performance Range</th> <th style="width: 50%;">Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td><b>Target</b></td> <td>3 - 4 hours</td> <td>0 points x daily Average remand Inmate population x number of days in reporting period</td> </tr> <tr> <td><b>Level 1</b></td> <td>1 - &lt;3 hours</td> <td>1 point for hours (or part thereof) in this range x daily average remand Inmate population x number of days in reporting period</td> </tr> </tbody> </table>	A.	Performance Range	Quality Failure Points	<b>Target</b>	4.8 - 6 hours	0 points x daily Average sentenced Inmate population x number of days in reporting period	<b>Level 1</b>	2 - <4.8 hours	1 point for hours (or part thereof) in this range x daily average sentenced Inmate population x number of days in reporting period	<b>Level 2</b>	<2 hours	2 points for hours (or part thereof) in this range x daily average sentenced Inmate population x number of days in reporting period	B.	Performance Range	Quality Failure Points	<b>Target</b>	3 - 4 hours	0 points x daily Average remand Inmate population x number of days in reporting period	<b>Level 1</b>	1 - <3 hours	1 point for hours (or part thereof) in this range x daily average remand Inmate population x number of days in reporting period
A.	Performance Range	Quality Failure Points																				
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KPI 10	Purposeful Activity	
	<b>Level 2</b> <1 hour	2 points for hours (or part thereof) in this range x daily average remand Inmate population x number of days in reporting period
<b>Definitions</b>	<p><b>Purposeful Activity</b> means:</p> <p>(a) the following activities on any day of the week:</p> <ul style="list-style-type: none"> <li>(i) <b>Commercial Industries</b>, Service Industries or Work Release;</li> <li>(ii) <b>Offence Related Programs</b>: a structured intervention that addresses the factors directly linked to offending behaviour;</li> <li>(iii) <b>Adult Basic Education (ABE)</b>: a structured intervention that develops skills to improve reading, writing, oral communication and numeracy;</li> <li>(iv) <b>Vocational Education and Training (VET)</b>: a course or traineeship that teaches skills and qualifications for employment;</li> <li>(v) <b>Services that support Inmate wellbeing</b>: one-to-one services that assess or address psychological, motivational, pre-release or welfare factors that impact on an Inmate’s well-being;</li> <li>(vi) <b>Personal Development and Life Skills Programs</b>: a structured program that addresses the life skills and well-being of the Inmate’s needs;</li> <li>(vii) <b>Reintegration Programs and Services</b>: provision of programs and/or one-to-one services that assist the Inmate to successfully re- integrate into the community upon release,</li> </ul> <p>as contemplated by an Inmate’s case plan for a sentenced Inmate or as otherwise approved by the State in respect of paragraph (a)(i) to (a)(vii); or</p> <ul style="list-style-type: none"> <li>(viii) <b>Exercise</b>: not more than one hour each day for exercise in the open air; or</li> </ul> <p>(b) the following activities on weekends and public holidays:</p> <ul style="list-style-type: none"> <li>(i) <b>Recreational Activities</b> including sports activities and any other recreational activities provided within the Correctional Centre to create a sense of community and to provide recreation for the Inmates; or</li> <li>(ii) <b>Community and social activities</b> including any activities which provide the opportunity for Inmates to purposefully engage with each other for leisure purposes.</li> </ul> <p><b>Commercial Industries</b> means programs run by Operator or its Associates at the Correctional Centre which operate on a commercial fee for service basis (e.g. sale of products/services to external clients and sale of products/services to the correctional system).</p> <p><b>Service Industries</b> means employment to maintain the self-sufficiency of the Correctional Centre which are not subject to a fee for service (e.g. kitchens, laundries, gardening). This includes community projects and other unpaid</p>	

KPI 10	Purposeful Activity
	<p>work.</p> <p><b>Work Release</b> means employment in the community under industrial award conditions as part of temporary leave.</p>
<p><b>Counting Rules</b></p>	<p>For each of A and B, count the total number of relevant Inmate hours engaged in Purposeful Activity during the reporting period. For the avoidance of doubt, any time spent travelling to or from Purposeful Activity (e.g. any time spent in transit or route movement) is not to be counted in the number of hours an Inmate is engaged in Purposeful Activity.</p> <p>Divide this by the Daily Average Inmate Population for sentenced Inmates (A) or remand Inmates (B), excluding any exempt Inmates (as listed below).</p> <p>Divide this by the number of days in reporting period to find the average number of hours of Purposeful Activity per sentenced Inmate (A) and remand Inmate (B) per day.</p> <p>The following Inmates are exempt from this KPI:</p> <ul style="list-style-type: none"> <li>• Inmates who are 65 years of age or over and who elect not to participate in Purposeful Activities, either in whole or part;</li> <li>• Inmates with chronic ill health, a debilitating condition, a disability or some other medical condition (as assessed by a medical health professional) to the extent that it prevents that Inmate from participating in Purposeful Activities, either in whole or part;</li> <li>• Inmates who for specified reasons cannot reasonably achieve a minimum of 6 hours (for sentenced Inmates) or 4 hours (for remand Inmates) of Purposeful Activities, provided those reasons have been approved by the State.</li> <li>• Inmates, to the extent serving a period of loss of privileges;</li> <li>• Inmates attending court (whether in person or via an audio visual link) but only for the day(s) during the reporting period on which they are attending court. For the avoidance of doubt, Inmates who attend court in the reporting period are not exempt for the whole reporting period;</li> <li>• Inmates accommodated in a high security or management unit of the Correctional Centre (and alternative arrangements are in place in accordance with the Output Specification or as agreed with the State in writing); or</li> <li>• Inmates subject to a temporary leave order where the purpose of the temporary leave order is not for Purposeful Activity (including compassionate leave or hospital appointments).</li> </ul>
<p><b>Reporting Requirements</b></p>	<p>N/A</p>
<p><b>Reporting Period</b></p>	<p>Monthly</p>

### 3.11 KPI 11 – Staff Misconduct

<b>KPI 11</b>	<b>Staff Misconduct</b>
<b>Formulae</b>	<p><b>A. Number of incidents of Staff Misconduct</b></p> <p><b>B. Number of Staff Misconduct not known to Operator or its Associates</b></p> <p><b>C. Number of Staff Misconduct incidents Not Reported or Misreported</b></p>
<b>Calculation of Quality Failure Points</b>	<p>The Quality Failure Points which Operator will accrue each Month is as follows:</p> <p>A. 5,000 points per incident</p> <p>B. 100,000 points per incident</p> <p>C. 50,000 points per incident</p>
<b>Definitions</b>	<p><b>Staff Misconduct</b> means:</p> <ul style="list-style-type: none"> <li>(a) a member of Staff is convicted of an offence, whether or not such a conviction is recorded and whether or not such an offence was committed in connection with the employment of the Staff member at the Correctional Centre, subject only to the Exceptions; or</li> <li>(b) a finding of misconduct of a member of Staff, including: <ul style="list-style-type: none"> <li>(i) any finding of misconduct by the General Manager or the State (acting reasonably) as a consequence of an event that arises in connection with the employment of the Staff member at the Correctional Centre including any breach of Law, Government and Department Policies or procedures or any professional standards or guidelines applicable to the position of that Staff member; or</li> <li>(ii) any finding of professional misconduct, negligence or malpractice by an appropriate professional regulatory body or a court or tribunal against any member of Staff.</li> </ul> </li> </ul> <p><b>Exceptions</b> means:</p> <ul style="list-style-type: none"> <li>(a) any convictions for traffic related offences that have not arisen from, during or in connection with the employment of the Staff member at the Correctional Centre; or</li> <li>(b) any conviction for which the Staff member has received a pardon or which has been quashed.</li> </ul> <p><b>Staff Misconduct not known to Operator or its Associates</b> means identification by the State of Staff Misconduct which, based on the findings of a State investigation, Operator or its Associates did not know of, but ought reasonably to have known of, at the time the State identified the Staff Misconduct.</p> <p><b>Staff Misconduct Not Reported or Misreported</b> means failure by Operator or any of its Associates to report or to correctly report any Staff Misconduct found,</p>

<b>KPI 11</b>	<b>Staff Misconduct</b>
	proven or substantiated whether in the reporting period or in a prior reporting period.
<b>Counting Rules</b>	<p>A. Count the number of incidents for which Staff Misconduct.</p> <p>B. Count the number of incidents of Staff Misconduct not known to Operator or its Associates during the reporting period.</p> <p>C. Count the number of incidents of Staff Misconduct Not Reported or Misreported during the reporting period.</p>
<b>Reporting Requirements</b>	Report all findings of staff misconduct to the CSNSW Professional Standards Branch (PSB) as they occur.
<b>Reporting Period</b>	Monthly

### 3.12 KPI 12 – Escapes from Temporary Leave

<b>KPI 12</b>	<b>Escapes from Temporary Leave</b>
<b>Formulae</b>	<b>Number of Escapes from Temporary Leave Programs</b>
<b>Calculation of Quality Failure Points</b>	Operator will accrue 100,000 Quality Failure Points for each Escape from Temporary Leave.
<b>Definitions</b>	<p><b>Escape from Temporary Leave</b> means when a minimum security Inmate:</p> <p>(a) departs, without lawful authority, from the location of an authorised temporary leave program (whether supervised or unsupervised), and is subsequently charged by NSW Police with escape from lawful custody; or</p> <p>(b) fails to return from an authorised temporary leave program (whether supervised or unsupervised) or returns late and is subsequently charged by NSW Police with escape from lawful custody.</p>
<b>Counting Rules</b>	<p>The number of Escapes from temporary leave during the reporting period.</p> <p>If two or more Inmates Escape from temporary leave at the same time or together, then this is counted as two or more Escapes from Temporary Leave (as relevant).</p>
<b>Reporting Requirements</b>	<ul style="list-style-type: none"> <li>• Compliance with relevant Services Requirements.</li> <li>• Summary of the incident, events leading to the Escape from Temporary Leave, detection and the response by Operator or its Associates.</li> <li>• Operator or its Associates' intended actions to prevent future Escapes from Temporary Leave. If none, the rationale supporting this decision.</li> <li>• Report of the General Manager regarding the Escape from Temporary</li> </ul>

<b>KPI 12</b>	<b>Escapes from Temporary Leave</b>
	Leave.
<b>Reporting Period</b>	Monthly

### 3.13 KPI 13 – Accuracy of Reporting

<b>KPI 13</b>	<b>Accuracy of Reporting</b>
<b>Formulae</b>	<p><b>A. Number of Non-Compliant Incident Reports</b></p> <p><b>B. Number of Critical Reporting Failures</b></p>
<b>Calculation of Quality Failure Points</b>	<p>The Quality Failure Points which Operator will accrue each Month is as follows:</p> <p>A. 500 points per Non-Compliant Incident Report</p> <p>B. 5,000 points per Critical Reporting Failure</p>
<b>Definitions</b>	<p><b>Non-Compliant Incident Reports</b> means those incident reports provided to the State in accordance with Legislative Requirements, Government and Department Policy or this Agreement that do not comply with relevant Legislative Requirements, Government or Department Policy or this Agreement (as applicable).</p> <p><b>Critical Reporting Failure</b> means a failure by the Operator to provide critical incident reports to the State in accordance with Legislative Requirements, Government and Department Policy or this Agreement within the timeframes specified in Legislative Requirements, Government and Department Policy or this Agreement (as applicable).</p>
<b>Counting Rules</b>	<p>A. Count the number of Non-Compliant Incident Reports during the reporting period.</p> <p>B. Count the number of Critical Reporting Failures during the reporting period.</p>
<b>CSNSW Validation</b>	Review by Monitors including a qualitative review of reports.
<b>Reporting Requirements</b>	<p>For each Non-Compliant Incident Report:</p> <ul style="list-style-type: none"> <li>• details of the relevant incident report;</li> <li>• details of the relevant Legislative Requirement, Government and Department Policy or section of this Agreement that it does not comply with including specific clause references; and</li> <li>• details of the reasons why the Non-Compliant Incident Report arose.</li> </ul> <p>For each Critical Reporting Failure:</p>

<b>KPI 13</b>	<b>Accuracy of Reporting</b>
	<ul style="list-style-type: none"> <li>• details of the relevant critical incident report;</li> <li>• details of the timeframe specified in Legislative Requirements, Government and Department Policy or this Agreement including specific clause references;</li> <li>• details of the timeframe in which the relevant critical incident report was provided; and</li> <li>• details of the reasons why the Critical Reporting Failure arose.</li> </ul>
<b>Reporting Period</b>	Monthly

### 3.14 KPI 14 – Adherence to Performance Improvement Notice cure plans

<b>KPI 14</b>	<b>Adherence to Performance Improvement Notice cure plans</b>
<b>Formulae</b>	<b>Number of failures to comply with a Performance Improvement Notice cure plan</b>
<b>Calculation of Quality Failure Points</b>	Operator will accrue 10,000 Quality Failure Points for each failure to comply with a Performance Improvement Notice cure plan.
<b>Definitions</b>	<p>If the State has not issued a Major Default Notice or Default Termination Notice in respect of the failure to comply, the State may issue a performance improvement notice to the Operator if it fails to comply with the Services Requirements (<b>Performance Improvement Notice or PIN</b>).</p> <p>If the State issues a Performance Improvement Notice, Operator must develop a cure plan to remedy the failures identified in the Performance Improvement Notice, which PIN cure plan must be provided to the State for review in accordance with clause 5.2 of this Agreement.</p> <p>All PIN cure plans must identify the timeframe for remedy.</p> <p>For the avoidance of doubt, the issue of a Performance Improvement Notice does not, in any way, affect or limit the State's rights to issue Major Default Notices or Default Termination Notices in accordance with this Agreement.</p>
<b>Counting Rules</b>	Count the number of Performance Improvement Notice cure plans not complied with during the reporting period. If the State subsequently issues a Major Default Notice or Default Termination Notice in respect of the failure to comply with the Services Requirements for which a PIN has been issued, that PIN is to be disregarded for the purposes of these counting rules.
<b>Reporting Requirements</b>	<p>For each Performance Improvement Notice cure plan not complied with:</p> <ul style="list-style-type: none"> <li>• the steps or actions which were not completed in accordance with the PIN cure plan; and</li> <li>• the reason why the PIN cure plan was not complied with.</li> </ul>
<b>Reporting</b>	Monthly

<b>KPI 14</b>	<b>Adherence to Performance Improvement Notice cure plans</b>
<b>Period</b>	

### 3.15 KPI 15 – Carrying out scheduled FM Service tasks

<b>KPI 15</b>	<b>Carrying out scheduled FM Service tasks</b>																								
<b>Formulae</b>	<p><b>A. Number of Type 1 Failures</b></p> <p><b>B. Number of Type 2 Failures</b></p>																								
<b>Calculation of Quality Failure Points</b>	<p>The following tables set out the Quality Failure Points which Operator will accrue each Month depending on its performance relative to the Target Performance Range, Level 1 Performance Range and Level 2 Performance Range.</p> <p><b>A. Number of Type 1 Failures</b></p> <table border="1"> <thead> <tr> <th></th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td><b>Target</b></td> <td>0 - 1</td> <td>0</td> </tr> <tr> <td><b>Level 1</b></td> <td>2 – 12</td> <td>500 points per Failure in this range</td> </tr> <tr> <td><b>Level 2</b></td> <td>&gt;12</td> <td>1,000 points per Failure in this range</td> </tr> </tbody> </table> <p><b>B. Number of Type 2 Failures</b></p> <table border="1"> <thead> <tr> <th></th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td><b>Target</b></td> <td>0</td> <td>0</td> </tr> <tr> <td><b>Level 1</b></td> <td>1 - 3</td> <td>2,000 points per Failure in this range</td> </tr> <tr> <td><b>Level 2</b></td> <td>&gt;3</td> <td>4,000 points per Failure in this range</td> </tr> </tbody> </table>		Performance Range	Quality Failure Points	<b>Target</b>	0 - 1	0	<b>Level 1</b>	2 – 12	500 points per Failure in this range	<b>Level 2</b>	>12	1,000 points per Failure in this range		Performance Range	Quality Failure Points	<b>Target</b>	0	0	<b>Level 1</b>	1 - 3	2,000 points per Failure in this range	<b>Level 2</b>	>3	4,000 points per Failure in this range
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<b>Level 1</b>	1 - 3	2,000 points per Failure in this range																							
<b>Level 2</b>	>3	4,000 points per Failure in this range																							
<b>Definitions</b>	<p><b>Type 1 Failures</b> means incidents of failure to undertake Non-Critical Maintenance Tasks in accordance with the Asset Management Plan, in the reporting period.</p>																								

<b>KPI 15</b>	<b>Carrying out scheduled FM Service tasks</b>
	<p><b>Type 2 Failures</b> means incidents of failure to undertake Critical Planned Maintenance Tasks in accordance with the Asset Management Plan in the reporting period.</p> <p><b>Critical Planned Maintenance Tasks</b> means any planned maintenance tasks identified in the Asset Management Plan undertaken to the following:</p> <ul style="list-style-type: none"> <li>(a) communication systems;</li> <li>(b) electrical services;</li> <li>(c) fire and life safety engineering services;</li> <li>(d) medical equipment; or</li> <li>(e) security systems.</li> </ul> <p><b>Non-Critical Maintenance Tasks</b> means any planned maintenance tasks which are not Critical Planned Maintenance Tasks.</p>
<b>Counting Rules</b>	Count the number of Type 1 and Type 2 Failures that occur in the reporting period.
<b>Reporting Requirements</b>	Report of planned maintenance tasks completed in accordance with the Asset Maintenance Schedule
<b>Reporting Period</b>	Monthly

### 3.16 KPI 16 – Rectifying FM Service Failures

For the purposes of this KPI, the following definitions will apply:

**FM Service Failure** has the meaning given to it in the Payment Schedule.

**FM Table** means the definitions set out in the following table:

<b>FM Table</b>	
<b>Level A FM Service Failure – Emergency</b>	<b>Level A Rectification Period</b>
<p>means any FM Service Failure which:</p> <ul style="list-style-type: none"> <li>• is life threatening or, if not remedied immediately, will potentially be life threatening;</li> <li>• is serious enough to cause significant damage to the Site or Correctional Centre;</li> <li>• poses, or has the potential to pose, an infection or health and safety risk to Inmates, Staff, Visitors or other users if not Rectified immediately;</li> </ul>	3 hours



<b>FM Table</b>	
<ul style="list-style-type: none"> <li>• may result in a partial or total lock-down if not Rectified immediately; or</li> <li>• is otherwise deemed by the State as requiring Rectification within the Level A Rectification Period.</li> </ul>	
<b>Level B FM Service Failure – Urgent/High Priority</b>	<b>Level B Rectification Period</b>
<p>means any FM Service Failure that is not categorised as a Level A FM Service Failure and:</p> <ul style="list-style-type: none"> <li>• is interrupting, or if not Rectified within the Level B Rectification Period, has the potential to interrupt the operation or functionality of the Site or Correctional Centre; or</li> <li>• may develop into a Level A FM Service Failure if not Rectified within the Level B Rectification Period.</li> </ul>	24 hours
<b>Level C FM Service Failure – Medium Priority</b>	<b>Level C Rectification Period</b>
<p>means any FM Service Failure which is not categorised as a Level A or B FM Service Failure and:</p> <ul style="list-style-type: none"> <li>• does not pose an immediate risk (health and safety or otherwise) to Inmates, Staff, Visitors or other users and is not likely to pose an immediate risk (health and safety or otherwise) to the users if not remedied within the Level C Rectification Period; or</li> <li>• causes no more than very minor disruption, inconvenience or loss of amenity to the Site or Correctional Centre; or</li> <li>• potentially causes more than minor disruption, inconvenience to Operator or its Associates in carrying out the operations if not Rectified within the Level C Rectification Period.</li> </ul>	5 calendar days
<b>Level D FM Service Failure – Low Priority</b>	<b>Level D Rectification Period</b>
<p>means any FM Service Failure which is not categorised as a Level A, B or C Service Failure and:</p> <ul style="list-style-type: none"> <li>• does not pose any immediate or potential danger or risk in any way to Inmates, Staff, Visitors or other users;</li> <li>• will not immediately disrupt the Site, or the purposes, functions and uses of the Correctional Centre if not Rectified; or</li> <li>• is considered highly unlikely to develop into a Level A, Level B or Level C Service Failure even if not Rectified until the expiry of the Level D Rectification Period.</li> </ul>	5 calendar days

**Rectification Period** has the meaning attributed to it in the Payment Schedule.

**Rectify** has the meaning attributed to it in the Payment Schedule.

**Respond** has the meaning attributed to it in the Payment Schedule.

- (a) On becoming aware of an FM Service Failure, Operator must:
  - (i) Respond as soon as practicable; and
  - (ii) categorise the FM Service Failure in accordance with the FM Table.
- (b) Once categorised, an FM Service Failure cannot be re-categorised as a lower FM Service Failure level unless agreed with the State. If an FM Service Failure has occurred and Operator does not categorise the FM Service Failure, then the level of the FM Service Failure may be determined by the State. The State may alter the level of an FM Service Failure assigned by Operator by notifying Operator. If Operator disputes the changed level, then Operator may refer for resolution in accordance with this Agreement. In the interim, Operator must Rectify the FM Service Failure in accordance with the level given by the State.
- (c) Operator is entitled to request a Temporary Fix in accordance with the Payment Schedule.
- (d) The Quality Failure Points attributable to each incident of failure to Rectify an FM Service Failure within the relevant Level A-D Rectification Periods are calculated in accordance with the following table.

KPI 16	Rectifying facilities management failure events
Formulae	<ul style="list-style-type: none"> <li>A. Number of incidents of failure to Rectify a Level A FM Service Failures within the Level A Rectification Period</li> <li>B. Number of incidents of failure to Rectify a Level B FM Service Failures within the Level B Rectification Period</li> <li>C. Number of incidents of failure to Rectify a Level C FM Service Failures within the Level C Rectification Period</li> <li>D. Number of incidents of failure to Rectify a Level D FM Service Failures within the Level D Rectification Period</li> </ul>

KPI 16	Rectifying facilities management failure events																																	
<p><b>Calculation of Quality Failure Points</b></p>	<p>The following tables set out the Quality Failure Points which Operator will accrue each Month depending on its performance relative to the Target Performance Range, Level 1 Performance Range and Level 2 Performance Range.</p> <p><b>A. Number of incidents of failure to Rectify a Level A FM Service Failures within the Level A Rectification Period</b></p> <table border="1" data-bbox="451 495 1394 958"> <thead> <tr> <th></th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td><b>Target</b></td> <td>0</td> <td>0</td> </tr> <tr> <td><b>Level 1</b></td> <td>1 – 3</td> <td>5,000 points per incident of failure in this range</td> </tr> <tr> <td><b>Level 2</b></td> <td>&gt;3</td> <td>10,000 points per incident of failure in this range</td> </tr> </tbody> </table> <p><b>B. Number of incidents of failure to Rectify a Level B FM Service Failures within the Level B Rectification Period</b></p> <table border="1" data-bbox="451 1077 1394 1541"> <thead> <tr> <th></th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td><b>Target</b></td> <td>0 - 1</td> <td>0</td> </tr> <tr> <td><b>Level 1</b></td> <td>2 - 12</td> <td>2,500 points per incident of failure in this range</td> </tr> <tr> <td><b>Level 2</b></td> <td>&gt;12</td> <td>5,000 points per incident of failure in this range</td> </tr> </tbody> </table> <p><b>C. Number of incidents of failure to Rectify a Level C FM Service Failures within the Level C Rectification Period</b></p> <table border="1" data-bbox="451 1659 1394 1989"> <thead> <tr> <th></th> <th>Performance Range</th> <th>Quality Failure Points</th> </tr> </thead> <tbody> <tr> <td><b>Target</b></td> <td>0 - 2</td> <td>0</td> </tr> <tr> <td><b>Level 1</b></td> <td>3 - 24</td> <td>1,250 points per incident of failure in this range</td> </tr> </tbody> </table>		Performance Range	Quality Failure Points	<b>Target</b>	0	0	<b>Level 1</b>	1 – 3	5,000 points per incident of failure in this range	<b>Level 2</b>	>3	10,000 points per incident of failure in this range		Performance Range	Quality Failure Points	<b>Target</b>	0 - 1	0	<b>Level 1</b>	2 - 12	2,500 points per incident of failure in this range	<b>Level 2</b>	>12	5,000 points per incident of failure in this range		Performance Range	Quality Failure Points	<b>Target</b>	0 - 2	0	<b>Level 1</b>	3 - 24	1,250 points per incident of failure in this range
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<b>Level 2</b>	>12	5,000 points per incident of failure in this range																																
	Performance Range	Quality Failure Points																																
<b>Target</b>	0 - 2	0																																
<b>Level 1</b>	3 - 24	1,250 points per incident of failure in this range																																

KPI 16	Rectifying facilities management failure events		
	<b>Level 2</b>	>24	2,500 points per incident of failure in this range
	<b>D. Number of incidents of failure to Rectify a Level D FM Service Failures within the Level D Rectification Period</b>		
		<b>Performance Range</b>	<b>Quality Failure Points</b>
	<b>Target</b>	0 - 4	0
	<b>Level 1</b>	5 - 48	625 points per incident of failure in this range
	<b>Level 2</b>	>48	1,250 points per incident of failure in this range
<b>Counting Rules</b>	<p>For each of A-D, count the number of incidents of failure to Rectify an FM Service Failure within the relevant Rectification Period.</p> <p><u>Example:</u></p> <p>A Level A FM Service Failure is detected by any automatic monitoring or alarm system at 3pm on a Thursday. The Level A Rectification Period is 60 minutes and no Temporary Fix is agreed with the State.</p> <p>The Level A FM Service Failure is Rectified at 9.30pm on the same Thursday. This represents two incidents of failure to Rectify the Level A FM Service Failure within the Level A Rectification Period which equates to 10,000 Quality Failure Points (i.e. 2 x 5,000).</p>		
<b>Reporting Requirements</b>	<p>Operator must provide a reporting system capable of undertaking comprehensive and complete self-monitoring of the delivery of the Services in accordance with the Performance Monitoring Program and must ensure that for each FM Service Failure, Operator must record the following:</p> <ul style="list-style-type: none"> <li>• a unique identification number;</li> <li>• the nature of the FM Service Failure;</li> <li>• the date, time, extent and duration of the FM Service Failure;</li> <li>• the specific location of the FM Service Failure;</li> <li>• the applicable FM Service Failure level;</li> <li>• the required and actual Rectification Period; and</li> <li>• the Quality Failure Points attributable to the FM Service Failure.</li> </ul> <p>Where the FM Service Failure gives rise to Critical Incidents, Operator is to separately provide a critical incident report</p>		

<b>KPI 16</b>	<b>Rectifying facilities management failure events</b>
<b>Reporting Period</b>	Monthly

### 3.17 KPI 17 – Chronic Healthcare Plans

<b>KPI 17</b>	<b>Chronic Healthcare Plans</b>												
<b>Formulae</b>	<b>(Number of Eligible Custodial Patients with an Up to Date Chronic Healthcare Plan) / (Number of Eligible Custodial Patients) x 100</b>												
<b>Calculation of Quality Failure Points</b>	<p>The following table sets out the Quality Failure Points which Operator will accrue each Month depending on its performance relative to the Target Performance Range, Level 1 Performance Range and Level 2 Performance Range.</p> <table border="1"> <thead> <tr> <th></th> <th><b>Performance Range</b></th> <th><b>Quality Failure Points</b></th> </tr> </thead> <tbody> <tr> <td><b>Target</b></td> <td>85– 100%</td> <td>0</td> </tr> <tr> <td><b>Level 1</b></td> <td>75 – &lt;85%</td> <td>200 per failure in this range</td> </tr> <tr> <td><b>Level 2</b></td> <td>&lt;75%</td> <td>300 per failure in this range</td> </tr> </tbody> </table>		<b>Performance Range</b>	<b>Quality Failure Points</b>	<b>Target</b>	85– 100%	0	<b>Level 1</b>	75 – <85%	200 per failure in this range	<b>Level 2</b>	<75%	300 per failure in this range
	<b>Performance Range</b>	<b>Quality Failure Points</b>											
<b>Target</b>	85– 100%	0											
<b>Level 1</b>	75 – <85%	200 per failure in this range											
<b>Level 2</b>	<75%	300 per failure in this range											
<b>Definitions</b>	<p><b>Up to Date Chronic Healthcare Plan</b> means:</p> <p>(a) a plan has been prepared in accordance with the Services Requirements within the Required Timeframe and which includes:</p> <ul style="list-style-type: none"> <li>(i) the identification of the health needs of the Custodial Patient;</li> <li>(ii) the specification of the health care interventions and treatments that the Custodial Patient is likely to need;</li> <li>(iii) the inclusion of a date when the plan will be reviewed;</li> <li>(iv) the appropriate linkage with other agencies and organisations for all necessary health care follow-ups on the Custodial Patient’s release from the Correctional Centre;</li> <li>(v) goals agreed with the Custodial Patient relating to ongoing health management; and</li> <li>(vi) evidence of discussion of the goals and nature of the plan with the Custodial Patient,</li> </ul> <p><b>(Chronic Healthcare Plan)</b>; and</p> <p>(b) the plan has been adhered to such that the required health care and</p>												

<b>KPI 17</b>	<b>Chronic Healthcare Plans</b>
	<p>treatment interventions, referrals and follow ups have been implemented in accordance with the Chronic Healthcare Plan; and</p> <p>(c) the Chronic Healthcare Plan has been updated and revised as appropriate based on the passage of time and the chronic health condition of the Custodial Patient, including further assessments of the necessity for other interventions.</p> <p><b>Required Timeframe</b> means:</p> <p>(a) 29 days from (as applicable) reception at the Correctional Centre or diagnosis by Operator or its Associates of the chronic illness; or</p> <p>(b) where a Custodial Patient has been identified as having a chronic health condition by an alternative health care provider prior to reception at the Correctional Centre, the later of:</p> <p style="padding-left: 40px;">(i) 29 days from the date of identification of the chronic health condition; or</p> <p style="padding-left: 40px;">(ii) 14 days from the date of the Custodial Patient's transfer to the Correctional Centre.</p> <p><b>Eligible Custodial Patients</b> means Custodial Patients who have been at the Correctional Centre for at least 29 days and:</p> <p>(a) have chronic conditions, as determined in accordance with the Output Specification; or</p> <p>(b) are identified as requiring a Chronic Healthcare Plan in accordance with the Output Specification,</p> <p>but do not include Custodial Patients who have been released or transferred from the Correctional Centre prior to the last calendar day of the Month.</p>
<b>Counting Rules</b>	<p><u>Numerator</u>: The number of Eligible Custodial Patients with an Up to Date Chronic Healthcare Plan.</p> <p><u>Denominator</u>: The number of Eligible Custodial Patients.</p>
<b>Reporting Requirements of Operator</b>	For each Eligible Custodial Patient without an Up to Date Chronic Healthcare Plan, Operator or its Associates' intended actions to ensure the Eligible Custodial Patient has an Up to Date Chronic Healthcare Plan in the following Month.
<b>Reporting Period</b>	Monthly

### 3.18 KPI 18 – Timely Primary Health Services

<b>KPI 18</b>	<b>Provision of timely primary health services</b>
<b>Formulae</b>	<b>A. Number of Failure Periods for Priority 1 Custodial Patients</b>

<b>KPI 18</b>	<b>Provision of timely primary health services</b>
	<b>B. Number of Failure Periods for Priority 2 Custodial Patients</b>
<b>Calculation of Quality Failure Points</b>	A. 750 Quality Failure Points per Failure Period B. 500 Quality Failure Points per Failure Period
<b>Definitions</b>	<p><b>Failure Periods</b> means the number of days (or part of them) in excess of the Required Timeframes that a Custodial Patient in the Month had to wait for non-emergency primary health referrals. For the avoidance of doubt, non-emergency primary health referrals do not include the initial reception assessment process to the Correctional Centre or urgent/emergency treatment (where shorter time periods apply).</p> <p><b>Priority 1 Custodial Patients</b> means Custodial Patients whose health condition is deteriorating and who require attention within one to three days.</p> <p><b>Priority 2 Custodial Patients</b> means Custodial Patients where lack of immediate intervention may result in an adverse health outcome and who require attention within three to fourteen days.</p> <p><b>Required Timeframes</b> means:</p> <p>(a) For Priority 1 Custodial Patients, 72 hours; and</p> <p>(b) For Priority 2 Custodial Patients, 14 days.</p>
<b>Counting Rules</b>	<p>For each of A and B above, count the number of Failure Periods that each Custodial Patient had to wait in excess of the Required Timeframes.</p> <p>For example, if a Priority 1 Custodial Patient is identified at 5pm on a Friday and that patient does not receive a primary health referral until 2pm on the following Tuesday, count 0.88 (being <math>(93-72)/24</math> rounded to two decimal places) Failure Periods.</p> <p>Where a Custodial Patient received a non-urgent primary health referral within the Required Timeframe, count zero Failure Periods.</p> <p>Exclude Failure Periods which arise due to non-attendance of the Custodial Patient (other than where the non-attendance arises as a result of a failure by Operator or its Associates to perform the Services in accordance with this Agreement) provided that, if it were not for the non-attendance of the Custodial Patient, the Required Timeframe would have been met for the Custodial Patient.</p>
<b>Reporting Requirements of Operator</b>	<p>Number of Failure Periods for Priority 1 Custodial Patients</p> <p>Number of Failure Periods for Priority 2 Custodial Patients</p>

<b>KPI 18</b>	<b>Provision of timely primary health services</b>
<b>Reporting Period</b>	Monthly

### 3.19 KPI 19 – Health Discharge Plans

<b>KPI 19</b>	<b>Health discharge plans</b>																								
<b>Formulae</b>	<p><b>A. (Number of In-Scope Sentenced Custodial Patients provided with a Health Discharge Plan)/(Number of In-Scope Sentenced Custodial Patients) x 100</b></p> <p><b>B. (Number of In-Scope Remand Custodial Patients provided with a Health Discharge Plan)/(Number of In-Scope Remand Custodial Patients) x 100</b></p>																								
<b>Calculation of Quality Failure Points</b>	<p>The following table sets out the Quality Failure Points which Operator will accrue each Month for A and B above depending on its performance against each sub-component relative to the Target Performance Range, Level 1 Performance Range and Level 2 Performance Range.</p> <table border="1" style="margin-left: 20px;"> <thead> <tr> <th><b>A – Sentenced Inmates</b></th> <th><b>Performance Range</b></th> <th><b>Quality Failure Points</b></th> </tr> </thead> <tbody> <tr> <td><b>Target</b></td> <td>90 - 100%</td> <td>0</td> </tr> <tr> <td><b>Level 1</b></td> <td>70 - &lt;90%</td> <td>300 per failure in this range</td> </tr> <tr> <td><b>Level 2</b></td> <td>&lt;70%</td> <td>400 per failure in this range</td> </tr> </tbody> </table> <table border="1" style="margin-left: 20px;"> <thead> <tr> <th><b>B – Remand Inmates</b></th> <th><b>Performance Range</b></th> <th><b>Quality Failure Points</b></th> </tr> </thead> <tbody> <tr> <td><b>Target</b></td> <td>70 - 100%</td> <td>0</td> </tr> <tr> <td><b>Level 1</b></td> <td>60 - &lt;70%</td> <td>300 per failure in this range</td> </tr> <tr> <td><b>Level 2</b></td> <td>&lt;60%</td> <td>400 per failure in this range</td> </tr> </tbody> </table>	<b>A – Sentenced Inmates</b>	<b>Performance Range</b>	<b>Quality Failure Points</b>	<b>Target</b>	90 - 100%	0	<b>Level 1</b>	70 - <90%	300 per failure in this range	<b>Level 2</b>	<70%	400 per failure in this range	<b>B – Remand Inmates</b>	<b>Performance Range</b>	<b>Quality Failure Points</b>	<b>Target</b>	70 - 100%	0	<b>Level 1</b>	60 - <70%	300 per failure in this range	<b>Level 2</b>	<60%	400 per failure in this range
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<b>Target</b>	70 - 100%	0																							
<b>Level 1</b>	60 - <70%	300 per failure in this range																							
<b>Level 2</b>	<60%	400 per failure in this range																							
<b>Definitions</b>	<p><b>Health Discharge Plan</b> means a health discharge plan that meets the requirements of the Output Specification.</p> <p><b>In-scope Sentenced Custodial Patients</b> means all sentenced Custodial Patients where the known date of release from the Correctional Centre is in the subsequent Month and for whom a health discharge plan is required in accordance with the Output Specification,</p>																								



<b>KPI 19</b>	<b>Health discharge plans</b>
	<p>and includes Specified Custodial Patients.</p> <p><b>In-scope Remand Custodial Patients</b> means all remand Custodial Patients where the next known court date is in the subsequent Month and for whom a health discharge plan is required in accordance with the Output Specification, and includes Specified Custodial Patients.</p> <p><b>Specified Custodial Patients</b> means Custodial Patients:</p> <ul style="list-style-type: none"> <li>• with chronic health issues;</li> <li>• with mental illness or significant mental health issues;</li> <li>• with alcohol and other drug issues;</li> <li>• with a Chronic Healthcare Plan (as defined in KPI 17);</li> <li>• with prescribed pharmacotherapy treatments; or</li> <li>• who are Aboriginal and Torres Strait Islander Custodial Patients.</li> </ul>
<b>Counting Rules</b>	<p>In the case of Custodial Patients presented to court and released by the court, the Health Discharge Plan will be deemed to have been provided if it is documented in Operator or its Associates' records and OIMS and is available to the Custodial Patient upon request.</p> <p>Exclude:</p> <ul style="list-style-type: none"> <li>• In-scope Remand Custodial Patients who were presented to court within 24 hours of being received at the Correctional Centre and for whom no health screening was conducted; or</li> <li>• In-scope Remand Custodial Patients where the Custodial Patient was released in advance of the next booked court date.</li> </ul>
<b>Reporting Requirements of Operator</b>	<ul style="list-style-type: none"> <li>• Number of In-Scope Sentenced Custodial Patients provided with a Health Discharge Plan</li> <li>• Number of In-Scope Sentenced Custodial Patients</li> <li>• Number of In-Scope Remand Custodial Patients provided with a Health Discharge Plan</li> <li>• Number of In-Scope Remand Custodial Patients</li> </ul>
<b>Reporting Period</b>	Monthly

### 3.20 KPI 20 – Early Detection Programs and Immunisation Services

<b>KPI 20</b>	<b>Early detection programs and immunisation services</b>																								
<b>Formulae</b>	<p><b>A. (Number of Eligible Custodial Patients provided with Immunisations)/(Number of Eligible Custodial Patients) x 100</b></p> <p><b>B. (Number of High Risk Custodial Patients provided with EDP)/(Number of High Risk Custodial Patients) x 100</b></p>																								
<b>Calculation of Quality Failure Points</b>	<p>The following table sets out the Quality Failure Points which Operator will accrue each Month for A and B above depending on its performance against each sub-component relative to the Target Performance Range, Level 1 Performance Range and Level 2 Performance Range.</p> <table border="1" data-bbox="512 680 1359 1077"> <thead> <tr> <th data-bbox="512 680 743 790"><b>A – Immunisations</b></th> <th data-bbox="743 680 1035 790"><b>Performance Range</b></th> <th data-bbox="1035 680 1359 790"><b>Quality Failure Points</b></th> </tr> </thead> <tbody> <tr> <td data-bbox="512 790 743 862"><b>Target</b></td> <td data-bbox="743 790 1035 862">100%</td> <td data-bbox="1035 790 1359 862">0</td> </tr> <tr> <td data-bbox="512 862 743 972"><b>Level 1</b></td> <td data-bbox="743 862 1035 972">90 – &lt;100%</td> <td data-bbox="1035 862 1359 972">500 per failure in this range</td> </tr> <tr> <td data-bbox="512 972 743 1077"><b>Level 2</b></td> <td data-bbox="743 972 1035 1077">&lt;90%</td> <td data-bbox="1035 972 1359 1077">1,000 per failure in this range</td> </tr> </tbody> </table> <table border="1" data-bbox="512 1144 1359 1503"> <thead> <tr> <th data-bbox="512 1144 743 1216"><b>B – EDP</b></th> <th data-bbox="743 1144 1035 1216"><b>Performance Range</b></th> <th data-bbox="1035 1144 1359 1216"><b>Quality Failure Points</b></th> </tr> </thead> <tbody> <tr> <td data-bbox="512 1216 743 1288"><b>Target</b></td> <td data-bbox="743 1216 1035 1288">75 - 100%</td> <td data-bbox="1035 1216 1359 1288">0</td> </tr> <tr> <td data-bbox="512 1288 743 1397"><b>Level 1</b></td> <td data-bbox="743 1288 1035 1397">50 - &lt;75%</td> <td data-bbox="1035 1288 1359 1397">250 per failure in this range</td> </tr> <tr> <td data-bbox="512 1397 743 1503"><b>Level 2</b></td> <td data-bbox="743 1397 1035 1503">&lt;50%</td> <td data-bbox="1035 1397 1359 1503">500 per failure in this range</td> </tr> </tbody> </table>	<b>A – Immunisations</b>	<b>Performance Range</b>	<b>Quality Failure Points</b>	<b>Target</b>	100%	0	<b>Level 1</b>	90 – <100%	500 per failure in this range	<b>Level 2</b>	<90%	1,000 per failure in this range	<b>B – EDP</b>	<b>Performance Range</b>	<b>Quality Failure Points</b>	<b>Target</b>	75 - 100%	0	<b>Level 1</b>	50 - <75%	250 per failure in this range	<b>Level 2</b>	<50%	500 per failure in this range
<b>A – Immunisations</b>	<b>Performance Range</b>	<b>Quality Failure Points</b>																							
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<b>B – EDP</b>	<b>Performance Range</b>	<b>Quality Failure Points</b>																							
<b>Target</b>	75 - 100%	0																							
<b>Level 1</b>	50 - <75%	250 per failure in this range																							
<b>Level 2</b>	<50%	500 per failure in this range																							
<b>Definitions</b>	<p><b>Eligible Custodial Patients</b> means all Custodial Patients who provide voluntary informed consent for Immunisations and who are:</p> <ul style="list-style-type: none"> <li>(a) received into custody at the Correctional Centre in the last 14 days of the previous Month; or</li> <li>(b) received into custody at the Correctional Centre in the current Month excluding the last 14 days of the Month.</li> </ul> <p><b>Immunisations</b> means immunisation services in accordance with the Output Specification.</p> <p><b>High Risk Custodial Patients</b> means Custodial Patients:</p> <ul style="list-style-type: none"> <li>(c) identified as at risk of a blood borne virus or a sexually</li> </ul>																								

<b>KPI 20</b>	<b>Early detection programs and immunisation services</b>
	<p>transmissible infection; and</p> <p>(d) who voluntarily undergo screening,</p> <p>who are:</p> <p>(e) received into custody at the Correctional Centre in the last 14 days of the previous Month; or</p> <p>(f) received into custody at the Correctional Centre in the current Month excluding the last 14 days of the Month.</p> <p><b>EDP</b> means early detection programs for blood borne viruses and sexually transmissible infections in accordance with the Output Specification.</p>
<b>Counting Rules</b>	<p><b>A. Immunisations</b></p> <p><u>Numerator:</u> Number of Eligible Custodial Patients provided with Immunisations</p> <p><u>Denominator:</u> Number of Eligible Custodial Patients</p> <p><b>B. EDP</b></p> <p><u>Numerator:</u> Number of High Risk Custodial Patients provided with EDP</p> <p><u>Denominator:</u> Number of High Risk Custodial Patients</p>
<b>Reporting Requirements of Operator</b>	<ul style="list-style-type: none"> <li>• Number of Eligible Custodial Patients provided with Immunisations</li> <li>• Number of Eligible Custodial Patients</li> <li>• Number of High Risk Custodial Patients provided with EDP</li> <li>• Number of High Risk Custodial Patients</li> </ul>
<b>Reporting Period</b>	Monthly

### 3.21 KPI 21 – Health Related Incident Reporting

<b>KPI 21</b>	<b>Health Related Incident Reporting</b>
<b>Formulae</b>	<p><b>A. Number of Failure Periods for submitting RCA incident reports to the State within the Required Timeframe</b></p> <p><b>B. Number of Failure Periods for Resolving Custodial Patient complaints within the Required Timeframe</b></p> <p><b>C. Number of Incorrect Incidents in the Month</b></p>

KPI 21	Health Related Incident Reporting
<p><b>Calculation of Quality Failure Points</b></p>	<p>The Quality Failure Points which Operator will accrue each Month is as follows:</p> <p>A. Root Cause Analysis – 1,000 points per Failure Period</p> <p>B. Complaints – 250 per Failure Period</p> <p>C. Incidents – 5,000 per Incorrect Incident</p>
<p><b>Definitions</b></p>	<p><b>Failure Periods</b> are calculated as the number of 24 hour periods in excess of the Required Timeframes before the Root Cause Analysis incident report is submitted or the Custodial Patient Complaint is Resolved in accordance with the requirements of the Output Specification.</p> <p><b>Root Cause Analysis or RCA</b> means contemporary root cause analysis processes in accordance with this Agreement in respect of all serious adverse incidents, where requested by the State through IIMS.</p> <p><b>IIMS</b> means the NSW Ministry of Health Incident Information Management System.</p> <p><b>Incorrect Incidents</b> means Health Procedures which were performed:</p> <ul style="list-style-type: none"> <li>(a) at the incorrect site (i.e. body part);</li> <li>(b) on the incorrect Custodial Patient;</li> <li>(c) which should not have been performed in accordance with NSW Health policies; or</li> <li>(d) were performed using equipment that was not in accordance with NSW Health policies.</li> </ul> <p><b>Health Procedures</b> means diagnostic and surgical procedures including dentistry, minor invasive procedures, radiology, chemotherapy and dialysis.</p> <p><b>Resolve, Resolved and Resolving</b> means meeting with the Custodial Patient to discuss their complaint (whether made orally to Staff at the Correctional Centre or submitted in writing including through external services such as the NSW Health Care Complaints Commission or the NSW Ombudsman’s Office) and providing (as appropriate) an explanation, apology or proposed rectification to the Custodial Patient. A written complaint also requires a written response.</p> <p><b>Required Timeframes</b> means:</p> <ul style="list-style-type: none"> <li>(a) for ‘Performance Target A’, within 70 days of notification by the State through IIMS;</li> <li>(b) for ‘Performance Target B’, within 35 days of Operator or its</li> </ul>

<b>KPI 21</b>	<b>Health Related Incident Reporting</b>
	Associates being notified of the complaint.
<b>Counting Rules</b>	<p>A. Example:</p> <p>Operator is notified of the requirement to submit an RCA through IIMS on 15 March 2023. Operator submits the RCA to the Ministry of Health on 27 May 2023 i.e. 73 days later. Count three Failure Periods.</p> <p>B. Example:</p> <p>A written complaint is lodged by an Inmate on 15 March 2023. Operator meets with the Inmate on 17 April 2023 (i.e. 33 days later) to discuss the complaint and apologise. Operator does not provide a written response to the Inmate until 20 April 2023 (i.e. 37 days after the complaint is lodged). Count two Failure Periods.</p> <p>C. Example:</p> <p>An Inmate is referred to hospital for an X-Ray of their left arm. They are suspected of having a broken right arm and therefore the referral was incorrect. Count one Incident.</p> <p>If a Health Procedure is performed on a Custodial Patient at the incorrect site and the Health Procedure should have been performed on a different Custodial Patient, count two Incidents.</p>
<b>Reporting Requirements of Operator</b>	<ul style="list-style-type: none"> <li>• Number of Failure Periods for submitting RCA incident reports to the State within the Required Timeframe</li> <li>• Number of Failure Periods for Resolving Custodial Patient complaints within the Required Timeframe</li> <li>• Relevant details of each Incorrect Incident</li> </ul>
<b>Reporting Period</b>	Monthly

### 3.22 KPI 22 – Drug and Alcohol Referrals for Pregnancies

<b>KPI 22</b>	<b>Drug and Alcohol Referrals for Pregnancies</b>
<b>Formula</b>	<b>Number of pregnant Custodial Patients with a history of drug and or alcohol use received into custody at the Correctional Centre and not Referred within 12 hours in accordance with the Output Specification (Failure).</b>
<b>Calculation of Quality Failure Points</b>	The Quality Failure Points which Operator will accrue each Month is 600 per Failure

<b>KPI 22</b>	<b>Drug and Alcohol Referrals for Pregnancies</b>
<b>Definitions</b>	<p><b>Referred</b> means:</p> <p>(a) advice is sought from the addictions specialist or drug and alcohol medical officer in respect of treatment for the pregnant Custodial Patient; and</p> <p>(b) the pregnant Custodial Patient meets with the addictions specialist / drug and alcohol medical officer.</p>
<b>Counting Rules</b>	The 12 hour period commences at the time of the Custodial Patient's initial reception
<b>Reporting Requirements of Operator</b>	<ul style="list-style-type: none"> <li>• Number of pregnant Custodial Patients with a history of drug and alcohol use received into custody at the Correctional Centre in the reporting period.</li> <li>• Number of pregnant Custodial Patients with a history of drug and alcohol use received into custody at the Correctional Centre in the reporting period and not referred to the addictions specialist or drug and alcohol medical officer within 12 hours in accordance with of the Output Specification.</li> </ul>
<b>Reporting Period</b>	Monthly

### 3.23 KPI 23 – Health Screening

<b>KPI 23</b>	<b>Health Screening</b>												
<b>Formula</b>	<p><b>(Number of Custodial Patients received into custody at the Correctional Centre in the Period who undergo a Health Assessment within 24 hours) / (Number of Custodial Patients received into custody at the Correctional Centre in the Period) x 100</b></p>												
<b>Calculation of Quality Failure Points</b>	<p>The following table sets out the Quality Failure Points which Operator will accrue each Month depending on its performance relative to the Target Performance Range, Level 1 Performance Range and Level 2 Performance Range.</p> <table border="1"> <thead> <tr> <th></th> <th><b>Performance Range</b></th> <th><b>Quality Failure Points</b></th> </tr> </thead> <tbody> <tr> <td><b>Target</b></td> <td>100%</td> <td>0</td> </tr> <tr> <td><b>Level 1</b></td> <td>97 – &lt;100%</td> <td>500 per failure in this range</td> </tr> <tr> <td><b>Level 2</b></td> <td>&lt;97%</td> <td>750 per failure in this range</td> </tr> </tbody> </table>		<b>Performance Range</b>	<b>Quality Failure Points</b>	<b>Target</b>	100%	0	<b>Level 1</b>	97 – <100%	500 per failure in this range	<b>Level 2</b>	<97%	750 per failure in this range
	<b>Performance Range</b>	<b>Quality Failure Points</b>											
<b>Target</b>	100%	0											
<b>Level 1</b>	97 – <100%	500 per failure in this range											
<b>Level 2</b>	<97%	750 per failure in this range											

KPI 23	Health Screening
<p><b>Definitions</b></p>	<p><b>Health Assessment</b> means:</p> <ul style="list-style-type: none"> <li>(a) a comprehensive health assessment in accordance with the Output Specification for Custodial Patients whose reception at the Correctional Centre is their initial reception into the NSW correctional system;</li> <li>(b) a health assessment review in accordance with the Output Specification for Custodial Patients transferred to the Correctional Centre from another correctional centre or from a hospital; or</li> <li>(c) gross health observations for Custodial Patients who are physically or mentally unwell or violent until such time as the Custodial Patient is sufficiently well or non-violent for the assessments in (a) or (b) above to be completed.</li> </ul> <p><b>Period</b> means:</p> <ul style="list-style-type: none"> <li>(a) the last day of the preceding Month; and</li> <li>(b) all days in the Month excluding the last day of the Month</li> </ul>
<p><b>Counting Rules</b></p>	<p><u>Numerator</u>: Number of Custodial Patients received into custody at the Correctional Centre in the Period who undergo a Health Assessment within 24 hours of reception into the Correctional Centre.</p> <p><u>Denominator</u>: Number of Custodial Patients received into custody at the Correctional Centre in the Reporting Period.</p>
<p><b>Reporting Requirements of Operator</b></p>	<ul style="list-style-type: none"> <li>• Number of Health Assessments undertaken for each of (a), (b) and (c) in the Definitions.</li> <li>• Total number of Custodial Patients received into custody at the Correctional Centre in the period.</li> </ul>
<p><b>Reporting Period</b></p>	<p>Monthly</p>

### 3.24 KPI 24 – Inmate Place Unavailability

KPI 24	Inmate Place Unavailability
<p><b>Formula</b></p>	<p><b>Number of days of Inmate Place Unavailability</b></p>
<p><b>Calculation of Quality Failure Points</b></p>	<p>The Quality Failure Points which Operator will accrue for each Inmate Place Unavailability is as follows:</p> <ul style="list-style-type: none"> <li>(a) 110 points per day, or part thereof, for the first seven days; plus</li> <li>(b) 165 points per day, or part thereof, for any subsequent days,</li> </ul>

<b>KPI 24</b>	<b>Inmate Place Unavailability</b>
	from the expiry of the Rectification Period for that Inmate Place Unavailability until the Inmate Place Unavailability is Rectified.
<b>Definitions</b>	<p><b>Inmate Place Unavailability</b> means an Inmate Place that is not an Available Inmate Place.</p> <p><b>Inmate Place</b> means a cell at the Correctional Centre (which, when occupied by two Inmates or three Inmates, will be treated as two cells or three cells, respectively) up to the maximum number of Available Inmate Places to be provided by Operator which is no less than 1,270 male Inmates and 9 female Inmates.</p> <p><b>Available Inmate Place</b> means, on any day following the Amendment Start Date, an Inmate Place:</p> <p>(a) which achieves the minimum standards as specified in the Output Specification, the Tender Response and Government and Department Policies, in respect of:</p> <ul style="list-style-type: none"> <li>(i) lighting (appropriate levels of lighting are available for night observation of Inmates by Staff);</li> <li>(ii) power outlets (except for designated cells where no power outlets are provided for safety and behavioural reasons);</li> <li>(iii) water supply;</li> <li>(iv) bathroom amenities (availability, operation, control, and drainage);</li> <li>(v) security door;</li> <li>(vi) air circulation;</li> <li>(vii) fire protection;</li> <li>(viii) the following security systems: <ul style="list-style-type: none"> <li>A. cell and pass locks</li> <li>B. detection systems (incl. video, motion, microphonics)</li> <li>C. alarm systems (incl. duress)</li> <li>D. metal detector (walk through)</li> <li>E. XRAY detection systems</li> <li>F. CCTV / video systems</li> <li>G. access door systems</li> <li>H. cell call system;</li> </ul> </li> </ul>



KPI 24	Inmate Place Unavailability
	<p>(b) all Laws relating to Inmate Places or any Inmate occupying Inmate Places were complied with in full;</p> <p>(c) any Inmate occupying an Inmate Place had available appropriate health services in accordance with the Output Specification and the Tender Response;</p> <p>(d) any Inmate occupying an Inmate Place had available adequate clothes for the prevailing climate conditions, for any industry or work which the Inmate was required to do or to maintain the health of the Inmate in accordance with the 'Clothing Bedding and Hygiene Requirements' in the Output Specification;</p> <p>(e) any Inmate occupying that Inmate Place had access to potable water;</p> <p>(f) any Inmate occupying an Inmate Place had access to appropriate mattress, bedding and a pillow; and</p> <p>(g) the levels of safety and security in the Correctional Centre were maintained as required under the Output Specification and Performance Regime.</p> <p><b>Rectification Period</b> has the meaning given to it in the Payment Schedule.</p>
<p><b>Counting Rules</b></p>	<p>To the extent that an Inmate Place Unavailability continues beyond the end of the nth Month, Quality Failure Points will be calculated for that Inmate Place Unavailability in the nth Month and any subsequent Month until the Inmate Place Unavailability is Rectified.</p> <p>For the avoidance of doubt, the calculation of Quality Failure Points in any such subsequent Month will utilise the higher amount of Quality Failure Points from the eighth consecutive day of the expiry of the Rectification Period for that Inmate Place Unavailability (taking into consideration the number of days of the Inmate Place Unavailability following the expiry of the Rectification Period in any previous Month(s)).</p> <p>For example, the Rectification Period for an Inmate Place Unavailability expires at 2pm on 22 September 2017. The Inmate Place Unavailability is not Rectified until 8pm on 4 October 2017. The Quality Failure Points for that Inmate Place Unavailability would be calculated as:</p> <ul style="list-style-type: none"> <li>• 110 QFPs x 7 days = 770 (in respect of 2pm on 22 September 2017 until 2pm on 29 September 2017);</li> <li>• 165 QFPs x 5.25 days = 866.25 (in respect of 2pm on 29 September 2017 until 8pm on 4 October 2017);</li> </ul> <p>The Quality Failure Points for the Inmate Place Unavailability total 866.25.</p>

<b>KPI 24</b>	<b>Inmate Place Unavailability</b>
<b>Reporting Requirements of Operator</b>	<p>To the extent available to the Operator, the Operator must provide a reporting system capable of undertaking comprehensive and complete self-monitoring of the delivery of the Services in accordance with the Performance Monitoring Program and must ensure that for each Inmate Place Unavailability, Operator must record the following:</p> <ul style="list-style-type: none"> <li>• a unique identification number;</li> <li>• the nature of the Inmate Place Unavailability;</li> <li>• the date, time, extent and duration of the Inmate Place Unavailability;</li> <li>• the specific location of the Inmate Place Unavailability;</li> <li>• the required and actual Rectification Period; and</li> <li>• the Quality Failure Points attributable to the Inmate Place Unavailability.</li> </ul> <p>Where the Inmate Place Unavailability gives rise to Critical Incidents, the Operator is to separately provide a critical incident report.</p>
<b>Reporting Period</b>	Monthly

### 3.25 KPI 25 – Meal Failures for meals provided by CSI

<b>KPI 25</b>	<b>Meal Failures for meals provided by CSI</b>
<b>Formula</b>	<b>Number of Meal Availability Failures in the relevant Month</b>
<b>Calculation of Quality Failure Points</b>	The Quality Failure Points which Operator will accrue each Month is 30 points per Meal Availability Failure.
<b>Definitions</b>	<p><b>CSI</b> means Corrective Services Industries.</p> <p><b>Meal Availability Failure</b> means a failure to provide any Inmate food (to the extent that the Inmate is physically present at the Correctional Centre at the time of the food) in accordance with the minimum services requirements for 'Food Services' set out in the Output Specification and the Operator's other obligations in relation to food set out in this Agreement.</p>
<b>Counting Rules</b>	<p>Count the number of Meal Availability Failures.</p> <p>Exclude:</p> <ul style="list-style-type: none"> <li>• Operator will be entitled to a relief from the Meal Availability Failure to the extent that the Meal Availability Failure is a direct result of the State (or CSI on behalf of the State) failing to comply with its obligations and it was not reasonably practicable to identify that failure using visual inspections or sample tests which Operator is obliged to perform under this Agreement.</li> </ul>

<b>KPI 25</b>	<b>Meal Failures for meals provided by CSI</b>
<b>Reporting Requirements of Operator</b>	<ul style="list-style-type: none"><li>• Report the number of Meal Availability Failures.</li></ul>
<b>Reporting Period</b>	Monthly

## Schedule 20 — Ramp-Up Profile (Indicative)

### Ramp-Up Profile

Table 1: Ramp-Up Profile

	Expanded Facility (480 beds)		
Week	Wing	Total number of Inmates per week <sup>i</sup>	Cumulative total in the Expanded Facility
<b>Operational Readiness Date (EF)</b>			
Week 1	A		
Week 2	A		
Week 3	B		
Week 4	B		
Week 5	Break in ramp-up <sup>ii</sup>		
Week 6	C		
Week 7	C		
Week 8	D		
Week 9	D		

<sup>i</sup> Ramp-up will consist of 20 inmates received each Monday, Wednesday and Friday (3 X 20 Inmates per week).

<sup>ii</sup> When 240 Inmates have been received there will be a week's break, then the same ramp-up schedule would recommence.

## Schedule 21 - Payment Schedule

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### 1. Definitions

For the purposes of this Schedule, the definitions in clause 1.1 of this Agreement will apply as supplemented by the following definitions:

**Additional Security Services** means any additional security services required under clause 19A.2 of this Agreement.

**Consumer Price Index** or **CPI** means the Consumer Price Index (all Groups) for Sydney published quarterly by the Australian Bureau of Statistics or, if section 2.2 applies, the index determined in accordance with that section.

**CPI Annual Multiplier** at any time means:

- (a) the most recently published CPI for a Quarter ending 30 June; divided by
- (b) the published CPI for the Quarter ended 30 June 2018.

**Extension Period** means the period commencing on the Amendment Start Date and finishing on 31 March 2024 (or any earlier date of termination).

**FM Service Failure** means any failure to meet, comply with or otherwise satisfy the requirements of the FM Services as described in the Output Specification.

**Inmate Place Unavailability** has the meaning given to it in the Performance Regime.

**Medical Pass Through** means those additional medical costs which the Operator is entitled to claim in accordance with section 8(h).

**Minimum Population** means 790 male ordinary Inmates.

**NSW Ambulance Charges** means the cost of emergency ambulance treatment or transport charged to the Operator by the Ambulance Service of NSW, except to the extent such treatment is required as a result of a failure by Operator to perform the Services in accordance with this Agreement.

**Pharmacy Costs** means the Operator's third party costs in relation to:

- (a) the purchase of Pharmaceuticals or Pharmaceutical Related Items; and
- (b) any Pharmaceutical Supply or Urgent Pharmaceutical Supply,

inclusive of all discounts, rebates, allowances and deductions but excluding the Operator or Operator's Associates mark-ups, profit margin or administration, management or other fees.

**Pharmaceutical Related Items** means dose administration aids.

**Pharmaceuticals Reporting Spreadsheet** means the spreadsheet titled as such in the Plans and Reports Schedule.

**Pharmaceutical Supply** means the freight, transport and delivery of Pharmaceutical and Pharmaceutical Related Items to the Correctional Centre within standard delivery times.

**Pharmaceuticals** means all prescription medications determined or prescribed by:

- (i) a registered medical practitioner;
- (ii) a registered dentist;
- (iii) a registered optometrist;
- (iv) a registered (and suitably endorsed) podiatrist; or
- (v) an authorised registered nurse practitioner.

**Quality Failure** has the meaning given to it in section 10.2.

**Rectification Period** means:

- (a) for Inmate Place Unavailability, the aggregate of:
  - (i) the period from the commencement of the Inmate Place Unavailability, as determined in accordance with section 10.3(b), up to (and including) midnight on that calendar day; and
  - (ii) subject to extensions granted under section 10.3(d), 24 hours from midnight on the calendar day in which the period of Inmate Place Unavailability commenced; and
- (b) for an FM Service Failure, subject to extensions granted under section 10.3(d) the period of time set out in the FM Table in section 3.16 of the Performance Regime for the relevant categorisation of the FM Service Failure.

**Rectification Notice** has the meaning given to it in section 10.3(f)(i).

**Rectify, Rectified, Rectifying or Rectification** means the Operator doing all that is required to rectify a FM Service Failure or an Inmate Place Unavailability (as the case may be), including in order to ensure that the Correctional Centre (or any part of it) is fit for purpose and the Operator otherwise meets or exceeds the performance standards set out in the Output Specification.

**Respond, Response or Responded** means the Operator does all of the following:

- (a) establishes the nature, location and cause of the Inmate Place Unavailability or FM Service Failure (as the case may be);
- (b) commences all necessary actions to address the Inmate Place Unavailability or FM Service Failure (as the case may be) and fulfil health and safety requirements;
- (c) if applicable, appoints a suitably qualified, experienced and accountable person to pursue a Rectification;
- (d) assesses the situation and, within reasonable time, takes or authorises any required action; and
- (e) records an assessment of the Inmate Place Unavailability or FM Service Failure (as the case may be) in the performance monitoring program in accordance with the minimum requirements for General Services as set out in the Output Specification.

**Surge Bed** means a temporary bed.

**Surge Bed Inmate** is an Inmate using a surge bed.

**Temporary Fix** has the meaning given to it in section 10.4.

**Urgent Pharmaceutical Supply** means the freight, transport and delivery of Pharmaceuticals and Pharmaceutical Related Items outside of standard delivery times in exceptional circumstances where necessitated by clinical need as determined by suitably qualified Staff of the Operator or any of its Associates.

**Wage Price Index** or **WPI** means the Wage Price Index: Total Hourly Rates of Pay Excluding Bonuses (New South Wales, All Industries, Public and Private) published quarterly by the Australian Bureau of Statistics or, if section 2.2 applies, the index determined in accordance with that section.

**WPI Annual Multiplier** at any time means:

- (a) the most recently published WPI for a Quarter ending 30 June; divided by
- (b) the published WPI for the Quarter ended 30 June 2018.

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## **2. Indexation**

### **2.1 Indexation**

- (a) All amounts to be “Indexed” under this Agreement are indexed by multiplying the relevant number by the CPI Annual Multiplier or, if expressly specified, the WPI Annual Multiplier (as applicable).

### **2.2 Changes to Indexes**

The following rules apply to all terms referred to in section 2.1:

- (a) if there is a change in the coverage of the index from that applying at the date of this Agreement and the new index is linked to another index, the defined term is to be referable to the new index;
- (b) if the index is published and there is a change in its:
- (i) coverage and it is not linked to another index; or
  - (ii) periodicity,
- the parties must request the President of the Institute of Actuaries of Australia (or the President’s nominee) to determine:
- (iii) whether the index remains appropriate as a general indicator of the rate of price change for the relevant goods and services; and
  - (iv) if it is not, what other index should be used as a substitute index for the purpose of the defined term’s use in this Agreement,
- and that determination is final and binding on the parties;
- (c) if there is a change in the reference base of the index from that applying at the date of this Agreement and the Australian Bureau of Statistics provides a conversion factor, that conversion factor must be applied to calculate revised figures for the purpose of the defined term’s use in this Agreement, in terms of the new reference base. Where possible the conversion factor should be applied to both (a) and (b) in the definitions of CPI Annual Multiplier or WPI Annual Multiplier (as applicable) so that going forward both are expressed in the terms of the new reference base;
- (d) if there is a change in the reference base of the index from that applying at the date of this Agreement and the Australian Bureau of Statistics does not provide a conversion factor, the parties must request the President of the Institute of Actuaries of Australia (or the President’s nominee) to calculate a revised index for the purposes of the defined term’s use in this Agreement, and that calculation is final and binding on the parties;
- (e) if the index ceases to be published and the Australian Bureau of Statistics publishes another index which is:
- (i) a replacement of that index; and
  - (ii) linked to the index,
- the defined term must be re-calculated to the same reference base as the replacement index;
- (f) if the index ceases to be published and the Australian Bureau of Statistics does not publish another index which is linked to the index, the parties must request



the President of the Institute of Actuaries of Australia (or the President's nominee) to calculate a revised index for the purposes of the defined term's use in this Agreement, and that calculation is final and binding on the parties;

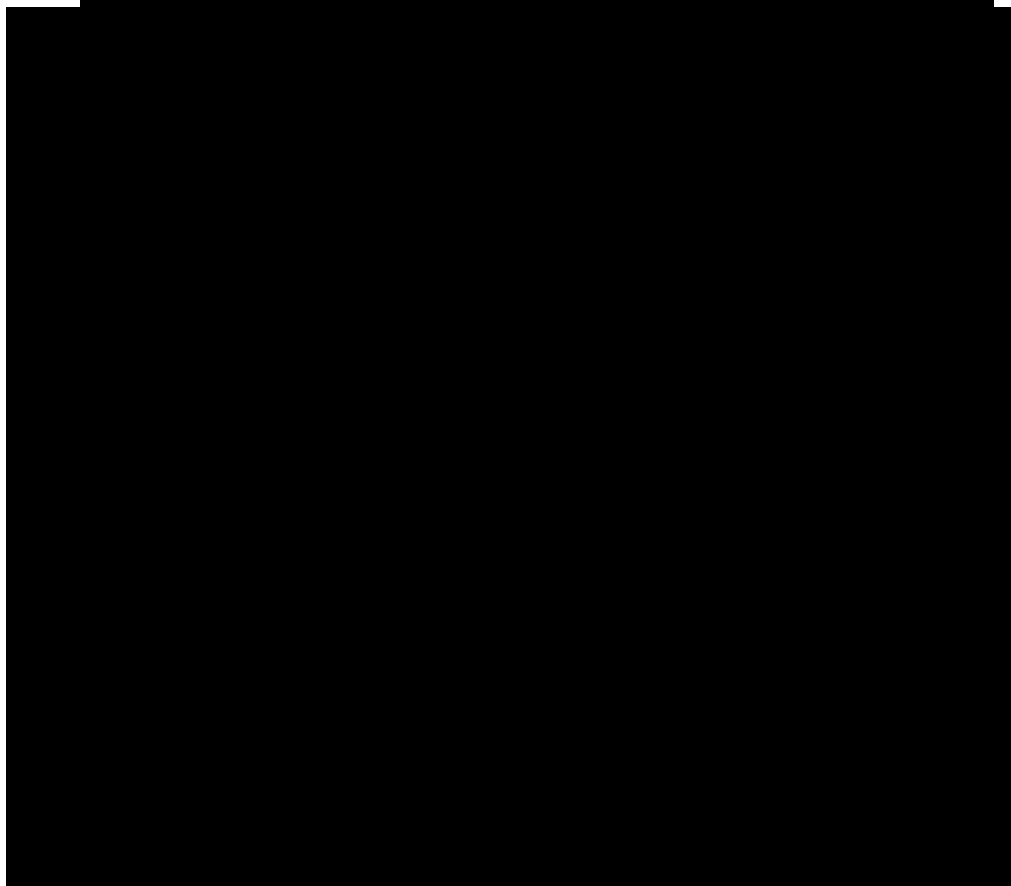
- (g) if the index ceases to be published and the Australian Bureau of Statistics does not publish another index in place of the index, the parties must request the President of the Institute of Actuaries of Australia (or the President's nominee) to determine an appropriate index which is a general indicator of the rate of price change for the relevant goods and services, and that determination is final and binding on the parties; and
- (h) if a Change in Law causes a material aberration in the index, the index must be adjusted to remove the impact of that material aberration in accordance with any such methodology published by a responsible Authority for adoption by business or, in the absence of such publication, within six months of the occurrence of the material aberration as agreed by the parties. In the absence of such agreement either party may refer the matter to dispute resolution in accordance with clause 32 of this Agreement.

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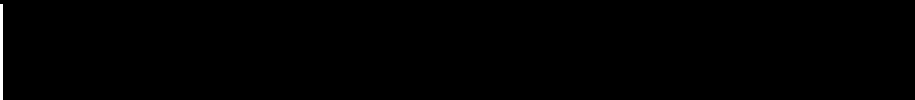
### **3. Monthly Service Payment**

#### **3.1 Calculation of the Monthly Service Payment**

- (a) The Monthly Service Payment for the nth Month of the Extension Period (MSP<sub>n</sub>) is:



- (b)



**3.2 First and Last Month of the Amendment Start Date**

Where the Amendment Start Date is not the first day of a Month,  $MSP_n$  will be adjusted proportionately for:

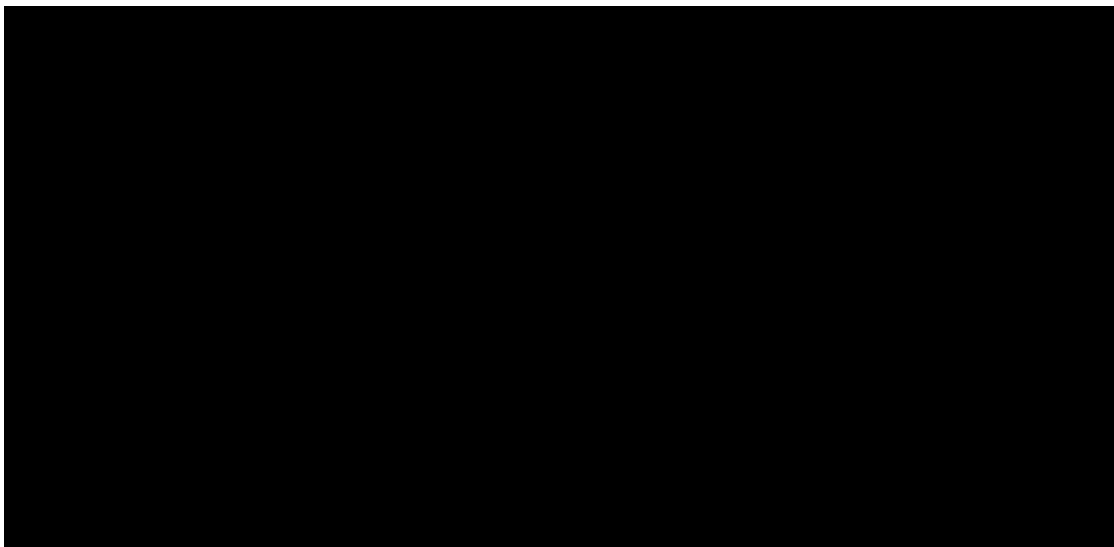
- (a) the first Month in the Extension Period; and
- (b) the last Month in the Extension Period,

having regard to the number of days in the relevant partial Month as a percentage of the total number of days in the full calendar Month.

**4. Base Fee**

**4.1 Calculation of the Base Fee**

- (a) The Base Fee for the nth Month of the Extension Period ( $BF_n$ ) is calculated as:



**5. Volumetric Adjustment**

**5.1 Calculation of the Volumetric Adjustment**

- (a) The purpose of the Volumetric Adjustment is to compensate the Operator for the additional costs of operation in accordance with this section where the number of male Inmates at the Correctional Centre exceeds the Minimum Population.
- (b) The Volumetric Adjustment will not be negative (i.e. the Volumetric Adjustment will either be zero or will be positive). The Volumetric Adjustment does not apply to female Inmates.
- (c) The Volumetric Adjustment will be calculated with reference to the bands of Inmate numbers and fixed and variable fees set out in Annexure 2 to this Schedule for the Correctional Centre (as Indexed by SIFn) (as defined in section 4.1(a)) and in accordance with section 5.1(e).
- (d) If the State forecasts:

- (i) an increase to the Inmate numbers at the Correctional Centre above the Minimum Population; or
- (ii) an increase or decrease in the Inmate numbers at the Correctional Centre beyond the upper or lower limit of the band as previously adjusted in accordance with this section 5.1,

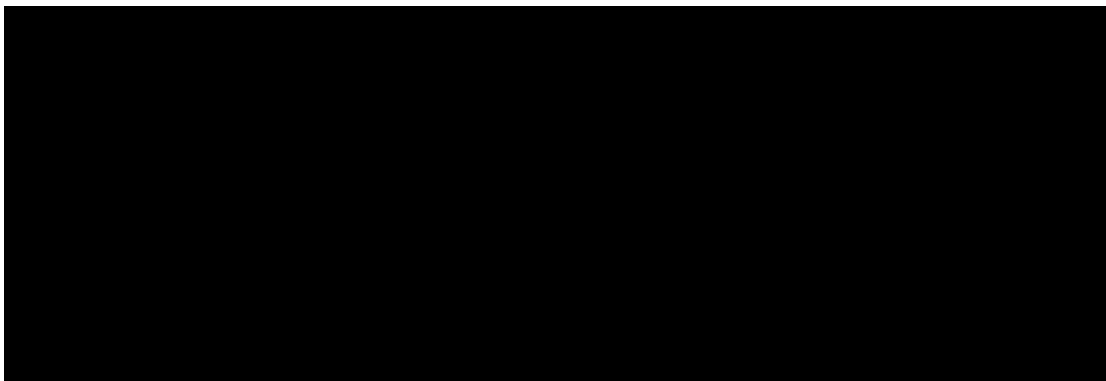
then the State must use reasonable endeavours to provide the Operator with as much notice as is practicably possible of the forecast banding for the relevant Correctional Centre and the date whereby the forecast banding is expected to apply.

- (e) The Volumetric Adjustment for Month n ( $VA_n$ ) of the Extension Period for the Correctional Centre is calculated as follows:
  - (i) Step 1: Count the actual number of Inmates at the Correctional Centre at 12am (**Actual Population**);
  - (ii) Step 2: Deduct the Minimum Population for that Correctional Centre to find the daily Variance in Population (**VIP**);
  - (iii) Step 3: Multiply the VIP by the relevant variable fee per Inmate per day and add to this the fixed fee per day (**DVA**), as determined by the bandings in the applicable table of rates in Annexure 2 to this Schedule; and
  - (iv) Step 4: Sum DVA for every day in the Month<sub>n</sub>.

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## 6. Surge Bed Payment

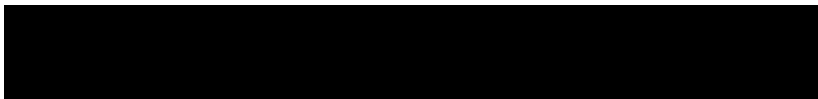
- (a) The purpose of the Surge Bed Payment is to compensate the Operator for the additional cost of operation in accordance with this section where Inmates are using Surge Beds.
- (b) The Surge Bed Payment for Month n ( $SBP_n$ ) of the Extension Period is calculated as:



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## 7. Lifecycle Charge

- (a) The Lifecycle Charge for Month n ( $LC_n$ ) of the Extension Period is calculated as:





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**8. Pass Through Costs**

- (a) The Pass Through Costs for the nth Month of the Extension Period will be the sum of the following:
- (i) Pharmacy Costs which the Operator is entitled to claim in accordance with section 8(b);
  - (ii) NSW Ambulance charges which the Operator is entitled to claim in accordance with section 8(f); and
  - (iii) Medical Pass Through which the Operator is entitled to claim in accordance with section 8(h).

***Pharmaceuticals***

- (b) The Operator will only be entitled to claim reimbursement of Pharmacy Costs after Pharmaceuticals have been administered to Custodial Patients (regardless of whether or not a Custodial Patient completes a course of Pharmaceuticals).
- (c) It is a condition precedent to the Operator's entitlement to claim reimbursement of Pharmacy Costs that:
- (i) the Pharmacy Costs were properly and necessarily incurred in accordance with the Output Specification; and
  - (ii) the Operator has complied with its obligations under this Agreement in incurring the Pharmacy Costs (including submission of the Pharmaceuticals Reporting Spreadsheet).
- (d) As part of its Payment Claim prepared under clause 25.1(b) of this Agreement, the Operator must provide evidence of all Pharmacy Costs actually incurred and paid for by Operator during the relevant Month.
- (e) The Operator acknowledges and agrees that it is only entitled to claim reimbursement of Pharmacy Costs up to the relevant unit price or rates, or in accordance with the applicable charging formula (as applicable), specified in the terms of the Pharmaceuticals Supplier's appointment in respect of:
- (i) each Pharmaceutical item;
  - (ii) each Pharmaceutical Related Item;
  - (iii) each Pharmaceutical Supply; and
  - (iv) each Urgent Pharmaceutical Supply.

***NSW Ambulance***

- (f) The Operator will only be entitled to claim reimbursement of NSW Ambulance Charges to the extent that the NSW Ambulance Charges were properly and necessarily incurred for the provision of emergency care.

- (g) As part of its Payment Claim prepared under clause 36.2(a) of this Agreement, the Operator must provide evidence of all NSW Ambulance Charges actually incurred and paid for by Operator during the relevant Month.

*Medical pass through*

- (h) any additional medical costs for which the Operator is liable arising directly from a change in policy by Justice Health, except to the extent that:
  - (i) that change in policy also constitutes a Change in Requirements; or
  - (ii) such costs arise from any medical treatment required as a result of a failure by Operator to perform the Services in accordance with this Agreement

or both, as the case may be.

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**9. Additional Security Services**

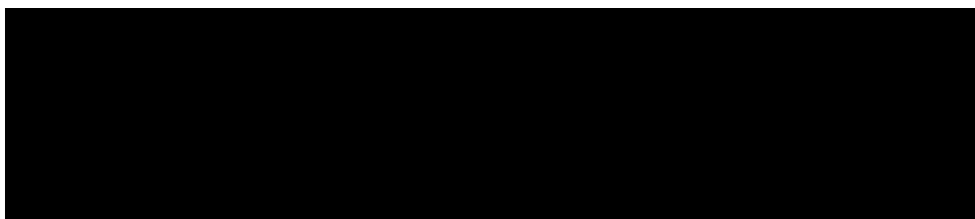
- (a) The Operator is entitled to compensation for providing Additional Security Service where it has agreed with the State to employ additional staff for a specified purpose. The Operator will be paid for each Additional Security Service in accordance with this section.
- (b) The Additional Security Services for Month n (AS<sub>n</sub>) of the Extension Period is calculated as the sum of the following for each staff type:
  - (i) the number of Additional Security Service hours in Month n for the relevant staff type multiplied by the price for relevant staff type per one hour interval (or part thereof) as identified in Annexure 5 of this Schedule. Whereby the price will be Indexed by the WPI Annual Multiplier in Month n.

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**10. Total Deductions**

**10.1 Calculation of the Total Deductions**

- (a) With the exception of the first three Months of the Extension Period where TD<sub>n</sub> is deemed to be equal to zero, Total Deductions for the nth Month of the Extension Period (TD<sub>n</sub>) are calculated as:



- (b) Any errors or omissions by the Operator that are found to be deliberate instances of concealing or omitting to report a Quality Failure Abatement will attract a reporting failure factor equal to 200% of the relevant Quality Failure Points.
- (c) In the Month that a reporting failure is identified (regardless of when or how it is identified) the Operator is required to record the correct details regarding the Quality Failure Abatement in an amended monthly report for the Month in which the error occurred. The Monthly Service Payment for the Month in which the reporting failure is identified will be adjusted to take account of any overpayment

by the State in the Month that the reporting failure relates to. The adjustment to the Monthly Service Payment will be calculated as per section 11.

**10.2 Calculation of the Quality Failure Abatement**

- (a) A Quality Failure will arise when:
  - (i) the Operator fails to meet the Target Performance Range for any Key Performance Indicator as set out in section 3 of the Performance Regime; or
  - (ii) where there is no Target Performance Range for a Key Performance Indicator, where the formula in section 3 of the Performance Regime applicable to that Key Performance Indicator (or that part of the Key Performance Indicator) results in a value greater than zero.
- (b) Where a Quality Failure occurs in a Month, Quality Failure Points (**QFPs**) will accrue and will be calculated with reference to the relevant Key Performance Indicator and methodology for the calculation of QFPs set out in section 3 of the Performance Regime.
- (c) Where two or more Quality Failures arise from the same incident, the higher of the calculated QFPs will apply.
- (d) To the extent that:
  - (i) the same Quality Failure occurs in 2 or more Months within a period of 6 consecutive Months; and
  - (ii) the Operator’s performance falls within the Level 2 Performance Range for each of those Months,

the QFPs which accrue in respect of that KPI or that part of the KPI for the second Month and any subsequent Months where section 10.2(d)(ii) continues to apply will be multiplied by a factor of two.

- (e) The Quality Failure Abatement for the Month ( $\sum QFA_n$ ) will be calculated as  $\frac{\sum QFP_n}{100}$



where the resultant value will either be nil or positive (such that it increases Total Deductions and reduces the Monthly Service Payment).

**10.3 Rectification**

- (a) This section sets out provisions in respect of the Rectification of Inmate Place Unavailability and FM Service Failures (as relevant to the calculation of Quality Failure Abatements in section 10.2).
- (b) The Rectification Period will commence at the moment that the Inmate Place Unavailability or the FM Service Failure (as the case may be):
  - (i) first comes to the attention of any member of Staff (including by notification by the State, the Monitor, an Inmate or a Visitor to a member of Staff);
  - (ii) is detected by any automatic monitoring or alarm system; or
  - (iii) should have come to the attention of any member of Staff or should have been detected by any other automatic monitoring or alarm

system, if the Operator was complying with its obligations under this Agreement,

whichever is the earlier.

- (c) If, at any time during the Extension Period, the Operator refuses to accept an Inmate to occupy any Available Inmate Place, that Available Inmate Place is deemed to be an Inmate Place Unavailability from the time of such refusal by the Operator until the date on which the Operator provides an Available Inmate Place.
- (d) The Operator may request an extension to the Rectification Period in respect of each Inmate Place Unavailability and each FM Service Failure. The State Representative will not unreasonably refuse to grant such extensions provided that:
  - (i) the Operator has promptly Responded and, where applicable, has diligently pursued and effected a Temporary Fix in accordance with section 10.4 to the State Representative's satisfaction;
  - (ii) the Inmate Place Unavailability or FM Service Failure (as the case may be) was not caused by an act or omission of the Operator or an Operator Associate (including the provision of inadequate resources) or an act or omission of an Inmate, to the extent arising from a failure to perform the Services in accordance with this Agreement;
  - (iii) the Operator has diligently pursued a remedy or cure; and
  - (iv) the need for the extension is not due to a failure on the part of the Operator to adhere to Best Services Practices, including the identification, purchasing and storage of spare parts for plant and equipment whose failure may have a significant impact upon the operation of the Correctional Centre in accordance with this Agreement.
- (e) For so long as any Inmate Place Unavailability or FM Service Failure (as the case may be) continues, the Operator must provide to the State a daily update on the progress made in Rectification, together with any revised estimate of the likely date of Rectification.
- (f) The period of the Inmate Place Unavailability or FM Service Failure (as the case may be) will be determined in accordance with the following procedure:
  - (i) the Operator must immediately notify the State when it believes that any Inmate Place Unavailability or FM Service Failure (as the case may be) has been Rectified (the "**Rectification Notice**"); and
  - (ii) the time of such Rectification Notice will, subject to section 10.3(i), constitute the time of Rectification.
- (g) The State will be entitled to inspect the area of the Correctional Centre that is the subject of the Rectification Notice and notify the Operator of whether or not it agrees that the Inmate Place Unavailability or FM Service Failure (as the case may be) has been Rectified by no later than 2 Business Days after receipt by the State of the Rectification Notice.
- (h) If the State:
  - (i) notifies the Operator that it agrees with the Rectification Notice; or
  - (ii) does not notify the Operator in accordance with section 10.3(i),

the relevant Inmate Place Unavailability or FM Service Failure (as the case may be) ceases from the time of the Rectification Notice.

- (i) If the State notifies the Operator that it does not agree with the Rectification Notice in accordance with section 10.3(g), the relevant Inmate Place Unavailability or FM Service Failure (as the case may be) is deemed to continue until Rectification in accordance with section 10.3(h).

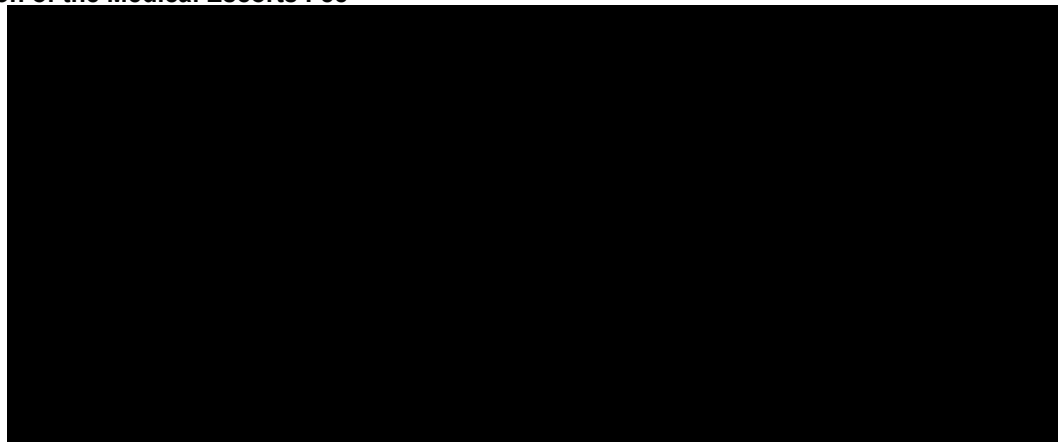
**10.4 Temporary Fix**

- (a) This section sets out provisions in respect of a Temporary Fix for Inmate Place Unavailability and FM Service Failures (as relevant to the calculation of Quality Failure Abatements in section 10.2).
- (b) If the Operator considers that it is not able to Rectify an Inmate Place Unavailability or FM Service Failure (as the case may be) within the relevant Rectification Period, it may seek approval from the State for a course of action that will temporarily ameliorate the consequences of the Inmate Place Unavailability or FM Service Failure (as the case may be) whilst the problem is being Rectified (**Temporary Fix**). The Operator must specify the proposed time by which the Rectification must occur (**Permanent Fix Time**).
- (c) The Operator may not proceed to perform a Temporary Fix without the State’s prior approval of the Temporary Fix and Permanent Fix Time.
- (d) The parties acknowledge that the State is entitled to reject a Temporary Fix.
- (e) If the State allows a Temporary Fix, the Operator must diligently pursue the Temporary Fix within the time frames agreed as part of the Temporary Fix and must ensure that the Inmate Place Unavailability or FM Service Failure (as the case may be) is Rectified by the Permanent Fix Time.
- (f) No approval of a Temporary Fix or Permanent Fix Time, or extension of the Permanent Fix Time or Rectification Period, by the State will:
  - (i) relieve the Operator of any of its obligations or liabilities under this Agreement; or
  - (ii) entitle the Operator to make a Claim against the State or its Associates.

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**11. Medical Escorts Fee**

**11.1 Calculation of the Medical Escorts Fee**





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**12. Other Adjustments**

- (a) The nature of any other adjustments required to the Monthly Service Payments and the corresponding adjustment amounts shall be agreed between the Parties on a case by case basis.
- (b) The OA for Month n shall be the aggregate of the adjustment amounts agreed for any other adjustments for that Month n.
- (c) Any adjustments due to overpayments from reporting failures under section 10.1(c) shall be paid as an Other Adjustment.

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**13. Operational Readiness (EF) Activities Fee**

- (a) For the purposes of this section 13, 'Operational Readiness Costs' means the actual direct costs properly and reasonably incurred by the Operator in connection with the recruitment and training of new Staff for the Expanded Facility (including the conduct of medical assessments, finger printing and advertising).
- (b) The State will pay the Operator its Operational Readiness Costs:
  - (i) if the Operator achieves Operational Readiness on the Date for Operational Readiness;
  - (ii) to the extent those costs are substantiated to the reasonable satisfaction of the State in accordance with section 13(c); and
  - (iii) up to a cap of \$ [REDACTED] (excluding GST).
- (c) The Operator must submit to the State evidence of the Operational Readiness Costs sufficient to substantiate those costs, including (where applicable):
  - (i) timesheets; and
  - (ii) invoices for all external costs and disbursements.

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**14. Additional Officers (AO) Fee**

- (a) The State will pay the Operator an Additional Officers Fee (AO) for Additional Officers required under clause 19A.2 of this Agreement. The Additional Officers Fee will be \$ [REDACTED] per Month (excluding GST), starting on the first Month after the Amendment Start Date and ceasing on the earlier of:
  - (i) 12 months after the Amendment Start Date; and
  - (ii) the month of the Operational Readiness Date.
- (b) The total payments made by the State for Additional Officer Fees will be capped at \$ [REDACTED] (excluding GST) over the Extension Period.

## Annexure 1 – Base Fee

	<b>\$ (2018-19, excluding GST)</b>
<b>Monthly Base Service Payment (MBSP)</b>	[REDACTED]
<b>Service Indexing Factor (SIF):</b>	<b>%</b>
<b>K%</b>	[REDACTED]
<b>L%</b>	[REDACTED]

## Annexure 2 – Volumetric Adjustments

	<b>Lower Band (Number of male nominal bed inmates)</b>	<b>Upper Band (Number of male nominal bed inmates)</b>	<b>Variable Fee per Inmate per day \$ (2018-19 excluding GST)</b>
<b>Band 0</b>			
<b>Band 1</b>			
<b>Band 2</b>			
<b>Band 3</b>			
<b>Band 4</b>			

## Annexure 3 – Surge Bed Payment

	\$ (2018-19 excluding GST)
Cost per Inmate per day	

## Annexure 4 – Lifecycle Payment

Existing Facility:

<b>Month after the Amendment Start Date</b>	<b>Lifecycle Payment \$ (2018-19, excluding GST)</b>
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## Annexure 5 – Additional Security Services

	\$ (2018-19, excluding GST)
Cost per hour per security officer	
Cost per hour per security supervisor	
Cost per hour per casual security officer	

## Annexure 6 – Bakery Termination Payment

[REDACTED]


where:

[REDACTED]

[REDACTED]



## Annexure 7 – Medical Escorts

	<b>\$ (2018-19, excluding GST)</b>
<b>Monthly Medical Escorts Payment</b>	
<b>Medical Escorts Indexing Factor (MEIF):</b>	
<b>M%</b>	
<b>N%</b>	



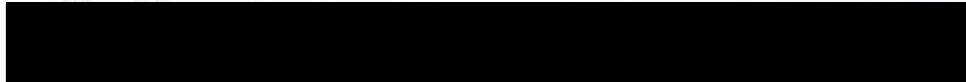
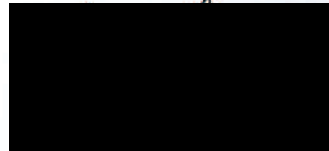
Signing page

Executed as a deed

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**State**

Signed, sealed and delivered by  
**COMMISSIONER OF CORRECTIVE  
SERVICES**, for and on behalf of the Crown  
in right of the State of New South Wales, in  
the presence of:



**Operator**

Signed sealed and delivered by  
**The GEO Group Australia Pty Limited**  
(ABN 24051130600)

