



## **Operation and Maintenance of the Young Adults Facility Contract**

**Between**

**The Commissioner of the Department of Corrective Services, for and on behalf of  
the State of Western Australia**

**and**

**Serco Australia Pty Limited  
(ABN 44 003 677 352)**

**Contract DCS0022011**

**March 2012**



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**Date**            **Twentieth Day of March 2012**

**Parties**

1. Ian Johnson in his capacity as Commissioner of the Department of Corrective Services, of 141 St Georges Terrace, Perth, Western Australia, 6000, for and on behalf of the State of Western Australia (**'the Principal'**)  
  
and
2. Serco Australia Pty Limited (ABN 44 003 677 352), Level 10, 90 Arthur Street, North Sydney, New South Wales, 2060 (**'the Contractor'**)

**Recitals**

- A. The Contractor submitted, in respect to the Request, Operation and Maintenance of the Young Adults Facility, number DCS0012011 issued by the Principal on or about 30 March 2011, a proposal to provide the Services ('Contractor's Proposal') and the Principal, after considering the Contractor's Proposal and subsequent written and oral submissions, wishes to engage the Contractor to provide the Services.
- B. The Principal and the Contractor have agreed to enter into this Contract to set out their respective rights and obligations in relation to the Services. This Contract is an agreement for the operation and maintenance of the Young Adults Facility.

It is agreed as follows.

## 1. Definitions and Interpretation

### 1.1 Definitions

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

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

**Adjustment Note** has the meaning given by the GST Law.

**Affiliate** means, in relation to a body corporate, each of:

- (a) that body's related bodies corporate
- (b) that body's directors; and
- (c) the persons who have a substantial holding (as that term is defined in the *Corporations Act 2001* (Cth)) in that body.

**Annual Report** means the report referred to in clause 22.8(a).

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

**Assault** means an act of physical violence against a Prisoner or any other person at the Facility resulting in physical harm or injury which does not require medical intervention or requires medical treatment at the Facility

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

**Best Industry Practice** means the practice of managing and providing services similar to the Services to the standard which would reasonably and ordinarily be expected from a skilled and experienced operator of similar facilities and services (whether private or public) for similar jurisdictions such as Australia, the United Kingdom, the United States, Canada and New Zealand.

**Business Continuity Plan** means a plan setting out any documents, instructions and procedures which will enable the Contractor to appropriately respond to any event which results in interruption to all or any of the Services, without any stoppage or hindrance in its operation of the Services.

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

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

**CEO** means the chief executive officer as defined in the *Prisons Act 1981* and includes, where the context permits, any person exercising delegated Power of the CEO.

**CEO's Rules** means each rule, regulation, guideline, policy directive, operational instruction or direction issued by the Principal relating to the provision of the Services or the performance of the Contractor's Obligations, including, but not limited to:

- (a) Policy Directives
  - (b) Operational Instructions
  - (c) Department of Corrective Services Assistant Commissioner Custodial Operations Notices
  - (d) Standing Orders; and
  - (e) Codes of ethics and conduct
- as amended or issued from time to time.

**Certificate III** means the training and qualification to the minimum Australian industry qualification application in respect of work involving Custodial Functions from the National Training Package for Correctional Services, which at the Commencement Date is CSC30101 Certificate III in Correctional Practice.

**Certificate IV** means the training and qualification to the minimum Australian industry qualification application in respect of work involving Custodial Functions from the National Training Package for Correctional Services, which at the Commencement Date is CSC30101 Certificate IV in Correctional Practice.

**Certificate of Practical Completion** has the meaning in clause 18.7.

**Change** has the meaning given in clause 25.4.

**Change of Control** means, in respect of a person, that:

- (a) the person becomes a subsidiary of another person (of which it was not a subsidiary at the Commencement Date); or
- (b) another person's voting power in the person increases from below 50% to 50% or above after the Commencement Date; or
- (c) another person is able to control the person where that other person was not able to control the person at the Commencement Date,

but, in respect of the Contractor, does not include an Excluded Change of Control. In this definition and the definition of Excluded Change of Control, 'voting power' has the meaning given in section 610 of the *Corporations Act 2001* (Cth), 'control' has the meaning given in section 50AA of the *Corporations Act 2001* (Cth) and 'subsidiary' has the meaning given in the *Corporations Act 2001* (Cth), in each case applied as if the relevant person were incorporated under that Act.

**Change of Law** means either:

- (a) a change in any legislation, ordinance, regulation, by-law, order or proclamation
- (b) the introduction of any new legislation, ordinance, regulation, by-law, order or proclamation
- (c) a change in, the introduction of, or removal of any Standards which the Contractor is obliged under any legislation, ordinance, regulation, or by-law to comply with; or
- (d) a judgement of a relevant court of law which changes a binding common law precedent or the interpretation of any legislation, ordinance, regulation, by-law, order or proclamation,

which:

- (e) occurs in Australia after the date of this Contract;
- (f) has effects which could not have been reasonably foreseen by the Contractor prior to the date of this Contract and the parties agreed that:
  - (i) a greenhouse gas emissions focused government legislation, ordinance, regulation, by-law, order or promulgation (including an emissions trading scheme or carbon tax); and
  - (ii) an increase in the superannuation guarantee levy under the *Superannuation Guarantee Charge Act 1992* (Cth) and the *Superannuation Guarantee (Administration) Act 1992* (Cth),

and are not reasonably foreseeable; and

- (g) had not been:
  - (i) foreshadowed by any Government Agency (and the parties agree that the changes described in paragraphs (f)(i) and (f)(ii) of this definition are not to be considered as having been foreshadowed by any Government Agency); or
  - (ii) in the case of legislation, introduced or tabled as a bill in the Parliament in which it was passed,

prior to the date of this Contract,

but excluding an Excluded Change of Law.

**Change of Law Notice** means a notice given under clause 48(a), meeting the requirements of clause 48(b).

**Change of Law Variation** means a change to the Contractor's Obligations directly and necessarily caused by a Change of Law and which Change of Law will directly and necessarily result in either:

- (a) the Contractor incurring more or less costs than it otherwise would have (but for the Change of Law), in performing the Services; or
- (b) a change to the Service Requirements.

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

**Code of Conduct** means a code of conduct setting out the permissible behaviour expected by all Contract Workers, both while they are working and when they are off duty.

**Commencement Date** means the date of execution of this Contract.

**Confidential Information** means all information, documents, reports, notes, memoranda, material or knowledge which is designated as confidential, or which is confidential by nature, in whatever form, including stored in writing, in a computer, in software or otherwise, relating to:

- (a) this Contract
- (b) anything done or to be done under this Contract
- (c) the Facility
- (d) the Principal and the Principal's Associates
- (e) the Services
- (f) the Contract Workers or the Contractor Employees
- (g) the Contractor
- (h) any Prisoner; or
- (i) business systems and assets and affairs which may impact on the security of the Facility or prisons in the Principal,

disclosed, communicated or delivered under or in connection with this Contract, or in providing the Services whether created by the Principal or the Contractor.

**Consideration** has the meaning given by the GST Law.

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

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

**Contract** means this Contract.

**Contract Manager** means the person appointed by the Principal under clause 5.1.

**Contract Worker** means a 'contract worker' within the meaning of section 15A of the *Prisons Act 1981* for the purposes of Part IIIA, engaged to provide any part of the Services and, for the avoidance of doubt, includes a natural person engaged to provide any part of the Services who is:

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

**Contractor's System** means the computer system, software and ancillary facilities established by the Contractor (or any Subcontractor) among other things to record data and information relating to the Facility, the provision of the Services and this Contract.

**Contractor Employee** means any of the following persons:

- (a) officers and employees, agents and consultants and contractors of the Contractor, including persons under the direction or control of the Contractor; and
- (b) Subcontractors, officers, employees and consultants and contractors of Subcontractors; and
- (c) all Contract Workers.

**Contractor Representative** means the person appointed as the representative of the Contractor under clause 5.2.

**Contractor Resources** has the meaning given in clause 21.1.

**Contractor Resources Register** has the meaning given in clause 21.4.

**Contractor Superintendent** means the person appointed by the Contractor and authorised by the CEO under clause 5.3.

**Contractor's Associates** means any Affiliate of the Contractor.

**Contractor's Obligations** means the obligations of the Contractor under this Contract or imposed by law in relation to the provision of the Services.

**Control** means:

- (a) control or influence of, or having the capacity to control or influence the composition of the Board, or decision making, directly or indirectly, in relation to the financial and operating policies;
- (b) being in a position to cast, or control the casting of, more than 20% of the maximum number of votes that may be cast at a general meeting; or
- (c) having a relevant interest (as defined in Section 608 of the *Corporations Act 2001* (Cth)) in more than 20% of the securities (as defined in the *Corporations Act 2001* (Cth)),

of an entity (whether alone or together with any associate (as that term is used in the *Corporations Act 2001* (Cth))).

**Controller** means:

- (a) a receiver or manager, of the property of a corporation; or
- (b) anyone else who (whether or not as agent for the corporation) is in possession, or has control, of that property for the purpose of enforcing a change.

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

**Cost** has the meaning given in clause 24.2(e).

**CPI** means the Consumer Price Index compiled by the Australian Bureau of Statistics ("ABS") for Perth (Capital City): All Groups, provided however that if either:

- (a) the CPI ceases to be published quarterly; or
- (b) the method of calculation of the CPI substantially alters,

then the CPI is to be replaced by the nearest equivalent index and any necessary consequential amendments are to be made. That index and those amendments are to be determined as follows:

- (a) by agreement between the Principal and the Contractor; or
- (b) if the parties do not agree by an economist appointed by the President of the Law Society of Western Australia on the application of the Principal whose decision will be final and binding.



**Critical Incident** means, but is not limited to, the following:

- (a) Any escape by a Prisoner;
- (b) The death of a Prisoner who is in the custody of the Contractor or the death of any other person at the Facility;
- (c) Any event that results in a loss of control of a Prisoner or the Facility for which the Contractor requires external assistance to regain control;
- (d) Any serious assault on any person;
- (e) Any serious self harm (including any attempted suicide);
- (f) Any incidents of serious misconduct by a Contractor Employee (including, but not limited to a serious breach of discipline);
- (g) Rescue or attempted rescue;
- (h) Unlawful release or unlawful detention; and
- (i) Any situation that required the implementation of emergency plans (including but not limited to a riot, a hostage situation, a bomb threat, a natural or technological disaster, fire).

**Custodial Functions** means a power, duty, responsibility and authority that a superintendent or a prison officer has under the *Prisons Act 1981* except a function referred to in section 15J of the *Prisons Act 1981*.

**Date of Practical Completion** means the date evidenced in the Certificate of Practical Completion as the date upon when practical completion was reached.

**Deal With** includes sell, novate, assign, transfer, encumber, grant any option, lease or licence in respect of, or in any manner alienate, dispose of, or part with possession of, or declare oneself trustee of or in relation to.

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

**Department** means Department as defined in the *Prisons Act 1981* which, as at the Commencement Date, is known as the Department of Corrective Services.

**Disaster Recovery Plan** means the disaster recovery plan for the Contractor's System (as referred to in clause 47) to be prepared by the Contractor under clause 7.10.

**Emergency** means a situation, actual or imminent, which, in the opinion of the Principal, endangers or threatens to endanger life, property or the environment and requires immediate action to be taken to ensure proper management, control, safety and security of the Facility or the safety and welfare of the Prisoners or other persons at the Facility.

**Emergency Plan** means a plan which deals with incident and emergency contingency and which sets out the planned interventions, activities and management control structures that will manage and mitigate any event that may disrupt the day to day routine of the Services or expectations of the Principal.

**Enabling Works** means the works to be carried out by the Contractor under the approved Enabling Works Plan which may commence on the Site Possession Date.

**Enabling Works Plan** means the plan to be prepared by the Contractor to undertake the enabling works in accordance with clause 18.2 that includes the specified items set out in clause 18.3.

**Encumbrance** means any mortgage, charge, licence, lease, lien, option over or other encumbrance or third party interest of any nature, and encumber and encumbrancer have corresponding meanings.

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

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

**Environmental Law** includes:

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

regulating or otherwise relating to the Environment.

**Escape** means when a Prisoner absents himself or herself from the charge/custody of the Contractor, without lawful authority, or from the Facility. A Prisoner who escapes in the following circumstances is to be classified as an escapee:

- (a) from the Facility by breaching a physical barrier such as a wall or secure accommodation which was expected to hinder the Prisoner from leaving (including the secure perimeter);
- (b) from a medical facility, public hospital or another place whilst under guard by the Contractor (if applicable);
- (c) from a secure escort vehicle and the Prisoner is out of sight of the Contract Worker; or
- (d) from leave of absence whilst expected to be under guard/lawful custody of the Contractor.

**Essential Service** means the provision of the following services:

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

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

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

- (a) the death of a Prisoner caused or materially contributed to by a breach of the Contractor's Obligations;
- (b) the escape by two (2) or more Prisoners in any Operating Year caused or materially contributed to by a breach of the Contractor's Obligations;
- (c) the occurrence of two (2) or more other Critical Incidents caused or materially contributed to by the Contractor in any one (1) Operating Month;
- (d) the occurrence of six (6) or more other Critical Incidents caused or materially contributed to by the Contractor in any Operating Year;
- (e) the Contractor fails to remedy any breach under this Contract within 10 Business Days after receipt of notice from the Principal requiring the breach remedied;
- (f) the Contractor commits a breach of this Contract which is incapable of being remedied;
- (g) the Contractor wholly or substantially abandons the Services;
- (h) an Insolvency Event occurs in relation to the Contractor, whether or not the Contractor is then in breach of this Contract;
- (i) an Insolvency Event occurs in relation to the Guarantor and the Guarantor is not replaced within twenty (20) Business Days by a party approved by the Principal;
- (j) there is a Change in Control or Change in Management of the Contractor without the Principal's consent;
- (k) Failures occur which results in abatements to the Monthly Services Payments of more than 10% on average in any three (3) consecutive Operating Months;
- (l) Failures occur which results in abatements to the Monthly Services Payments of more than 7.5% on average in any six (6) consecutive Operating Months; or
- (m) Failures occur which results in abatements to the Monthly Services Payments of more than 5% on average in any twelve (12) consecutive Operating Months.

**Excluded Change of Law** means any Change of Law:

- (a) the effects of which must be satisfied by the Contractor under clause 48; or
- (b) which affects the Tax applying to the Contractor,

other than:

- (a) a Tax imposed by the State of Western Australia;
- (b) the superannuation guarantee levy under the *Superannuation Guarantee Charge Act 1992* (Cth) and the *Superannuation Guarantee (Administration) Act 1992* (Cth); or
- (c) a Tax described in paragraph f(i) of the definition of Change of Law.

**External Prisoner Purchases** is defined in clause 9.3.

**Facility** is defined as the Young Adults Facility which has the same meaning as Prison.

**Facility Building** means each building or permanent structure which forms part of the Facility.

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

**Facility Equipment** means each item of plant and equipment which is attached to and forms part of the Facility Building, including the Principal's Systems, but does not include any Contractor Resources.

**Facility Operating Manual** means documents covering each of the areas listed in clause 8.7, as prepared by the Contractor and as approved by the Principal in accordance with clause 8.7.

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

**Failure** means a non-fulfilment by the Contractor to satisfy or achieve a KPI in accordance with and to the standard specified in the Service Requirements in Schedule 1 and/or Schedule 2.

**Force Majeure** means an event that prevents a party from performing its obligations, or receiving the benefit of the other party's obligations, in whole or part, under this Contract and which is unforeseeable and beyond the reasonable control of the affected party including:

- (a) Acts of God;
- (b) explosion or fire;
- (c) storm or cyclone (of any category);
- (d) flood;
- (e) landslides;

- (f) earthquake or tsunami;
- (g) volcanic eruption;
- (h) impact of vehicles or aircraft;
- (i) failure of a public utility;
- (j) epidemic (whether affecting only the Facility or having wider effect) or pandemic;
- (k) civil unrest;
- (l) war (including civil war);
- (m) acts of terrorism;
- (n) radioactive or biological contamination;
- (o) mudslides, washouts, bushfires, lightning and hurricanes;
- (p) outbreaks of disease, medical contamination;
- (q) civil commotion or insurrection;
- (r) Contractor industrial action such as strike, lockout restraint of labour which also involves employees other than the Contractor and Contractor Employees (but does not include a dispute between the Contractor and a supplier or Subcontractor or a dispute between the Contractor and the Principal).
- (s) revolution or other state of armed hostility of a like nature;
- (t) chemical contamination; or ionising radiation;
- (u) collisions or accidents which constitute a major catastrophe, an example being an aircraft crash or nuclear contamination; and
- (v) blockade or embargo

but does not include:

- (i) lack of or inability to use funds for any reason;
- (ii) any occurrence which results from the wrongful or negligent act or omission of the affected party or the failure by the affected party to act in a reasonable and prudent manner;
- (iii) an event or circumstance where the event or circumstance or its effects on the affected party or the resulting inability of the affected party to perform its obligations, or receive the benefit of the other party's obligations, could have been prevented, overcome or remedied by the exercise by the affected party of the standard of care and diligence consistent with that of a reasonable and prudent person;
- (iv) breakdown of equipment;
- (v) the failure by a third party to fulfil a contractual commitment with the affected party other than as a result of any of items (a) to (v) above;
- (vi) any act or omission of a Subcontractor.

**Force Majeure Party** means a Party that is unable to perform that party's, or receive the benefit of the other party's, obligations under this Contract as a result of Force Majeure.

**Further Period** has the meaning given in clause 4.2(a).

**Government Agency** means any:

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

**Government Authorisation** means:

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

**Gross Prison Industry Revenue** means the total gross revenue received by the Contractor from third parties in **respect** of Prison Industry.

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

**GST** has the meaning given **by** the GST Law.

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

**GST Group** has the **meaning** given by the GST Law.

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

**Guarantee Amount** means the amount set out in clause 31.2.

**Guarantee Expiry Date** has the meaning given in clause 31.2(c).

**Guarantor** means any **guarantor** required by the Principal under clause 31.

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

**High-level Security Work** means high-level security work within the meaning of section 15M of the *Prisons Act 1981* or as declared under section 15N of the *Prisons Act 1981*.

**Indexation Adjustment** has the meaning given in Schedule 3.

**Individual Management Plan** or IMP has the meaning given in the Service Requirements in **Schedule 1**.

**Industrial Instruments** means awards, workplace agreements, industrial agreements of any kind, contract determinations or orders or any industrial tribunal or court to which the Contractor is subject to and which relates to the provision of the Services and this Contract.

**Industrial Dispute** means an industrial dispute, ban, limitation of work or denial of facilities or services **involving** any Contract Workers.

**Industry Participation Plan** means the industry participation plan developed in accordance with **clause 8.5**.

**Inspector means** the holder of the Office of Inspector of Custodial Services continued by section 5 of the *Inspector of Custodial Services Act 2003* , which includes reference to any person employed by the Inspector to carry out functions under that Act.

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

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

- (a) the corporation is or becomes, or any action is taken to make that corporation, insolvent within that meaning as specified in section 95A(2) or section 922 of the *Corporations Act 2001* (Cth);
- (b) the corporation has a controller appointed, as defined in section 9 of the *Corporations Act 2001* (Cth), in respect of any of that corporation's property;
- (c) the corporation informs any party, or creditors generally, that that corporation is insolvent, or is financially unable to proceed with this Contract;
- (d) execution is levied against the corporation in an amount exceeding \$50,000 and the execution is not satisfied or withdrawn within 20 Business Days of being issued;
- (e) the Corporation gives or has given in relation to the corporation a notice of a meeting of creditors;
- (f) the corporation is, or becomes the subject of, an application or resolution for:
  - (i) its winding up; or
  - (ii) the appointment of a liquidator or provisional liquidator of the corporation;
- (g) the corporation is or states that it is unable to pay its debts when they fall due;
- (h) by operation of section 459F(1) of the *Corporations Act 2001* (Cth), the corporation is taken to have failed to comply with a statutory demand;

- (i) the corporation implements any procedure to obtain protection or is granted protection from its creditors, under any applicable legislation; or
- (j) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Insurer** means any corporation that carries on an insurance business and has provided a policy of insurance under clause 30.

**Intelligence and Information** is any intelligence or information which may impact on the safety and security of a Prisoner, any employee of the State, or the community generally.

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

**Intellectual Property Rights** means any and all intellectual and industrial property rights and rights relating to all systems and information (including the Confidential Information and in any developments, improvements, modifications and enhancements to the Confidential Information), trade secrets, know-how, goodwill and business reputation, whether registered or unregistered, including, without limitation, rights in or to or arising under copyright, patents, inventions, trade marks, designs, plant varieties, circuit layouts or laws relating to breach of confidence or passing off.

**Interest Rate** means the rate payable under the rules of the Supreme Court on unpaid judgements.

**Key Management Staff** means any Contractor Employee employed by the Contractor in management positions as identified in clause 11.1(b)(ii), including the Contractor Representative.

**Key Performance Indicators** and '**KPIs**' means any of the key performance indicators as set out in Schedule 2.

**Laws** means:

- (a) Commonwealth, Western Australia or local government legislation, including statutes (including but not limited to Relevant Legislation), ordinances, instruments, codes, requirements, regulations, by-laws and other subordinate legislation;
- (b) common law; and
- (c) principles of equity.



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

- (a) an Act;
- (b) an ordinance, rule, regulation, by-law, proclamation, licence, permit, authorisation, code, order or other instrument made or issued under an Act, including a CEO's Rule, Policy Directive and Operational Instruction; and
- (c) any other enforceable requirement of a Government Agency.

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

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

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

- (a) a significant part of the Facility;
- (b) a significant number of Prisoners at the Facility; and/or
- (c) the welfare of a significant number of Prisoners at the Facility,

for which the Contractor requires external assistance (such as Emergency Support Group or Western Australia Police) to regain control.

**MAP** means a Management and Placement Checklist – Remand or MAP Remand as that term is defined in Service Requirements in Schedule 1 or a Management and Placement Checklist – Sentenced or MAP Sentenced as that term is defined in defined in Service Requirements in Schedule 1, as the context requires.

**Material Subcontractor** has the meaning given in clause 37.5(b).

**Minister** means the Minister of the State from time to time responsible for the administration of the *Prisons Act 1981*.

**Monitoring Method** means the method of monitoring and reporting in relation to the Services which must be followed by the Contractor in accordance with the Facility Operating Manual and the Key Performance Indicators Schedule.

**Monthly Performance Report** means the report prepared by the Contractor every month in accordance with clause 22.6.

**Monthly Services Payment** means the monthly payments for Services calculated in accordance with Schedule 3.

**Moral Rights** means the moral rights set out in the *Copyright Act 1968* (Cth).

**New Intellectual Property Rights** means those Intellectual Property Rights which come into existence after the Commencement Date.

**Non Affected Party** means the Party that is not the Force Majeure Party.

**Notifiable Incidents** are those incidents defined as Critical Incidents and non-Critical Incidents as defined by the Principals Policy Directive.

**Ombudsman** means the person who holds the position of Parliamentary Commissioner under the *Ombudsman Act 1976* (Cth).

**Ombudsman Act** means the *Parliamentary Commissioner Act 1971*.

**Ongoing Disclosure Requirements** means where the Contractor becomes aware of any of its employees or representatives or Subcontractor's employees who are alleged to be in breach of duty, or against whom any allegation of, or criminal charge has been made or a new criminal conviction identified. On such an occurrence, there is an obligation on the Contractor to immediately notify the Principal.

**Ongoing Training Programs** has the meaning given in clause 12.4(a)(iii).

**Operating Month** means each month during an Operating Year, provided that:

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

**Operating Period** means the period of time for the performance of the Services specified in clause 4.1(b) other than the Enabling Works and the Transition Services which commence prior to that date.

**Operating Quarter** means each period of three (3) months, ending on the last day of March, June, September and December during the Operating Period provided that:

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

**Operating Year** means each period of twelve (12) months ending on 30 June during the Operating Period, provided that:

- (a) the first Operating Year will commence on the Services Commencement Date and end on the 30 June following the Services Commencement Date; and

- (b) the last Operating Year will commence on 1 July immediately preceding the date of expiry or termination of the Operating Period and end on the last day of the Operating Period.

**Operational Philosophy and Regime** means the Contractor's operational philosophy and regime.

**Other Assault** means an act of physical violence against a Prisoner or any other person at the Facility that neither results in physical harm or injury nor requires any form of medical intervention.

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

**Parent Guarantee** means the guarantee referred to in clause 3.1(b) and clause 31.1.

**Power** means a right, power, remedy or authority under this Contract, or otherwise at law or in equity and includes any statutory power.

**Pre-Service Induction Program** has the meaning given in clause 12.4(a)(i).

**Price Adjustment Notice** has the meaning given in clause 25.3.

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

**Principal's Obligations** means the obligations of the Principal under this Contract or imposed by law in relation to the provision of Services.

**Principal's Resources** means any vehicle, plant, equipment, chattel or other property of the Principal or any of the Principal's Associates, as set out in the Asset Register provided to the Contractor and as that Asset Register is updated from time to time.

**Principal's Systems** means the information system as used by the Department in relation to the operation and management of prisons in Western Australia at the Commencement Date, including:

- (a) software such as TOMS, AIPR and Registrar;
- (b) all other software used at the Facility for the purposes of operating the Facility and managing the Prisoners;
- (c) all hardware, including cabling and network racking; and
- (d) any upgrade of that information system after the Commencement Date.

**Prison** means the prison for male, minimum security Prisoners constructed on the Site and declared a prison under section 5 of the *Prisons Act 1981*, and includes:

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

and is referred to for the purpose of this Contract as the Facility.

**Prison Industry** means:

- (a) the provision of domestic services within the Facility, including food preparation, gardening and cleaning; and
- (b) the manufacture or assembly of goods, or the provision of services or other commercial activity,

undertaken in the Facility by Prisoners.

**Prison Industry Amount** has the meaning given in clause 10.2.

**Prison Industry Payment** has the meaning given in clause 10.3.

**Prisoner** means a person who is a prisoner within the definition contained in section 3 of the *Prisons Act 1981*.

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

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

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

**Prisons Act 1981** means the *Prisons Act 1981*.

**Prisons Regulations** means the Prisons Regulations 1982 and any other Regulations issued under the *Prisons Act 1981*.

**Probity Event** includes an event, matter or thing which:

- (a) has a material adverse effect upon the character, honesty and integrity of a Contractor Employee;
- (b) relates to a Contractor Employee and has a material adverse effect upon the public interest;
- (c) involves a material failure to achieve or maintain reasonable standards of ethical behaviour;
- (d) in respect of a Contractor Employee which is a body corporate – involves a material failure to achieve or maintain good corporate citizenship;
- (e) involves a material failure to achieve or maintain the avoidance of conflicts of interest; or

- (f) involves a material failure to achieve or maintain standards of behaviour expected of a person engaged in a State project involving the Western Australian justice system.

**Quality Management System** means the quality management system certified under AS/NZS ISO 9001:2008 or its successor standard.

**Registered Training Organisation** means organisations which are registered as a registered training organisation by the Training Accreditation Council of Western Australia to train, assess and award such qualifications to Contract Workers as are necessary for the performance of the Services or the Contractor Obligations.

**Revenue** has the meaning given in clause 24.2(d).

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

**Self-harm** means the self-infliction of an injury by a person on themselves that may require medical treatment at the Facility but does not require medical treatment at an external facility.

**Sentence Planning Documents** means the sentence planning documents, such as IMPs and MAPs, developed for each Prisoner and located on the Principal's Systems.

**Serious Assault** (including prisoner on prisoner, prisoner on staff and prisoner on visitor, staff on prisoner and prisoner on another person whilst on Temporary Release or escorted authorised absence) is an act of assault against a Prisoner, or any other person resulting in actual bodily harm or injury and requires treatment by a medical practitioner in an external medical facility. All acts of sexual assault where there is clear evidence of such as assault having occurred, which results in a related charge being laid by Police, irrespective of whether the person has been hospitalised or not, is a Serious Assault.

**Serious Self-harm** means and act of self-harm which:

- (a) requires medical treatment and assessment by a medical practitioner resulting in medical treatment at an external medical facility;
- (b) is classified as an attempted suicide.

**Services** means the management, control and security of the Facility and the welfare of Prisoners at the Facility in accordance with this Contract including:

- (a) the specific services set out in this Contract and the Service Requirements;
- (b) any other service or function of the kind contemplated under the *Prisons Act 1981* as services that may be provided by a contractor; and

- (c) any other services that would reasonably be required for the proper performance and provision of the services described in subclauses (a) and (b); and

unless the context does not permit, includes the Transition Services and the Enabling Works.

**Services Commencement Date** means the date notified by the Principal to the Contractor and is expected to be on or about 1 November 2012 (which date may be subject to change by further notice in writing by the Principal to the Contractor).

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

**Service Handover Period** means the period determined in accordance with clause 29.3(b).

**Service Handover Plan** has the meaning given in clause 29.5.

**Service Retender** has the meaning given in clause 29.1.

**Service Requirements** means the minimum objectives, requirements and performance standards for the provision of the Services during the Operating Period as set out in Schedule 1.

**Site** means the location of the Facility situated at Murdoch as shown bounded by a thick black line on the Site Plan.

**Site Plan** means the plan referred to in this Contract in Schedule 6 – Appendix 3.

**Site Possession Date** means the date notified by the Principal to the Contractor and is expected to be on or about 1 October 2012 to enable the Contractor to commence Enabling Works (which date may be subject to change by further notice in writing by the Principal to the Contractor).

**Situation** means non-serious, general issues affecting the Services or performance of the Contractor's Obligations which need to be brought to the Contract Manager's attention.

**Specific Training Programs** has the meaning given in clause 12.4(a)(ii).

**Staffing Plan** means a plan that sets out the staffing model and requirements of the Contractor in accordance with clause 11.1.

**State** means the State of Western Australia.

**Statutory Power** means any right, power, discretion, authority, duty or function exercisable by the Principal or any of the Principal's Associates or by a superintendent, prison officer or any other officer as defined in the *Prisons Act 1981*, vested in them pursuant to any Act.

**Structured Activity** means any of the activities listed in Schedule 1.

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

**Subcontractor** means a person engaged by the Contractor, other than as an employee of the Contractor, to provide any part of the Services described in subclauses (a) and (b) of the definition of Services in this clause 1.1.

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

**Superintendent** means a superintendent as defined in the *Prisons Act 1981*.

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

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

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

**Training Program** means any Pre-Service Induction Program, Specific Training Program or Ongoing Training Program.

**Training Plan** means a proposal by the Contractor for approval of the Contractor's initial Pre-Service Induction Program, Specific Training Programs and Ongoing Training Programs submitted under clause 12.4(b) and any subsequent proposal submitted by the Contractor to amend or replace any of the approved Training Programs.

**Transition Period** means the period from the Commencement Date and ending on the date identified in the Transition Plan.

**Transition Plan** means the plan setting out the details of transition in accordance with clause 6.1 that includes the specified items set out in clause 6.2.

**Transition Services** means the work to be performed during the Transition Period under the agreed Transition Plan.

**Trust Fund Purpose** means the purpose of the welfare of the Prisoners, or any classes or groups of Prisoners, or any Prisoner, in the Facility.

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

**Variation Notice** means a notice given by the Principal under clause 25.2.

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

## 1.2 Interpretations

In this Contract, unless the context indicates otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (c) a reference to a gender includes other genders;
- (d) a reference to a person includes a Public Authority, a public body, a company, an incorporated or unincorporated association or joint venture, partnership or firm;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, legal representatives, substitutes (including, but not limited to, a person taking by novation), and permitted assigns;
- (f) references to a person or body that has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by any other person or body in its place, are taken to refer to the person or body established or constituted in its place or by which its functions have become exercisable;
- (g) a reference to any government department, professional body, committee, council or other body, or to any position within any such body, includes the successors to that body or position or to any relevant activity or function of that body or position;
- (h) 'comply with' includes observe and perform;
- (i) 'permit' includes allow, permit, suffer or cause including by way of omission;
- (j) 'provisions' include provisions, terms, conditions, requirements, agreements, representations, warranties, covenants, obligations and undertakings;
- (k) a right includes a benefit, remedy, discretion, authority or power;
- (l) 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;
- (m) the meaning of "or" will be that of the inclusive "or", that is meaning one, some or all of a number of possibilities;
- (n) a reference to a "party" is to a party to this Contract;
- (o) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (p) unless agreed or notified in writing by the Principal, a reference to Standards Australia standards, overseas standards or other similar reference documents in this Contract is a reference to the edition last published prior to the preparation of the relevant documentation;



- (q) if the Contractor consists of a partnership or joint venture, then:
  - (i) an obligation imposed on the Contractor under this Contract binds each person who comprises the Contractor jointly and severally;
  - (ii) each person who comprises the Contractor is deemed to agree to do all things necessary to enable the obligations imposed on the Contractor under this Contract to be undertaken;
  - (iii) the act of one person who comprises the Contractor binds the other persons who comprise the Contractor; and
  - (iv) an Event of Default by one person who comprises the Contractor constitutes an Event of Default by the Contractor;
- (r) an agreement, representation or warranty on the part of, or in favour of, 2 or more persons binds, or is for the benefit of, them jointly and severally;
- (s) a reference to this Contract or another agreement, contract, deed or instrument includes all novations, supplementations, variations and replacements of them, despite any change of, or any change in the identity of, the Principal or the Contractor;
- (t) a reference to an agreement, contract, document, deed or instrument (including this Contract) includes all annexures, attachments, exhibits and schedules to that document;
- (u) a reference to a clause, schedule, attachment or appendix is a reference to a clause in, or a schedule, attachment or appendix to, this Contract and a reference to a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the Clause in which the reference appears;
- (v) all the provisions in any schedule, attachment or appendix to this Contract are incorporated in, and form part of, this Contract and bind the Principal and the Contractor;
- (w) headings are included for convenience and do not affect the interpretation of this Contract;
- (x) a reference to a statute, regulation, ordinance, code or other law includes any subsidiary instrument or legislation under any of them and consolidations, amendments, re-enactments or replacements of any of them;
- (y) no rule of interpretation is to be applied to disadvantage the Principal or the Contractor on the basis that it was responsible for preparing this Contract or any part of it;
- (z) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (aa) 'including' and similar expressions are not words of limitation and 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;
- (bb) a reference to writing includes all means of representing or reproducing words in tangible and permanently visible form including by electronic means such as email or facsimile transmission;

- (cc) a reference to a month is to a calendar month and a reference to a year is to a calendar year;
- (dd) where time is to be reckoned by reference to a day or event, that day or the day of the event is excluded;
- (ee) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day;
- (ff) a reference to time means the time observed by the general community from time to time in Perth, Western Australia;
- (gg) a reference to a monetary amount means that amount in Australian currency.

## **2. Applicable Acts**

### **2.1 Prisons Act 1981**

- (a) This Contract:
  - (i) has been entered pursuant to section 15B of the *Prisons Act 1981*;
  - (ii) does not affect the operation of the *Prisons Act 1981*; and
  - (iii) is not to be construed as requiring a Party to breach any provision of the *Prisons Act 1981*.
- (b) If there is any inconsistency between the provisions of this Contract and the provisions of the *Prisons Act 1981*:
  - (i) the *Prisons Act 1981* will prevail to the extent of the inconsistency; and
  - (ii) the Principal and the Contractor must promptly consult with each other and negotiate in good faith, with a view to agreeing any appropriate amendments (if any) to this Contract so that the intent of this Contract may, to the extent possible, be achieved.
- (c) The Contractor must, and must ensure that all Contract Workers, at all times give full assistance to, and co-operate fully with, the person from time to time appointed to the office of Inspector of Custodial Services under the Inspector of *Custodial Services Act 2003* and, in particular, to enable the Inspector of Custodial Services and any person acting with his authority to carry out in relation to the Facility the functions set out in the Inspector of *Custodial Services Act 2003*.

### **2.2 Exercise of Statutory Powers by Contractor and Contract Workers**

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

## 2.3 Contractor within Jurisdiction of Ombudsman

The Parties acknowledge the following.

- (a) For the purpose of section 3(1) of the *Prisons Act 1981*:
  - (i) the Contractor is a contractor; and
  - (ii) a Subcontractor is a subcontractor.
- (b) Accordingly, for the purpose of sections 4A(1)(f) and 13 of the *Ombudsman Act 1976* (Cth), the Contractor and each Subcontractor will be considered to be an authority:
  - (i) in any way affecting or applying to the Facility; or
  - (ii) in the performance of, or compliance with, the Contractor's Obligations, or the Services.
- (c) With regard to any decision or recommendation made, or any act done or omitted by the Contractor or any Subcontractor:
  - (i) the Ombudsman will have jurisdiction under the *Ombudsman Act 1976* (Cth) to investigate; and
  - (ii) in the event that the Ombudsman exercises a discretion to commence an investigation, the provisions of the *Ombudsman Act 1976* (Cth) will apply.

## 2.4 Principal Officer of the Contractor

In accordance with section 15C(1) of the *Prisons Act 1981* and for the purposes of the:

- (a) *Corruption and Crime Commission Act 2003*;
- (b) *Freedom of Information Act 1992*; and
- (c) *Ombudsman Act 1976* (Cth),

the principal officer of the Contractor is the person from time to time appointed as the Contractor Superintendent under clause 5.3.

## 2.5 Principal Officer of Subcontractors and other persons

In accordance with section 15C(1) of the *Prisons Act 1981* and for the purposes of the:

- (a) *Corruption and Crime Commission Act 2003*;
- (b) *Freedom of Information Act 1992*; and
- (c) *Ombudsman Act 1976* (Cth),

the principal officer of:

- (a) a Subcontractor;
- (b) a person with whom the Subcontractor contracts; and
- (c) a person, with whom a person referred to in subclause (e) contracts,

is:

- (a) in the case of a natural person, that person; and
- (b) in the case of a body corporate, the secretary of that body.

### **3. Conditions Precedent and Initial Obligations**

#### **3.1 Satisfaction and Waiver of Conditions**

- (a) This Contract (with the exception of this clause 3 and clauses 1, 2, 5, 6, 7.1 and 7.2, 7.4 and 7.5, 7.7 and 7.8, 7.13 and 7.14, 11.1 and 11.2, 16.1 and 16.2, 18.2 to 18.4, 20, 23, 34, 35, 36, 38, 39, 42, 43, 44, 45 and 46 is conditional upon, and does not become binding until, the satisfaction or waiver under subclause (c) of each of the conditions set out in subclause (b).
- (b) The conditions referred to in subclause (a) are:
  - (i) the Principal having approved the Transition Plan.
  - (ii) the Principal having approved the Schedule of Programs in accordance clause 7.14.
  - (iii) the Principal having approved the Staffing.
  - (iv) the Principal having approved the Facility Management Plan.
  - (v) the Principal having approved the Enabling Works Plan.
  - (vi) the Principal having approved all Contract Workers in accordance with the requirements of clause 12.2 necessary to carry out the Services as at the Services Commencement Date;
  - (vii) the Contractor complying with subclauses 30.1 and 30.3;
  - (viii) the Principal having received a Bank Guarantee which satisfies the requirements of clause 31.2;
  - (ix) the Principal having received a Parent Guarantee from the Guarantor in the form set out in Schedule 4; and
  - (x) the representations and warranties in clause 38.1 remain true and correct as at the date each other condition in this subclause (b) is satisfied or waived.
- (c) The conditions in subclause (b) may only be waived by the Principal notifying the Contractor of its waiver.
- (d) The Parties must:
  - (i) use reasonable endeavours (other than waiver) to ensure that the conditions referred to in subclause (b) are satisfied on or before the Services Commencement Date; and

- (ii) keep each other informed of any circumstances which may result in any of those conditions not being satisfied in accordance with its terms.

### **3.2 Result of Non-satisfaction of Conditions**

If the conditions referred to in clause 3.1 are not satisfied or waived in accordance with clause 3.1 on or before the Site Possession Date then all rights and obligations under this Contract other than:

- (a) those arising under this clause 3 and clauses 1, 2, 5, 23, 34, 35, 36, 38, 39, 42, 43, 44, 45 and 46; and
- (b) rights that have accrued before that date,

terminate on that date.

### **3.3 Certificate of Commencement**

The Principal must issue a certificate in duplicate promptly on becoming aware that all the conditions precedent in clause 3.1 have been satisfied or waived. The certificate must also specify the Services Commencement Date. The Principal must deliver a copy of the certificate of services commencement to the Contractor as soon as practicable after the Services Commencement Date.

## **4. Commencement of Contract and Operating Period**

### **4.1 Duration of this Contract**

- (a) Subject to clauses 3.2 and 26, this Contract commences on the Commencement Date and expires on the last day of the Operating Period.
- (b) The Operating Period:
  - (i) commences on the Services Commencement Date; and
  - (ii) ends on the fifth anniversary of the Services Commencement Date, subject to:
    - (A) earlier termination of this Contract under clause 26; and
    - (B) any extension under clause 4.2 or informal continuation under clause 4.3.

### **4.2 Option to Extend Operating Period**

- (a) The Principal may elect, at its absolute discretion, to extend the Operating Period for up to two (2) consecutive further periods up to a maximum term of fifteen (15) years, commencing on the expiry of the Operating Period (each a Further Period), by giving notice to the Contractor:
  - (i) at least three (3) months and at most one (1) year before the end of the Operating Period (as extended under this subclause (a)); and
  - (ii) specifying the length of the Further Period.

- (b) Upon the Principal giving notice under subclause (a), the Operating Period will extend for the Further Period, on the same terms and conditions as this Contract except that in the case of the second Further Period, subclause (a) will not apply.
- (c) The Principal may not exercise its option under subclause (a) during any extension of the Operating Period under clause 4.3.

#### **4.3 Informal Continuation of Services**

- (a) Notwithstanding anything contained in this Contract, the Principal may direct the Contractor to continue to perform the Services after the expiry of the Operating Period for a further period by notice to the Contractor at least three (3) months before the expiry of the Operating Period (Informal Further Period). The terms and conditions of this Contract will continue to apply until the arrangement in this subclause is terminated in accordance with subclause (b) or under clause 26.
- (b) At any time after the commencement of the Informal Further Period, either Party may terminate the arrangement in subclause (a) by giving at least three (3) months notice to the other Party.

## **5. Administration of Contract**

### **5.1 The Contract Manager**

- (a) The Principal:
  - (i) must, no later than the Commencement Date, appoint a person to be the Contract Manager; and
  - (ii) may replace the Contract Manager from time to time by notice to the Contractor.
- (b) Subject to subclause (e) and any other provisions of this Contract, and except as otherwise specified by the Principal, the Contract Manager:
  - (i) is the agent of the Principal for the purpose of doing any thing to be done under this Contract; and
  - (ii) has authority to make and give, or accept, on the Principal's behalf, any approvals, acceptances, directions, notices and other decisions that the Principal may make, give or accept under this Contract.
- (c) The Principal must ensure that the person appointed as Contract Manager has the appropriate authority under the *Prisons Act 1981* and any other applicable laws to perform the functions of a Contract Manager under this Contract.
- (d) If the Contractor requests the Contract Manager to confirm an oral direction, the Contractor must promptly comply with the direction, but the Contract Manager must as soon as practicable confirm the direction in writing.
- (e) Where the *Prisons Act 1981* requires anything to be done on behalf of the Principal by the CEO, the Contract Manager's authority and agency under subclause (b) will be deemed to exclude that thing, and the CEO will be the agent of the Principal, with the authority, as specified in subclause (b) in respect of that thing.

### **5.2 The Contractor Representative**

- (a) The Contractor:
  - (i) must, no later than the Commencement Date, appoint a person to be the Contractor Representative; and
  - (ii) may replace the Contractor Representative from time to time by notice to the Principal.
- (b) The Contractor Representative:
  - (i) is the agent of the Contractor for the purpose of doing any thing to be done under this Contract; and
  - (ii) has authority to make and give, or accept, on the Contractor's behalf, any approvals, acceptances, directions, notices and other decisions that the Contractor may make, give or accept under this Contract.

### 5.3 The Contractor Superintendent

- (a) The Contractor:
  - (i) must, prior to the Services Commencement Date, notify the Principal of a suitable and appropriately qualified Contract Worker whom the Contractor wishes to be authorised by the CEO pursuant to section 151 of the *Prisons Act 1981* to perform the functions of a Superintendent; and
  - (ii) may from time to time request that a replacement Contract Worker be authorised by the CEO pursuant to section 151 of the *Prisons Act 1981* to perform the functions of a Superintendent by notice to the Principal.
- (b) Upon receipt of a notice pursuant to subclause (a), the CEO will determine whether to authorise the Contract Worker identified in the notice to perform the functions of a Superintendent. The CEO's authorisation of, or refusal to authorise, a Contract Worker shall be in his or her absolute discretion and may be subject to such conditions and limitations specified in the authorisation as the CEO thinks fit. If the CEO refuses to authorise the Contract Worker notified to the Principal under subclause (a), the Contractor must, as soon as practicable after receiving notification of the CEO's refusal, notify the Principal of an alternative Contract Worker whom the Contractor wishes to be authorised by the CEO pursuant to section 151 of the *Prisons Act 1981*.
- (c) The CEO's authorisation of a Contract Worker to perform the functions of a Superintendent may specify any powers or duties that the Contract Worker may delegate to other Contract Workers.
- (d) The Contractor Superintendent is:
  - (i) the Contract Worker authorised by the CEO pursuant to subclause (b) who is responsible for performing the functions of a Superintendent of the Facility, to the extent authorised by the CEO in accordance with section 151 of the *Prisons Act 1981*;
  - (ii) the person primarily responsible for supervising the day to day provision of the Services; and
  - (iii) the first point of contact for the Contract Manager in respect of any matter relating to the provision of the Services or any other matter under this Contract.
- (e) Nothing in this clause requires or authorises the Contractor Superintendent to perform any functions of a Superintendent which may not be delegated to a Contract Worker under the *Prisons Act 1981*.



#### **5.4 Notification of Appointments**

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

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

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

#### **5.5 Qualifications, Imputation of Knowledge and Other Requirements of Appointed Representatives**

- (a) The exercise of a right or the discharge of an obligation under this Contract by:
  - (i) the Contract Manager, is to be taken to be performed by the Principal to the extent it is within the Contract Manager's authority under clause 5.1; and
  - (ii) the CEO, is to be taken to be performed by the Principal to the extent it is within the CEO's Statutory Powers under the *Prisons Act 1981*; and
  - (iii) the Contractor Representative or the Contractor Superintendent, is to be taken to be performed by the Contractor.
- (b) Where a matter is known by:
  - (i) the Contract Manager, that matter will be treated as being known by the Principal; and
  - (ii) the Contractor's Representative or the Contractor Superintendent, that matter will be treated as being known by the Contractor.
- (c) Each Party must ensure that each person appointed under this clause 5 to represent that Party is:
  - (i) an appropriately qualified and experienced person to perform the responsibilities that person is required to perform under this Contract; and
  - (ii) available at all reasonable times, on reasonable notice, to consult on behalf of that Party in connection with matters arising under this Contract.

## **5.6 Custodial Contracts Management Board**

- (a) The Custodial Contracts Management Board comprises:
  - (i) the following representatives of the Principal: the CEO, the Contract Manager, the Department's Deputy Commissioner Adult Custodial, Deputy Commissioner Community and Youth Justice, Assistant Commissioner Corporate Support and Director Contracted Services or persons occupying equivalent positions within the Principal; and
  - (ii) the following representatives of the Contractor: the Contractor's Representative and up to three other senior executive nominees of the Contractor.

The CEO will be the Chairperson of the Custodial Contracts Management Board.

- (b) Each of the Contractor and the Principal may replace any of its representatives on the Custodial Contracts Management Board at any time by giving notice to the other Party at least 48 hours prior to the effective date of the replacement.
- (c) The functions of the Custodial Contracts Management Board are to:
  - (i) monitor the performance of the Services, the operation of the Facility and performance of the Principal's Obligations and the Contractor's Obligations;
  - (ii) seek to resolve any disputes that are referred to it in accordance with clause 35.3; and
  - (iii) consider any other matters as agreed.
- (d) Meetings of the Custodial Contracts Management Board must be held at least once each Operating Quarter and on an adhoc basis for the purpose of seeking to resolve disputes or matters referred to it in accordance with clause 35.3. The Contract Manager will be responsible for convening the meetings of the Custodial Contracts Management Board. At least ten (10) Business Days notice must be given of each meeting and of the agenda for the meeting.
- (e) The Contract Manager must arrange for a secretary to attend all meetings and record all resolutions and actions arising out of each meeting.

## **6. Transition Arrangements**

### **6.1 Contractor to Prepare Transition Plan**

The Contractor must prepare a Transition Plan for approval by the Principal on or before the Commencement Date which:

- (a) describes all tasks necessary to be completed by the Contractor in order to commence providing the Services as required by this Contract; and
- (b) specifies to the reasonable satisfaction of the Principal, the processes that the Contractor has put in place in order to complete such tasks.

## **6.2 Transition Plan to Include Specified Items**

In addition, but not limited to, those items specified in clause 6.1, the Contractor must ensure that the Transition Plan includes the following information:

- (a) the method the Contractor will use to manage Facility;
- (b) confirmation on how the information requirements for operating and reporting on performance of the Services will function;
- (c) recruitment and training of Contractor Employees to meet the operational requirements in delivering the Services and performing the Contractor's Obligations;
- (d) the method by which the operations, equipment and systems will be tested before the commencement of Services;
- (e) what equipment will be used;
- (f) information systems relevant to this Contract initiated and trialled to the satisfaction of the Principal; and
- (g) the Contractor's acquisition and management of equipment and Contractor Resources.

## **6.3 Transition Obligations**

The Contractor shall carry out its obligations as set out in the Transition Plan.

## **7. Risk Management Plan, Business Continuity Plan, Emergency Plan, Disaster Recovery Plan, and Schedule of Programs**

### **7.1 Contractor to Prepare Risk Management Plan**

The Contractor must prepare a Risk Management Plan in respect to the provision of the Services for approval by the Principal by no later than twenty (20) Business Days before the Services Commencement Date.

### **7.2 Principal to Approve Risk Management Plan**

- (a) The Principal may approve, withhold approval or give qualified approval to all or part of the Risk Management Plan submitted by the Contractor in accordance with clause 7.1.
- (b) If the Principal fails to respond within fifteen (15) Business Days of any such submission, then the Risk Management Plan shall be deemed to be approved for the purposes of this Contract.
- (c) If the Principal does not approve all or part of the Risk Management Plan or gives qualified approval, then the Principal shall give written notice to the Contractor specifying in reasonable detail the reasons for such a decision and the Contractor must promptly submit a revised Risk Management Plan to the Principal for its approval having regard to the Principal's comments.

### **7.3 Contractor to Review and Maintain Risk Management Plan**

Upon obtaining approval under clause 7.2, the Contractor must keep the Risk Management Plan current at all times and must review the same as often as may be necessary and appropriate, but not less than once every twelve (12) months.

### **7.4 Contractor to Prepare Business Continuity Plan**

The Contractor must prepare a Business Continuity Plan in respect to the provision of the Services for approval by the Principal by no later than twenty (20) Business Days before the Services Commencement Date.

### **7.5 Principal to Approve Business Continuity Plan**

- (a) The Principal may approve, withhold approval or give qualified approval to all or part of the Business Continuity Plan submitted by the Contractor in accordance with clause 7.4.
- (b) If the Principal fails to respond within fifteen (15) Business Days of any such submission, then the Business Continuity Plan shall be deemed to be approved for the purposes of this Contract.
- (c) If the Principal does not approve all or part of the Business Continuity Plan or gives qualified approval, then the Principal shall give written notice to the Contractor specifying in reasonable detail the reasons for such a decision and the Contractor must promptly submit a revised Business Continuity Plan to the Principal for its approval having regard to the Principal's comments.

### **7.6 Contractor to Review and Maintain Business Continuity Plan**

Upon obtaining approval under clause 7.5, the Contractor must keep the Business Continuity Plan current at all times and must review the same as often as may be necessary and appropriate, but not less than once every twelve (12) months.

### **7.7 Contractor to Prepare Emergency Plan**

The Contractor must prepare an Emergency Plan in respect to the provision of the Services for approval by the Principal by no later than twenty (20) Business Days before the Services Commencement Date.

### **7.8 Principal to Approve Emergency Plan**

- (a) The Principal may approve, withhold approval or give qualified approval to all or part of the Emergency Plan submitted by the Contractor in accordance with clause 7.7.
- (b) If the Principal fails to respond within fifteen (15) Business Days of any such submission, then the Emergency Plan shall be deemed to be approved for the purposes of this Contract.
- (c) If the Principal does not approve all or part of the Emergency Plan or gives qualified approval, then the Principal shall give written notice to the Contractor specifying in reasonable detail the reasons for such a decision

and the Contractor must promptly submit a revised Emergency Plan to the Principal for its approval having regard to the Principal's comments.

#### **7.9 Contractor to Review and Maintain Emergency Plan**

Upon obtaining approval under clause 7.8, the Contractor must keep the Emergency Plan current at all times and must review the same as often as may be necessary and appropriate, but not less than once every twelve (12) months.

#### **7.10 Contractor to Prepare Disaster Recovery Plan**

The Contractor must prepare a Disaster Recovery Plan in respect to the provision of the Services for approval by the Principal by no later than twenty (20) Business Days before the Services Commencement Date.

#### **7.11 Principal to Approve Disaster Recovery Plan**

- (a) The Principal may approve, withhold approval or give qualified approval to all or part of the Disaster Recovery Plan submitted by the Contractor in accordance with clause 7.10.
- (b) If the Principal fails to respond within fifteen (15) Business Days of any such submission, then the Disaster Recovery Plan shall be deemed to be approved for the purposes of this Contract.
- (c) If the Principal does not approve all or part of the Disaster Recovery Plan or gives qualified approval, then the Principal shall give written notice to the Contractor specifying in reasonable detail the reasons for such a decision and the Contractor must promptly submit a revised Disaster Recovery Plan to the Principal for its approval having regard to the Principal's comments.

#### **7.12 Contractor to Review and Maintain Disaster Recovery Plan**

Upon obtaining approval under clause 7.11, the Contractor must keep the Disaster Recovery Plan current at all times and must review the same as often as may be necessary and appropriate, but not less than once every twelve (12) months.

#### **7.13 Contractor to Prepare Schedule of Programs**

The Contractor must prepare a Schedule of Programs in respect to the provision of the Services consistent with the requirements of Schedule 1 for approval by the Principal by no later than twenty (20) Business Days before the Services Commencement Date.

#### **7.14 Principal to Approve Schedule of Programs**

- (a) The Principal may approve, withhold approval or give qualified approval to all or part of the Schedule of Programs submitted by the Contractor in accordance with clause 7.13.
- (b) If the Principal fails to respond within fifteen (15) Business Days of any such submission, then the Schedule of Programs shall be deemed to be approved for the purposes of this Contract.

- (c) If the Principal does not approve all or part of the Schedule of Programs or gives qualified approval, then the Principal shall give written notice to the Contractor specifying in reasonable detail the reasons for such a decision and the Contractor must promptly submit a revised Schedule of Programs to the Principal for its approval having regard to the Principal's comments.

#### **7.15 Contractor to Review and Maintain Schedule of Programs**

Upon obtaining approval under clause 7.14, the Contractor must keep the Schedule of Programs current at all times and must review the same as often as may be necessary and appropriate, but not less than once every twelve (12) months.

## **8. Services**

### **8.1 Contractor's Appointment and Acceptance of Appointment**

- (a) The Principal appoints the Contractor to provide the Services over the term of the Contract in accordance with the terms of this Contract.
- (b) The Contractor accepts the appointment under subclause (a).

### **8.2 Compliance with Laws**

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

- (a) the *Prisons Act 1981*, the Prisons Regulations and any CEO's Rules made under them;
- (b) all other Legislative Requirements; and
- (c) all policies of the Principal of which the Principal may, from time to time, give notice to the Contractor.

### **8.3 Compliance with Standards and Maintenance of Accreditation**

From the date that is twelve (12) months after the Services Commencement Date, the Contractor must ensure that:

- (a) it is certified under AS/NZS ISO 9001:2008 Quality Management Systems – Requirements (AS/NZS ISO 9001), or its successor standard, and the scope of its certification covers the provision of all of the Services and performance of all of the Contractor's Obligations;
- (b) it provides the Services and performs the Contractor's Obligations in compliance with the quality management system certified under AS/NZS ISO 9001 for the duration of the Contract; and
- (c) it is registered by the Training Accreditation Council of Western Australia, or an equivalent organisation in another State, to train, assess and award such qualifications to Contract Workers as are necessary for the Contractor to perform the Services and otherwise fulfil the Contractor's Obligations.

### **8.4 Service Requirements**

The Contractor must provide the Services and perform the Contractor's Obligations in accordance with the Service Requirements.

## **8.5 Development of and Compliance with Industry Participation Plan**

- (a) The Contractor must prepare an Industry Participation Plan and consult with the Principal in a timely manner during its preparation for the purpose of ensuring that the Industry Participation Plan is adopted, in a form acceptable to the Principal, within six (6) months after the Services Commencement Date.
- (b) The Contractor must adopt, implement and comply with the Industry Participation Plan developed in accordance with subclause (a) immediately upon the Principal giving the Contractor notice that the form and content of the Industry Participation Plan is acceptable to the Principal.

## **8.6 Best Industry Practice**

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

## **8.7 Facility Operating Manual**

- (a) The quality management systems established by the Contractor in accordance with AZ/NZS ISO 9001 must incorporate processes and procedures for the preparation and maintenance of the Facility Operating Manual as contemplated by this clause 8.7.
- (b) The Contractor must prepare the Facilities Operating Manual in respect to the provision of the Services for approval by the Principal by no later than twenty (20) Business Days before the Services Commencement Date.
- (c) The Facility Operating Manual must cover the following areas:
  - (i) the Contractor's Operational Philosophy and Regime;
  - (ii) custody and containment incorporating the systems and procedures described in Schedule 1;
  - (iii) care and well-being, including Facility administration, Prisoner services and Prisoner management, incorporating the systems and procedures described in Schedule 1;
  - (iv) rehabilitation and reintegration, including sentence and case management, Prisoner programs and other Prisoner matters, incorporating the systems and procedures described in Schedule 1;
  - (v) reparation, including through the operation of Facility Industries and the provision of goods and services to the community, incorporating the systems and procedures described in Schedule 1;
  - (vi) Facility management, including Soft Facility Management services, Hard Facility Management services, enabling works and minor works, incorporating the systems and procedures described in Schedule 1;



- (vii) human resources and occupational health and safety, including the development and implementation of relevant processes and the recruitment, training and management of appropriate personnel, incorporating the systems and procedures described in Schedule 1; and
  - (viii) systems and other requirements, including information management and operational and other matters, incorporating the systems and procedures described in Schedule 1.
- (d) The Facility Operating Manual must:
- (i) except where otherwise agreed by the Principal, be consistent with the Contractor's Proposal, including the Operational Philosophy and Regime;
  - (ii) specify in detail the strategies and processes the Contractor proposes to use to deliver the Services;
  - (iii) demonstrate that the strategies and processes the Contractor proposes to use are based on sound operational practices; and
  - (iv) describe how the Contractor will use internal systems, such as performance indicators and complaints (including complaints by Prisoners and Contract Workers), to monitor and evaluate the Contractor's performance and compliance with its proposed strategies and processes.
- (e) The Principal may approve, withhold approval or give qualified approval to all or part of the Facilities Operating Manual submitted by the Contractor in accordance with clause 8.7(b).
- (f) If the Principal fails to respond within fifteen (15) Business Days of any such submission, then the Facilities Operating Manual shall be deemed to be approved for the purposes of this Contract.
- (g) If the Principal does not approve all or part of the Facilities Operating Manual or gives qualified approval, then the Principal shall give written notice to the Contractor specifying in reasonable detail the reasons for such a decision and the Contractor must promptly submit a revised Facilities Operating Manual to the Principal for its approval having regard to the Principal's comments.
- (h) Upon obtaining approval under clause 8.7(e), the Contractor must keep the Facilities Operating Manual current at all times and must review the same as often as may be necessary and appropriate, but not less than once every twelve (12) months.
- (i) At any time after the approval of a Facility Operating Manual under this clause, the Contractor may submit to the Principal a proposal to revise or replace that Facility Operating Manual, or the Principal may notify the Contractor of any amendment to or replacement of that Facility Operating Manual which it considers reasonably necessary. To the extent that any such revision is approved (with or without amendment), the Facility Operating Manual will take effect as revised under this subclause.

- (j) The Contractor acknowledges that an approval given by the Principal under this clause does not imply:
  - (i) any release of the Contractor from the Contractor's Obligations or its responsibility to provide the Services in accordance with the standards and any other requirements of this Contract and the *Prisons Act 1981*; or
  - (ii) any assumption by the Principal of any responsibility or liability as to the adequacy of the Contractor's arrangements to meet the standards and requirements of this Contract and the *Prisons Act 1981*.
- (k) Pending approval of a Facility Operating Manual under this clause, the Principal's procedures will apply.

### **8.8 Compliance with the Facility Operating Manual**

The Contractor must comply with, and ensure that all Contract Workers comply with, the Facility Operating Manual.

### **8.9 Obligations to Act Fairly and Dealings with Local Community**

The Contractor must:

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

members of the local communities in the vicinity of the Facility, including the City of Melville and members of local and other relevant Aboriginal groups.

### **8.10 Consultation and Minimising Disruption**

Without limiting the Contractor's Obligations under subclause 8.9, the Contractor must:

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

### **8.11 Conflicting Requirements**

- (a) If the Contractor becomes aware of any conflict between any of the Contractor's Obligations, it must notify the Principal and the Principal must direct the Contractor as to the manner in which the Contractor should provide the Services and perform the Contractor's Obligations, provided that the Principal may not direct the Contractor to take any action which would place the Contractor in breach of any Legislative Requirements.

- (b) In the case of a conflict between any of the Contractor's Obligations, the Contractor will not be in breach of those obligations if it acts in accordance with them subject to any direction from the Principal under subclause (a).

## **9. Prisoner Services and Prisoner Welfare Trust Fund**

### **9.1 Facility Canteen Services**

- (a) The Contractor must operate a Facility Canteen Service (Facility Canteen Service) which:
  - (i) provides a level and standard of service to Prisoners which is equal to, or exceeds, the level and standard of service described in the Service Requirements in Schedule 1; and
  - (ii) complies with this clause 9.1.
- (b) The Contractor must offer, as a minimum, snacks, confectionary, non alcoholic drinks, toiletries, magazines, books, stationery and any other items as specified from time to time by the Principal.
- (c) The Contractor must make the Canteen Goods purchased by Prisoners available for collection by Prisoners at least once a week at a designated secure location in the Facility during designated hours. The Contractor must establish and maintain systems to minimise theft of Canteen Goods available for collection.
- (d) The Canteen Goods must be offered for sale at prices which are no higher than the prices at which those goods, or equivalent goods, are sold to Prisoners at all prisons operated in the Perth metropolitan area. To enable compliance with this subclause, the Principal must provide the Contractor with a copy of the canteen goods price lists for the prisons operating in the Perth metropolitan area, within ten (10) Business Days after the Services Commencement Date or after any revision to any such price lists.
- (e) The Contractor must provide to the Principal a list (Canteen List) of goods (the Canteen Goods) available for sale through the Facility Canteen Service and the prices for those Canteen Goods (the Canteen Price List) within twenty (20) Business Days after the Services Commencement Date and within five (5) Business Days after any change to the Canteen List or the Canteen Price List. The Principal must notify the Contractor whether or not it approves the Canteen List and the Canteen Price List within ten (10) Business Days after receipt of the Canteen List and Canteen Price List or any amendment to the Canteen List or the Canteen Price List. The Principal may require the addition or removal of specified goods from the Canteen List as a condition of its approval. The Contractor must comply with any condition of the Principal's approval. The Contractor must not sell any goods through the Facility Canteen Service which are not on the approved Canteen List, or at a price other than on the approved Canteen Price List.

## **9.2 Vending Machines**

- (a) The Contractor must establish and operate vending machines at appropriate locations accessible to Prisoners within the Facility. The vending machines must stock a broad range of brands and products which are generally available for sale by vending machine. The Contractor must obtain the Principal's approval of the number and location of vending machines, the goods to be sold through vending machines and the prices at which those goods are to be sold.
- (b) Within twenty (20) Business Days after the Services Commencement Date, the Contractor must provide to the Principal a list of vending machines installed throughout the Facility together with the location of those vending machines, a list of goods to be sold through the vending machines and the prices at which those goods are to be sold (the Vending Machine List). The Contractor must obtain the approval of the Principal prior to installing any new vending machines, removing any existing vending machines, changing the location of any vending machines or changing the goods sold, or the prices at which goods are sold (the Vending Machine List Change). The Principal must notify the Contractor whether or not it approves the Vending Machine List or any Vending Machine List Change within ten (10) Business Days of receipt of the Vending Machine List or Vending Machine List Change. The Principal may require the addition or removal of specified vending machine goods or the removal or relocation of vending machines as a condition to its approval. The Contractor must comply with any condition of the Principal's approval.

## **9.3 External Prisoner Purchases**

- (a) The Contractor must offer a service to Prisoners which enables Prisoners to order and purchase a reasonable range of goods which are not available through the Facility Canteen Service or Facility Vending Machines (External Prisoner Purchases). The Contractor must obtain the Principal's approval to the range of goods available by External Prisoner Purchases within twenty (20) Business Days after the Services Commencement Date, and within five (5) Business Days after any change to the range of goods available. The Principal must notify the Contractor whether or not it approves the range of goods available through External Prisoner Purchases within ten (10) Business Days after receipt of a notice seeking approval under this subclause. The Principal may require the addition or removal of specified goods available for External Prisoner Purchase as a condition of its approval. The Contractor must comply with any conditions of the Principal's approval.
- (b) The Contractor must offer the External Prisoner Purchase service to Prisoners at a cost per item which is no greater than the aggregate of the actual cost to the Contractor (or the Contractor's Associates) of the item and the actual cost to the Contractor (or the Contractor's Associates) of transport of the item. The Contractor must use reasonable endeavours to negotiate arrangements with suppliers to minimise the transport costs incurred in the delivery of goods ordered through this service.

#### **9.4 Prisoner Welfare Trust Fund**

- (a) The Contractor must establish a Prisoner Welfare Trust Fund with effect from the Services Commencement Date.
- (b) The Contractor must open and operate an account with a commercial bank carrying on business in Perth that is approved by the Principal, which account must:
  - (i) be established for the sole purpose of deposits and withdrawals from the Prisoner Welfare Trust Fund in accordance with this clause;
  - (ii) be in the name of the Contractor;
  - (iii) incorporate in the account name - Young Adults Facility Prisoner Welfare Trust Fund; and
  - (iv) be operated by two signatories, one nominated by the Principal and the other nominated by the Contractor.
- (c) The Contractor must pay into the Prisoner Welfare Trust Fund on a monthly basis an amount equal to 2% of Gross Canteen Sales in respect of the previous month.
- (d) Subject to subclause (e) all money paid into the Prisoner Welfare Trust Fund must be held on trust solely for the Trust Fund Purpose.
- (e) On termination or expiry of the Operating Period the balance of the Prisoner Welfare Trust Fund must be paid to the Principal.

#### **9.5 Application of Prisoner Welfare Trust Fund**

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

#### **9.6 Records and Audit**

- (a) The Contractor must keep and maintain accurate and fully detailed records of all transactions relating to the Facility Canteen Service, Facility Vending Machines and External Prisoner Purchases and the matters specified in this clause 9 in accordance with clause 22.11.
- (b) The records maintained by the Contractor in accordance with subclause (a) must be made available for inspection and audit by the Principal in accordance with clause 22.13.

## **9.7 Monthly Sales Statements by Contractor**

Within ten (10) Business Days after the end of each Operating Month, the Contractor must provide to the Principal a statement setting out the following:

- (a) the value of Gross Canteen Sales during that Operating Month;
- (b) the value of sales from vending machines during that Operating Month;
- (c) the value of External Prisoner Purchases during that Operating Month, separately itemising the cost of each item and the cost of transport of each item, and providing verification of those costs; and
- (d) the amount deposited by the Contractor into the Prisoner Welfare Trust Fund in respect of that Operating Month in accordance with clause 9.4.

The Principal must be accompanied by deposit slips or statements evidencing the deposits referred to in subclause (d).

## **9.8 Annual Sales Statement**

- (a) Within three (3) months after the end of each Operating Year, the Contractor must provide to the Principal a statement setting out the following:
  - (i) the value of Gross Canteen Sales during that Operating Year;
  - (ii) the value of sales from vending machines during that Operating Year;
  - (iii) the value of External Prisoner Purchases during that Operating Year, separately itemising the cost of each item and the cost of transport of each item, and providing verification of those costs; and
  - (iv) the amount deposited by the Contractor into the Prisoner Welfare Trust Fund in respect of that Operating Year in accordance with clause 9.4.
- (b) The Principal specified in subclause (a) must be accompanied by a certificate from an Approved Auditor certifying the accuracy of the Principal.

## **9.9 Prisoner Trust Account**

The Contractor must establish and maintain a trust account for the deposit and withdrawal of Prisoners' personal funds with effect from the Services Commencement Date and throughout the Operating Period.

## **9.10 Prisoner Property**

The Principal undertakes to transfer to the Contractor:

- (a) all items of Prisoner Property held by each Prisoner on the date each Prisoner transfers to the Facility;
- (b) any cash balances held by the Principal on behalf of Prisoners transferring to the Facility, required to be deposited in the Prisoner Trust Account; and

- (c) all records applicable to the Prisoner Property and balances under subclauses (a) and (b).

## **10. Prison Industry**

### **10.1 Prison Industry**

- (a) The Contractor must arrange for Prison Industry to be undertaken by Prisoners at the Facility. Each Prison Industry activity must be approved by the Principal prior to it being undertaken by Prisoners.
- (b) The Prison Industry must comply with the Correction Industry Business Development Code of Practice adopted by Australian Corrective Service Ministers on 11 July 1997 or any other code of practice or policy nominated by the Principal from time to time.
- (c) The Contractor must ensure that products and services derived from Prison Industry are priced having regard to the spirit and intent of the National Competition Policy or any other competition policy nominated by the Principal from time to time. The Principal may require the Contractor to complete product pricing forms in a form notified by the Principal to determine the pricing of Prison Industry products and services in accordance with this subclause.

### **10.2 Prison Industry Amount**

The Contractor must pay to the Principal an amount equal to 10% of all Gross Prison Industry Revenue (the Prison Industry Amount) at the times and otherwise in accordance with clauses 10.3 to 10.5.

### **10.3 Calculation and Payment of Prison Industry Amount**

- (a) The Prison Industry Amount must be calculated and paid by the Contractor for each six (6) month period ending 31 December and 30 June during the Operating Period based on the Gross Prison Industry Revenue for that six (6) month period (the Prison Industry Payment).
- (b) Within ten (10) Business Days after each 31 December and each 30 June occurring during the Operating Period, the Contractor must calculate the Prison Industry Payment for the preceding six (6) month period and:
  - (i) submit a statement to the Principal setting out:
    - (A) the Gross Prison Industry Revenue for that six (6) month period; and
    - (B) the Prison Industry Payment for that six (6) month period; and
  - (ii) pay to the Principal the Prison Industry Payment for that six (6) month period.

#### **10.4 Verification of Prison Industry Payments against Audited Accounts**

Within three (3) months after the expiry of each Operating Year, the Contractor must submit to the Principal:

- (a) a statement of:
  - (i) the Gross Prison Industry Revenue for that Operating Year; and
  - (ii) the Prison Industry Amount for that Operating Year;
- (b) a certificate from an Approved Auditor certifying the correctness of the statement submitted under subclause (a); and
- (c) a reconciliation of the Prison Industry Amount for the Operating Year against the Prison Industry Payments made in respect of that Operating Year.

If the reconciliation demonstrates that:

- (a) the Prison Industry Payments for the Operating Year exceed the Prison Industry Amount for that Operating Year, the Principal must pay the Contractor the difference within one month of receipt by the Principal under this clause; or
- (b) the Prison Industry Payments for the Operating Year are less than the Prison Industry Amount for that Operating Year, the Contractor must pay the Principal the difference within four (4) months after expiry of the Operating Year.

#### **10.5 Calculations and Payments for the First and Last Operating Years**

The calculations and payments of the Prison Industry Payments for the first Operating Year will be made in respect of the period commencing on the Services Commencement Date and ending on the following 30 June. The calculations and payments of the Prison Industry Payments for the last Operating Year will be made in respect of the period commencing on the first day of that Operating Year and ending on the last day of the Operating Period.

#### **10.6 Application of Prison Industry Amount**

- (a) The Principal will determine the way in which the Prison Industry Amount is to be applied in its absolute discretion.
- (b) Without prejudice to subclause (a), the Contractor may make submissions to the Principal as to the basis on which the whole or part of the Prison Industry Amount should be applied for the welfare of Prisoners or other facilities at the Facility.

#### **10.7 Records and Audit**

- (a) The Contractor must keep and maintain detailed records of every matter relating to the Prison Industry in accordance with clause 22.11.
- (b) The records specified in subclause (a) must be made available for inspection and audit by the Principal in accordance with clause 22.13.



## **10.8 Prison Industry Reference Group**

The Contractor must establish and coordinate a Prison Industry reference group for the purpose of liaising with industry groups to establish opportunities for Prison Industry. The Contractor must incorporate a report on the activities and meetings of the Prison Industry reference group in the Monthly Performance Reports prepared under clause 22.6.

## **10.9 No Prison Industry for Contract Workers**

The Contractor must ensure that no Prison Industry is undertaken by, or for the benefit of, the Contractor, any Contractor's Associates or any Contract Workers without the consent of the Principal. The purchase of goods produced by Prison Industry by the Contractor, any Contractor's Associates or any Contract Workers on terms available to the general public will not breach this clause.

# **11. Human Resources**

## **11.1 Staffing Plan**

- (a) The Contractor must prepare a Staffing Plan for approval by the Principal on or before the Commencement Date.
- (b) The Staffing Plan must include:
  - (i) the current management structure supporting the Services;
  - (ii) a management Staffing Plan including the names, curriculum vitae, position held and locations of Key Management Staff;
  - (iii) an operational Staffing Plan showing the number of full time and casual staff by key location and by role undertaken;
  - (iv) the proposed location of staff with specialist qualifications;
  - (v) a broad outline of pay structures, terms and conditions of employment applied to Contractor Employees; and
  - (vi) total operational and administrative staff at key locations from which the Contractor operates.

## **11.2 Review and amendment of Staffing Plan**

- (a) The Contractor will review the Staffing Plan on an annual basis and provide a copy of the Staffing Plan to the Principal for its review.
- (b) The Contractor will negotiate with and obtain the prior written agreement of the Principal before amending its staffing levels as stated in the Staffing Plan. The Contractor will provide a copy of the current Staffing Plan to the Principal upon request.

### **11.3 Recruitment and Retention of Experienced Contractors**

- (a) The Contractor must have at all times throughout the Operating Period, a current recruitment and retention plan.
- (b) The Contractor will review the recruitment and retention plan on an annual basis and provide a copy of the recruitment and retention plan to the Principal for its review.
- (c) The Parties agree that it is in their best interests to keep the turnover rate of Contractor Employees to a reasonably low level. Accordingly, where the Principal believes the turnover rate is excessive, the Principal may require the Contractor to provide a report providing details of all Contractor Employees and the turnover rate, and the Parties shall meet and discuss the reasons for the turnover rate.
- (d) Within fifteen (15) Business Days of a request from the Principal, the Contractor shall submit to the Principal its proposal for reducing the turnover rate and the Parties shall agree on a programme to bring the turnover rate to an acceptable level.
- (e) The Contractor must ensure that Key Management Staff remain assigned in the roles or positions described in clause 11.1(b)(ii) throughout the Operating Period, unless the Principal has given its prior written consent to both the removal of one of the Key Management Staff and the intended replacement. For the avoidance of doubt, the Principal's approval is not required where a Key Management Staff voluntarily resigns, however it is required for any intended replacement.
- (f) The Contractor may not abolish the positions of the Key Management Staff without the prior written consent of the Principal.

### **11.4 Contractor to Develop Code of Conduct**

The Contractor must develop, and submit to the Principal for its approval, no later than twenty (20) business days before the Services Commencement Date, a Code of Conduct.

### **11.5 Principal to Approve Code of Conduct**

- (a) The Principal may approve, withhold approval or give qualified approval to all or part of the Code of Conduct submitted by the Contractor in accordance with clause 11.5.
- (b) If the Principal fails to respond within fifteen (15) Business Days of any such submission, then the Code of Conduct shall be deemed to be approved for the purposes of this Contract.
- (c) If the Principal does not approve all or part of the Code of Conduct or gives qualified approval, then the Principal shall give written notice to the Contractor specifying in reasonable detail the reasons for such a decision and the Contractor must promptly submit a revised Code of Conduct to the Principal for its approval having regard to the Principal's comments.

## **11.6 Contractor to Review and Maintain Code of Conduct**

Upon obtaining approval under clause 11.6, the Contractor must keep the Code of Conduct current at all times and must review the same as often as may be necessary and appropriate, but not less than once every twelve (12) months and must submit the revised Code of Conduct for approval by the Principal under Clause 11.6.

## **11.7 Contractor to have in place Human Resource Systems**

- (a) The Contractor must ensure that human resource systems are in place:
  - (i) to ensure effective orientation and induction of all Contract Workers;
  - (ii) to ensure Contract Workers are adequately trained to undertake their role;
  - (iii) to enable effective appraisals of the performance of Contract Workers;
  - (iv) to ensure that the behaviour of Contract Workers is of the highest standard even when off duty and is in accordance with the Code of Conduct;
  - (v) to provide mentoring for new Contract Workers; and
  - (vi) subject to clauses 12.2(d) and (e), to foster and support gender and ethnicity mix, reflecting the community and, where appropriate, the prison population according to location.
- (b) The Contractor must ensure that Contract Workers are afforded support, guidance and assistance by the use of comprehensive and fair human resource strategies.
- (c) The Contractor must implement and maintain effective occupational health and safety standards and ensure that all Contract Workers comply with them.
- (d) The Contractor must formulate and disseminate a comprehensive suite of human resource management policies to all Contract Workers including, but not limited to, the following issues:
  - (i) performance management;
  - (ii) occupational health and safety;
  - (iii) security;
  - (iv) equal opportunity;
  - (v) anti-discrimination;
  - (vi) victimisation;
  - (vii) bullying; and
  - (viii) employee support and assistance.
- (e) The Contractor must ensure that roles are clearly defined and agreed with employees and that effective performance appraisals are conducted consistent with the Contractor's performance management system.

## 12. Contractor Employees and Contract Workers

### 12.1 Provision of Contractor Employees and Contract Workers

The Contractor is responsible for providing all Contractor Employees and making all staffing arrangements required for the performance of the Services and the Contractor's Obligations in accordance with this Contract. This includes staffing the Facility with adequate numbers of Contract Workers 24 hours a day and 7 days a week and, from time to time, providing Contract Workers as external escorts to Prisoners.

### 12.2 Engagement of Contractor Employees and Contract Workers

The Contractor must:

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

### 12.3 Requirements for Performance

The Contractor must:

- (a) ensure that each Contract Worker:
  - (i) **(permits, accreditation, training, etc)** holds all appropriate qualifications, accreditation, permits and licences and has completed all training in accordance with the requirements of clause 12.5;
  - (ii) **(compliance)** complies and acts in a manner at all times consistent with the *Prisons Act 1981*, any other Legislative Requirement and any requirements of this Contract; and
  - (iii) **(substances affecting performance)** does not perform any of the Services and does not operate any vehicles, plant or equipment in connection with the Services, whilst under the influence of alcohol or any other substance which may impair such performance or operation;
- (b) **(codes)** comply, and must ensure that each Subcontractor and Contract Worker complies, with any codes (including codes of ethics and conduct) approved by the CEO under the *Prisons Act 1981* to apply to the Contractor, any Subcontractors and any Contract Workers; and
- (c) **(staff disciplinary procedures)** comply, and must ensure that each Subcontractor and Contract Worker complies, with any staff disciplinary procedures set out in the Facility Operating Manual.

### 12.4 Approval of Training Programs

- (a) The Contractor must:
  - (i) develop a pre-service induction program for Contract Workers addressing all matters that may be reasonably required for the purpose of training Contract Workers and providing them with the skills required to provide the Services in the manner and at the standard required by this Contract (Pre-Service Induction Program), including the following matters:
    - (A) custody and containment including the training referred to in Schedule 1;
    - (B) care and wellbeing including the training referred to in Schedule 1;
    - (C) reparation including the training referred to in Schedule 1;
    - (D) rehabilitation and reintegration including the training referred to in Schedule 1;
    - (E) Facility management services including the training referred to in Schedule 1;
    - (F) human resources and occupational health and safety including the training referred to in Schedule 1;

- (G) systems and other requirements including the training referred to in Schedule 1;
  - (H) compliance with Legislative Requirements or other requirements applicable to the performance of Contract Workers' functions including where appropriate, the use of force and instruments of restraint and the handling and disclosure of information about the Facility and any Prisoners; and
  - (I) any other matter that the Principal considers (acting reasonably), and notifies the Contractor, should be the subject of a Pre-Service Induction Program;
- (ii) develop other training programs addressing all matters that may be reasonably required in respect of the specific duties or functions that each Contract Worker or category of Contract Worker is required to perform to provide the Services, in the manner and at the standard required by this Contract (Specific Training Programs), including:
- (A) training in the performance of Custodial Functions;
  - (B) training in the performance of any other functions or which addresses any other specific matters that the Principal considers (acting reasonably), and notifies the Contractor, should be the subject of a Specific Training Program; and
- (iii) develop ongoing training and staff development for Contract Workers who have completed the Pre-Service Induction Program or Specific Training Programs (Ongoing Training Programs), for the purpose of:
- (A) updating and developing Contract Workers' skills required in the performance of their duties and functions, in the manner and at the standard required by this Contract;
  - (B) where required, assisting Contract Workers to achieve the training qualifications referred to in Schedule 1; and
  - (C) addressing any other matters that the Principal considers (acting reasonably), and notifies the Contractor, should be the subject of an Ongoing Training Program.
- (b) The Contractor must prepare and submit to the Principal, by no later than three (3) months before the Services Commencement Date, a Training Plan.
- (i) (ii)
- (c) The Principal must notify the Contractor within fifteen (15) Business Days of receiving the Training Plan that the Principal approves the Training Plan, with or without amendment.
- (d) If the Principal rejects a Training Plan or approves it with specified amendments, the Contractor must submit to the Principal a further Training Plan within ten (10) Business Days of receiving the Principal's notice under subclause (c).

- (e) If the Contractor fails to submit any Training Plan as required under this clause 12.4 or the Principal does not approve unconditionally a further Training Plan submitted by the Contractor under subclause (d) then:
  - (i) the Principal may itself prepare or revise the Training Program the subject of the Training Plan (as the case may be) and the Principal's Training Program or revised Training Program will apply under this Contract; and
  - (ii) the Contractor must reimburse the Principal on demand for any reasonable costs incurred in preparing or revising a proposed Training Program under this subclause.
- (f) The Contractor must review each Training Program approved by the Principal pursuant to this clause 12.4 every twelve (12) months after its approval, to ensure its content is updated as may be required or appropriate and, within twenty (20) Business Days of the date for review, submit a revised Training Program for approval by the Principal. The Principal must notify the Contractor within twenty (20) Business Days after receipt of the revised Training Program whether the Principal approves the revised Training Program (with or without amendment) or rejects it. If the Principal rejects the revised Training Program or approves it with specified amendments, then subclauses (d) and (e) will apply as though each reference to 'Training Plan' in those subclauses were a reference to 'revised Training Program'.
- (g) At any time after the approval of a Training Program under this clause, the Contractor may submit to the Principal a proposal to revise or replace that Training Program, or the Principal may notify the Contractor of any amendment to or replacement of that Training Program which it considers reasonably necessary. To the extent that any such revision is approved (with or without amendment), the Training Program will take effect as revised under this subclause (g).

## **12.5 Training and Qualifications of Contract Workers**

- (a) The Contractor must ensure that each Contract Worker:
  - (i) has satisfactorily completed the Pre-Service Induction Program approved by the Principal under clause 12.4 before the Contract Worker has any contact with Prisoners;
  - (ii) has satisfactorily completed all Specific Training Programs approved by the Principal under clause 12.4 before the Contract Worker commences performance of any duties and functions to which the Specific Training Program relates; and
  - (iii) satisfactorily completes any Ongoing Training Programs approved by the Principal under clause 12.4 as may be required from time to time for the purposes of this Contract.
- (b) A Contract Worker will be deemed to have satisfactorily completed a Training Program if the Contract Worker has been formally assessed as having passed the relevant Training Program or, where no formal assessment is required to be made, the Contract Worker has completed the class hours scheduled for that Training Program.

- (c) The Contractor must provide the Principal with the information necessary for the Principal to assess the Contractor's compliance with this clause 12.5, or to determine that the Training Programs for Contract Workers have been satisfactorily completed, as the case may be, within ten (10) Business Days after receiving a written request from the Principal for such information.

## **12.6 Contract Worker Uniforms**

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

## **12.7 Use of Force by Contract Workers**

- (a) The Contractor must not, and must ensure that Contract Workers do not, use force or instruments of restraint to control Prisoners or the behaviour of a Visitor other than:
  - (i) to the degree permitted by, and in accordance with the requirements of, the *Prisons Act 1981* and any other Legislative Requirements; and
  - (ii) at the minimum level and for the minimum time necessary to control the relevant behaviour and only where no other means of control is reasonably available.
- (b) The Contractor must ensure that the use of force and instruments of restraint by Contract Workers pursuant to this clause 12.7, and the degree to which force and instruments of restraint are used, are reasonable in the circumstances.
- (c) The Contractor acknowledges that the *Prisons Act 1981* empowers the CEO to authorise the use of force by Contract Workers against a Prisoner or Prisoners in certain circumstances, including the degree of force to be used.



## 12.8 Removal of Contract Workers

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

## 12.9 High-Level Security Work

- (a) The Parties acknowledge that the *Prisons Act 1981* permits certain Contract Workers to perform High-level Security Work and the Contractor agrees that the requirements of Part IIIA Division 4 of the *Prisons Act 1981* apply to any Contract Workers performing, or proposing to perform, High-level Security Work.
- (b) In addition to any requirements in this clause 12 applying to Contract Workers generally, the Contractor must ensure that each Contract Worker who performs High-level Security Work:
  - (i) holds the necessary permit and all other authorisations as may be required under the *Prisons Act 1981* to perform that High-level Security Work;
  - (ii) performs the High-level Security Work in accordance with the relevant permit and any conditions and limitations specified in that permit and all other authorisations; and
  - (iii) has received all training as may be required under the *Prisons Act 1981* to perform that High-level Security Work.

- (c) The Contractor acknowledges the CEO's power under the *Prisons Act 1981* to:
  - (i) determine the suitability of any applicant for a permit to perform High-level Security Work having regard to the matters referred to in section 15P of the *Prisons Act 1981* in respect of the applicant;
  - (ii) refuse to issue a permit to perform High-level Security Work in accordance with section 15S of the *Prisons Act 1981*;
  - (iii) determine the suitability of a Contract Worker, in accordance with section 15T of the *Prisons Act 1981*, to continue to perform High-level Security Work; and
  - (iv) suspend or revoke a permit issued to perform High-Level Security Work under section 15U of the *Prisons Act 1981*.
- (d) The Contractor must, on request by the Principal:
  - (i) assist the Principal to make the enquiries contemplated under section 15T(1) and 15Q(1) of the *Prisons Act 1981* about a Contract Worker who applies for a permit to perform High-level Security Work, including any enquiries about the honesty and integrity of the Contract Worker's known associates; and
  - (ii) provide to the Principal the information contemplated under section 15T(2) and 15Q(2) of the *Prisons Act 1981*.
- (e) In this clause 12.9 the word "perform" includes the exercise of a power, responsibility or authority.

#### **12.10 Principal's Approvals under this Clause**

The Contractor acknowledges that an approval given by the Principal under this clause 12 does not imply:

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

#### **12.11 Contractor to Keep Records Relating to Contract Workers**

The requirements of clause 22 in relation to records apply to the Contractor's Obligations under this clause and the Contractor must, in particular, keep records of the following matters relating to each Contract Worker:

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

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

## **13. Industrial Relations**

### **13.1 Good Relations**

The Contractor must use reasonable endeavours to maintain good industrial and employee relations with the Contract Workers.

### **13.2 Industrial Disputes**

If an industrial dispute, ban, limitation of work or denial of facilities or services involving any Contract Workers occurs, or is threatened, the Contractor must:

- (a) immediately inform the Principal and continue to keep the Principal informed throughout the course of the dispute, ban, limitation or denial;
- (b) take all reasonable action required to bring the dispute, ban, limitation or denial to an end in the shortest time practical, including notifying the dispute to the relevant state or federal Industrial Relations Commission;
- (c) take all reasonable action to ensure that the Contract Workers conform to the provisions of any dispute settling procedures provided for in an applicable Industrial Instrument; and
- (d) while appropriate steps are implemented to resolve the dispute, ban, limitation or denial:
  - (i) continue to provide Essential Services; and
  - (ii) use reasonable endeavours to provide all other Services.

### **13.3 Minimising Adverse Effects**

The Principal and the Contractor must co-operate to endeavour to minimise the adverse effect of any actual or threatened industrial dispute, ban, limitation of work or denial of facilities or services involving any Contract Workers.

### **13.4 Awards, Workplace Contracts**

The Contractor must ensure that the remuneration and terms of employment of all Contractor Personnel for the duration of the Contract will be consistent with the remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry.

## **14. Facility and Facility Access**

### **14.1 Access to Facility**

- (a) The Principal grants the Contractor and the Contract Workers access to the Facility at least twenty (20) Business Days prior to the Services Commencement Date for the purposes of providing the Services and performing the Contractor's Obligations. The Contractor must not use the Facility for any other purpose without the Principal's prior consent.
- (b) Except as expressly provided by this Contract, the Contractor's access to the Facility ceases at the end of the Operating Period, and the Contractor must not, and must ensure that no Contract Worker, uses or occupies the Facility for any purpose after that date, except with the Principal's prior consent.
- (c) The Contractor must, and must ensure that all Contract Workers in the Facility:
  - (i) comply with those security measures in relation to the Facility as directed by the Principal;
  - (ii) carry suitable identification while in the Facility;
  - (iii) not examine, copy, remove or otherwise interfere with any thing on or in the Facility except for the purpose of performing the Services; and
  - (iv) comply with the directions given by the Principal from time to time in relation to its access to the Facility.
- (d) Where the Principal gives a direction under subclauses (c)(i) or (c)(iv) and the direction involves any variation of the Services, the provisions of clause 25.4 will apply as if the direction was given under clause 25.2.
- (e) The rights granted to the Contractor under this clause do not:
  - (i) create any proprietary interest in the Facility; or
  - (ii) confer any exclusive occupation of the Facility.
- (f) The Contractor must not:
  - (i) create, or permit to be created, any Encumbrance over the Facility; or
  - (ii) permit any person other than Contract Workers, to use or occupy the Facility without the Principal's prior consent or except as otherwise specified in this Contract.
- (g) The Contractor must not store any property (other than the Contractor's Resources), or permit any Contract Worker, to store any property, at the Facility.

- (h) The Contractor acknowledges that the access rights under this clause are subject to the Principal's and the Principal's Associates' unfettered 24 hour access to enter onto the Site and to access any part of the Facility subject to compliance with the Contractor's security procedures applying to movement of persons within the Facility. In particular, the Principal may at any time:
  - (i) inspect the condition of the Facility; and
  - (ii) carry out works to the Facility, subject to consulting with the Contractor to minimise any interference with the provision of the Services or the Contractor's Obligations.

#### **14.2 Contractor to Provide Space and Facilities**

- (a) The Contractor must provide the Principal with access to and use of those working areas and facilities at the Facility as it may reasonably require to perform its functions, including:
  - (i) a secure office area with sufficient working space for five employees or agents of the Principal in locations nominated by the Principal;
  - (ii) power, air-conditioning, desks, chairs, telephones and lockable storage facilities in office areas contemplated under subclause (i) and access to staff meal areas, toilets and meeting facilities;
  - (iii) reasonable use of office equipment at the Facility, including reasonable use of facsimile machines and photocopiers;
  - (iv) meals at no cost for employees and agents of the Principal while at the Facility; and
  - (v) access to the Contractor's computer systems used for the purpose of this Contract: and
  - (vi) complete and unfettered access to the Facility, Facility Property: correspondence and records.

#### **14.3 Utility Services**

The Contractor must:

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

#### **14.4 Cell Condition**

- (a) The Contractor must not accommodate Prisoners in any cell at the Facility which is not fit for purpose. In order for a cell to be fit for purpose it must satisfy the following requirements (Cell Requirements):
  - (i) the cell alarm, which has an integrated cell call intercom system to allow for emergency communication during lock down periods, must be fully operational;

- (ii) the fire and smoke detection system must be fully operational;
  - (iii) the officer lock on the cell door must be fully operational and the inspection window on the cell door must be enclosed with hardened transparent material;
  - (iv) the window and frame must be secure and in good condition;
  - (v) the toilet, shower and handbasin must be fully operational;
  - (vi) the cell must have access to a supply of potable water;
  - (vii) the cell inspection lights must be fully operational;
  - (viii) all power and light fittings must be safe;
  - (ix) if the cell is used for a special purpose such as punishment, observation or crisis care, it must be free of any hanging points and closed circuit television must be installed and operational;
  - (x) the furniture and fittings must be in serviceable condition; and
  - (xi) the cell must be free of health and safety hazards.
- (b) The Contractor acknowledges that all cells in the Facility are fit for purpose as at the Services Commencement Date, subject to any issues identified in the agreed Enabling Works Plan.
  - (c) The Contractor must notify the Principal as soon as practicable, but in any event within 24 hours, if any cell ceases to be fit for purpose and of the reasons why the cell has ceased to be fit for purpose. The Contractor must notify the Principal as soon as practicable after it becomes aware that the cell is fit for purpose again. Each of the Principal and the Contractor must update its register of cells by reference to the notifications under this subclause.

#### **14.5 Nuisance, Injurious Conduct and Misuse**

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

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

#### **14.6 No Alterations or Damage**

The Contractor must:

- (a) not, and must not permit any other person to, alter or otherwise interfere with, or damage:
  - (i) the Facility, any Principal Resources or any amenity at the Facility; and
  - (ii) any of the Contractor Resources; and
- (b) take all reasonable steps to protect and preserve the property referred to in subclause (a) from loss, damage or destruction of any kind.

#### **14.7 Not to Pollute**

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

#### **14.8 Removal of Garbage**

The Contractor must promptly collect and dispose of all garbage, waste matter, oil and other pollutants from the Facility and the Site in a manner required or approved by the Principal and every Government Authority having control over the disposal of waste matter and the protection of the Environment.

#### **14.9 Inflammable Substances**

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

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

## **14.10 Compliance with Environmental Law**

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

## **14.11 Removal of Contamination**

- (a) If any Contamination or Hazardous Materials are discovered at the Facility or on the Site, the Contractor must immediately notify the Principal and:
  - (i) remove the Contamination or Hazardous Materials from the Site, including the cause of that Contamination or Hazardous Materials; and
  - (ii) comply in all respects with any Legislative Requirements in relation to any Contamination or Hazardous Materials.

If the Contractor does not remove the Contamination or Hazardous Materials within ten (10) Business Days of discovery, the Principal may remove the Contamination or Hazardous Materials and the Contractor must reimburse the Principal for the cost of that removal on demand from the Principal.

- (b) Sub-paragraph (a)(i) does not apply to Hazardous Materials which are kept at the Facility or on the Site for operational reasons and which, if used with care and in compliance with all Legislative Requirements, do not pose a risk to person, property or the Environment.

## **15. Facility Management Obligation**

### **15.1 General Obligation**

- (a) From the Site Possession Date and throughout the Operating Period, the Contractor must maintain the Site, Facility Building, Facility Equipment and systems:
  - (i) in accordance with the minimum accepted level of appearance, as detailed in the asset condition report, being cognisant of any Enabling Works agreed prior to Services Commencement Date;



- (ii) subject to reasonable, fair wear and tear and in substantially the same state of repair or condition as they were in on the Services Commencement Date;
  - (iii) in accordance with Best Industry Practice;
  - (iv) 24 hours per day, 365 days (366 days in a leap year) per calendar year; and
  - (v) within the response and rectification periods set out in Schedule 1 and/or Schedule 2.
- (b) The intention of:
- (i) the Principal and the Contractor; and
  - (ii) as expressed under subclause (a),

is that the Contractor must maintain the Site, Facility Building, Facility Equipment and systems in a manner so that the Facility may be used as a minimum security Facility for male prisoners on a 24 hour 365 day basis (366 days in a leap year) with the following specific requirements which apply in respect of the Facility, being continuous operation and use of the Site, Facility Building, Facility Equipment and systems to enable:

- (iii) the provision of training opportunities for Prisoners where possible when the Contractor uses Prisoners for the provision of Services;
- (iv) the successful reintegration of Prisoners into the community;
- (v) the security, good order and integrity of the Facility;
- (vi) ensuring the maximum number of beds are available for use; and
- (vii) the welfare of the Prisoners, persons working in, or visiting, the Facility.

## **15.2 Hard Facility Management Services**

The Contractor shall provide Hard Facility Management Services as set out in the Service Requirements in Schedule 1.

## **15.3 Soft Facility Management Services**

The Contractor shall provide Soft Facility Management Services as set out in the Service Requirements in Schedule 1.

#### **15.4 Suitable Personnel**

The Contractor must ensure that each Contractor Employee engaged in the performance of the Facility Management Services is only a person who:

- (a) is properly qualified for the task that person is to perform; and
- (b) will act, in all the circumstances, in a fit and proper manner.

#### **15.5 Standard of Facility Management Services**

The Contractor must undertake the Facility Management Services so as to not adversely affect the Contractor's obligations under the Contract.

### **16. Facility Management Plan**

#### **16.1 Contractor to Prepare Facility Management Plan**

The Contractor must prepare and submit to the Principal, for approval, a Facility Management Plan in accordance with the requirements of Schedule 1 on or before the Commencement Date.

#### **16.2 Obligation Not Affected**

No:

- (a) review that may be undertaken of the Facility Management Plan; or
- (b) comment, assent, approval or suggestion given by or on behalf of the Principal in relation to that Facility Management Plan,

relieves the Contractor of the Contractor Obligation.

#### **16.3 Cost**

The cost of producing the Facility Management Plan, including three (3) copies for the Principal, must be paid by the Contractor.

#### **16.4 Status**

The Facility Management Plan will become and be known as the approved Facility Management Plan for the purpose of undertaking the Hard Facility Management Services and otherwise for the purposes of this Contract.

#### **16.5 Compliance**

The Contractor:

- (a) must undertake all Hard Facility Management Services strictly in accordance with the approved Facility Management Plan; and
- (b) must not depart from the approved Facility Management Plan except with the Principal's prior written consent or as required by law.

## **16.6 No Variation**

The Contractor must not update or vary the contents of the approved Facility Management Plan without the Principal's prior written consent.

## **16.7 Variations by the Principal**

The Principal may from time to time, to ensure compliance with the Contractor Obligation, require revisions or variations to the approved Facility Management Plan, and the Contractor must comply with:

- (a) the Principal's requirements; and
- (b) the requirements of the approved Facility Management Plan as revised or varied.

## **16.8 Inconsistency**

If there is any inconsistency between the provisions of:

- (a) the approved Facility Management Plan; and
- (b) the provisions of this Contract,

then the provisions of this Contract will apply unless the Contract Manager otherwise agrees in writing.

## **16.9 Updating Facility Management Plan**

- (a) The Contractor must submit to the Contract Manager not less than one (1) month prior to each anniversary of the Services Commencement Date, the Contractor's program for the following twelve (12) month period commencing on the anniversary of the Services Commencement Date, for all Hard Facility Management Services to be undertaken during that following twelve (12) month period.
- (b) Following receipt of the Contractor's program in accordance with subclause (a) the Contract Manager may direct the Contractor to modify the program to ensure compliance with a provision of this Contract.
- (c) None of the following will affect any Contractor Obligation:
  - (i) the provision of the program under subclause (a);
  - (ii) a direction under subclause (b); or
  - (iii) no comment by the Contract Manager on the program submitted under subclause (a).

## **17. Survey and Inspection by Principal**

### **17.1 Asset Management Survey**

- (a) The Principal may conduct, at the cost of the Principal, an asset management survey for the purpose of determining the physical condition and state of maintenance of the Site, Facility Building, Facility Equipment and systems:
  - (i) on or about three (3) years after the Services Commencement Date; and
  - (ii) thereafter on or about the expiration of each period of two (2) years during the Operating Period.
- (b) The Principal must notify the Contractor of the date the Principal intends to inspect the Site, Facility Building, Facility Equipment and systems for the purpose of an asset management survey by not less than five (5) Business Days notice in writing to the Contractor.
- (c) The purpose of the asset management survey will be to:
  - (i) determine whether the Facility Management Services has been undertaken to the standard and in the manner required under this Contract; and
  - (ii) establish the basis for ensuring that after the completion of the inspection and the asset management survey, Facility Management Services is undertaken to the standard and in the manner required under this Contract.
- (d) Following an inspection and survey under subclause (a), the Principal:
  - (i) will prepare a written report concerning the inspection and survey; and
  - (ii) provide to the Contractor a copy of the written report prepared in accordance with subclause (d)(i).
- (e) Either party may, after the provision of the written report specified in subclause (d), convene a meeting with the other party to discuss issues arising from the written report.
- (f) If a party requires a meeting in accordance with subclause (e), the other party must attend a meeting on a date and at a time reasonably specified by the party calling the meeting.

### **17.2 Inspection**

- (a) The Principal may, subject to subclause (g), on not more than two (2) occasions in each Operating Year, undertake a formal inspection of the Site, Facility Building, Facility Equipment and systems for the purpose of establishing whether Facility Management Services has been, or is being undertaken, in a manner and to the standard required under this Contract.

- (b) Not later than five (5) Business Days prior to an inspection as specified in subclause (a) the Principal must notify the Contractor of the date on which the inspection under subclause (a) is to take place.
- (c) The Contractor may accompany the Principal on an inspection under subclause (a).
- (d) Following an inspection under subclause (a), the Principal:
  - (i) will prepare a written report concerning the inspection; and
  - (ii) provide to the Contractor a copy of the written report prepared in accordance with subclause (d)(i).
- (e) Either party may, after the provision of the written report specified in subclause (d), convene a meeting with the other party to discuss issues arising from the written report.
- (f) If a party requires a meeting in accordance with subclause (e), the other party must attend a meeting on a date and at a time reasonably specified by the party calling the meeting.
- (g) The Principal may, subject to the provisions of subclauses (b) to (f), elect to undertake a formal inspection on more than two occasions in an Operating Year.

### **17.3 Co-ordination of Inspections**

As far as practicable the inspections required under clauses 17.1 and 17.2 will be undertaken at the same time to minimise disruption to the activities of the Contractor.

### **17.4 Contractor Obligation not Affected**

No:

- (a) inspection; or
- (b) report prepared; or
- (c) comment,

by the Contract Manager or the Principal following an inspection and report under clauses 17.1 or 17.2 will affect any Contractor Obligation.

### **17.5 Facility Management Services not Undertaken**

- (a) Subject to clause 16.11 and to subclause (b), if the Contractor fails to undertake any Facility Management Services required to be undertaken under this Contract the Principal may, without prejudice to any other right of the Principal under this Contract, elect to:
  - (i) undertake those Facility Management Services; or
  - (ii) engage another person to undertake those Facility Management Services,

and the cost of those Facility Management Services will, subject to the further provisions of this subclause, be a debt due by the Contractor to the Principal.

(b) Except in the case of an emergency when no notice will be required, the Principal must not:

- (i) undertake Facility Management Services, or
- (ii) engage another person to undertake the Facility Management Services,
- (iii) under subclause (a) without first giving to the Contractor a notice:
- (iv) specifying the Facility Management Services which has not been undertaken; and
- (v) stating that if the Contractor does not undertake the Facility Management Services specified in subclause (b)(iii) within the period of ten (10) Business Days or any longer or shorter period as is appropriate in the circumstances and specified in the notice, the Principal may:

(A) undertake the Facility Management Services; or

(B) engage another person to undertake the Facility Management Services,

specified in subclause (b)(iii).

(c) Where the Principal undertakes Facility Management Services under this clause the Principal may, at the election of the Principal:

- (i) deduct the cost incurred by the Principal in undertaking the Facility Management Services from any money which is payable to the Contractor under this Contract, including any instalment of the Monthly Services Payment; or
- (ii) require the Contractor to pay the cost incurred by the Principal in which event the cost incurred by the Principal in undertaking the Facility Management Services will be treated as a liquidated debt due and payable by the Contractor to the Principal on demand.

## **17.6 Withdrawal of Cell Certificate**

- (a) It is acknowledged that as at the Services Commencement Date a Cell Certificate will be issued for each Prison Cell (as both terms are defined in Schedule 6).
- (b) If during the Operating Period the Contract Manager determines that a Prison Cell does not comply with the Cell Requirement the Contract Manager may withdraw the Cell Certificate for that Prison Cell.
- (c) If the Contract Manager withdraws a Cell Certificate under subclause (b) the Contract Manager will not issue a Cell Certificate for that Prison Cell until all necessary Facility Management Services to that Prison Cell has been undertaken and the Prison Cell satisfies the Cell Requirement.

- (d) Where the Contract Manager withdraws a Cell Certificate the Contract Manager must give notice in writing to the Contractor of, and reason for, the withdrawal of the Cell Certificate.
- (e) Where:
  - (i) a Cell Certificate has been withdrawn; and
  - (ii) the Contract Manager has determined to issue a new Cell Certificate for a Prison Cell where a Cell Certificate has been withdrawn,

the Contract Manager must give notice in writing to the Contractor of the issue of the Cell Certificate for that Prison Cell.

### **17.7 Withdrawal of Prison Certificate**

- (a) It is acknowledged that as at the Services Commencement Date a Prison Certificate in respect of eighty (80) Available Prisoner Places will have been issued for the Facility (as both terms are defined in Schedule 6).
- (b) If during the Operating Period the Contract Manager determines that the Facility does not satisfy the Prison Requirement the Contract Manager may:
  - (i) withdraw the Prison Certificate; or
  - (ii) amend or re-issue the Prison Certificate in respect of a reduced number of Available Prisoner Places.
- (c) If the Contract Manager withdraws the Prison Certificate under subclause (b) the Contract Manager will not issue a Prison Certificate for the Facility until all necessary Facility Management Services has been undertaken so that the Facility meets the Prison Requirement and on completion of that Facility Management Services, the Contract Manager must issue a Prison Certificate in accordance with subclause (e).
- (d) Where the Contract Manager withdraws, amends or re-issues the Prison Certificate, the Contract Manager must give notice in writing to the Contractor of, and reasons for, the withdrawal, amendment or re-issue of the Prison Certificate.
- (e) Where:
  - (i) the Prison Certificate has been withdrawn; and
  - (ii) the Contract Manager determines to issue a new Prison Certificate,the Contract Manager must:
  - (iii) issue a new Prison Certificate; and
  - (iv) notify the Contractor of the issue of the new Prison Certificate.
- (f) This clause does not limit the rights of the Principal under this Contract.

## **18. Enabling Works**

### **18.1 Contractor must Undertake Enabling Works**

The Contractor shall undertake any minor works necessary to the Facility such that the Facility is suitable for the Contractor to meet its Obligations under this Contract. These works shall be referred to as Enabling Works.

### **18.2 Contractor to Prepare Enabling Works Plan**

The Contractor must prepare an Enabling Works Plan for approval by the Principal on or before the Commencement Date which:

- (a) describes all Enabling Works necessary to be completed by the Contractor; and
- (b) specifies to the reasonable satisfaction of the Principal, the processes that the Contractor will put in place in order to complete such works.

### **18.3 Enabling Works Plan to include Specified Items**

In addition, but not limited to, those items specified in clause 18.2, the Contractor must ensure that the Enabling Works Plan includes the following information:

- (a) A working day calendar;
- (b) Identification of each activity by area, trade and element of work;
- (c) The easiest and latest starting and finishing dates for each activity, milestone events, logic dependencies, resource levels and critical path activities;
- (d) All major off-site activities such as supply, prefabrication, testing, drawings, nominated subcontractor nominations, approvals required;
- (e) Activities of all the Contractor's consultants, subcontractors, suppliers and the like; and
- (f) Details having significant bearing on the Enabling Works achievement including human resource requirements at each stated, proposed works methods, plant, materials and equipment required.

### **18.4 Enabling Works Obligations**

Once the Enabling Works Plan has been approved under clause 18.4, the Contractor shall carry out its obligations as set out in the Enabling Works Plan, and in accordance with the provisions of clause 19.3.

### **18.5 Practical Completion**

Within ten (10) Business Days after receiving a request by the Contractor for the issue of a Certificate of Practical Completion, the Principal shall give to the Contractor either a Certificate of Practical Completion evidencing the Date of Practical completion or written reasons for not doing so.



## **19. Minor Works**

### **19.1 Principal may instigate Minor Works**

The Principal may request the Contractor during the Operating Period to undertake minor works at the Facility.

### **19.2 Contractor must permit or undertake Minor Works**

Subject to clause 19.3, it is acknowledged that:

- (a) the Principal may make a request under clause 19.1;
- (b) if the Contractor agrees to comply with the request referred to in subclause (a) the Contractor must not commence or undertake the Minor Works unless the parties reach agreement on the scope for the performance of the work associated with the request, including payment for the Contractor carrying out the Minor Works; and
- (c) if the parties cannot reach agreement on the terms and conditions referred to in subclause (b), the Principal may contract with another contractor to carry out the Minor Works in place of the Contractor.

### **19.3 Standards for Minor Works**

To the extent there is no conflict with the terms and conditions set out in this Contract, all Minor Works shall be undertaken in accordance with the provisions set out in AS4906-2002 Minor Works Contract Conditions (Principal Administered) or its successor standard.

For the avoidance of doubt, if there is any conflict between the provisions set out in AS4906-2002 Minor Works Contract Conditions (Principal Administered) and the terms of this Contract and/or the Principal's scope for the Minor Works, the terms of this Contract and/or the Principal's scope for the Minor Works shall prevail.

### **19.4 Principal may make alternative arrangements for Minor Works**

Despite any other provision in this clause:

- (a) the Principal is not obliged to request the Contractor undertake any Minor Works;
- (b) the Principal is entitled to call for tenders or contract with other parties to carry out Minor Works; and
- (c) the Contractor is entitled to submit a tender to the Principal in response to an invitation for tenders referred to in subclause (b).

## **19.5 Co-operation with Other Contractor**

If Minor Works is undertaken by a person other than the Contractor, the Contractor must reasonably co-operate with:

- (a) the other contractor; or
- (b) any sub-contractor, consultant or employee of the other contractor,

who undertakes the Minor Works.

## **20. Destruction of or Damage to Facility**

### **20.1 Suspension of Obligations**

(a) If the Facility is destroyed or damaged over the term of the Contract so as to render the Facility or any part of the Facility unfit for occupation and use or inaccessible then the following will apply:

- (i) the Contractor's Obligations will be suspended or modified to the extent to which they cannot be fully and properly performed as a consequence of the destruction or damage; and
- (ii) the Principal's obligation to pay the Monthly Services Payment will be suspended or modified according to the nature and extent of the destruction or damage.

(b) The provisions of subclause (a) do not affect any liability of the Contractor to the Principal for damage or destruction arising from an Event of Default by the Contractor or a failure by the Contractor to undertake Facility Management Services as required under this Contract.

### **20.2 Substantial Destruction**

If in the reasonable opinion of the Principal, the destruction of or damage to the Facility:

- (a) affects 50% or more of the Available Prisoner Places which were available immediately prior to the damage or destruction; or
- (b) renders 50% or more of the Prison Cells which were available immediately prior to the damage or destruction unusable; or
- (c) is otherwise likely to detract substantially from the Contractor's ability to perform the its obligations under this Contract for more than three (3) months,

the Principal may, by notice in writing to the Contractor, elect to terminate this Contract.

## **21. Contractor Resources**

### **21.1 Provision of Contractor Resources**

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

which are required to properly perform the Services and the Contractor's Obligations (Contractor Resources), but having regard to the Contractor's rights to access and use the Facility Equipment and, where agreed with the Principal, the Principal Resources.

- (b) The Contractor must ensure that the Contractor Resources are at all times fit and suitable for performing the Services and the Contractor's Obligations by:
- (i) arranging for all necessary repairs, replacement of parts and components; and
  - (ii) replacing any Contractor Resources,

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

- (c) The Contractor acknowledges that the Principal may, at its discretion:
- (i) allow the Contractor to access and use the Principal Resources on terms acceptable to the Principal;
  - (ii) provide any additional Principal Resources for access and use by the Contractor; and
  - (iii) withdraw from access or use by the Contractor, any Principal Resources provided by the Principal, for any period.
- (d) The Contractor must not make any alterations or additions to any Principal Resources without the prior consent of the Principal.
- (e) The Contractor must acquire and hold Contractor Resources in a manner that will enable it to comply with clause 29.10 at the end of the Operating Period.

### **21.2 Materials**

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

### **21.3 Warranties**

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

### **21.4 Contractor Resources Register**

- (a) The Contractor must maintain a register of Contractor Resources (Contractor Resources Register) listing and identifying each item of the Contractor Resources used in the performance of the Services and indicating the item's ownership. Each item of the Contractor Resources must be marked with its unique identifying number, which must also be shown in the Contractor Resources Register.
- (b) The Principal is entitled to inspect any Contractor Resources and review the Contractor Resources Register at any time without prior notification to the Contractor.

## **22. Reporting and Records**

### **22.1 Reporting of Critical Incidents**

Where a Critical Incident has occurred, the Contractor must:

- (a) immediately, or as soon as reasonably practicable in the circumstances, but no later than fifteen (15) minutes of the Critical Incident occurring, verbally inform the Principal of the Critical Incident in accordance with Principal's Policy Directive; and
- (b) no later than four (4) hours after the Critical Incident occurred, complete and return to the Contract Manager via email, a full written report (containing information and in a format specified by the Principal to the Contractor from time to time).

### **22.2 Reporting of non-Critical Incidents**

Where a non-Critical Incident has occurred, the Contractor must report through the Principal's Incident Reporting System in accordance with the Principal's Policy Directive.

### **22.3 Reporting of Situation**

Where there is a Situation which warrants inclusion in a Situation Report, the Contractor must:

- (a) ensure that such a Situation is recorded in the Situation Report on the day it happens; and
- (b) submit via email to the Contract Manager, by 10am the following day, the completed Situation Report containing all relevant Situations from the previous day (containing information and in a format specified by the Principal to the Contractor from time to time).

## **22.4 Intelligence and Information Reporting**

As soon as the Contractor becomes aware of any Intelligence and/or Information it must immediately report the same in such manner and format determined by the Principal from time to time.

## **22.5 Notification of Defective Performance**

- (a) The Contractor must promptly notify the Principal in writing of:
- (i) any defective or sub-standard performance of any of the Services; and
  - (ii) any:
    - (A) notice from a Government Agency;
    - (B) Court order; or
    - (C) notice or demand in writing from any third party,

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

- (b) Where:
- (i) the Contractor informs the Principal of a matter specified in subclause (a); and
  - (ii) the Principal directs the Contractor to undertake a matter or thing arising from a matter specified in subclause (a),

the Contractor must comply with the direction given by the Principal. A direction under this clause will not constitute a Variation Notice for the purpose of clause 25.

## **22.6 Monthly Reporting by Contractor**

- (a) The Contractor must monitor the performance of the Services and provide to the Principal the following reports:
- (i) by no later than ten (10) Business Days after the end of each Operating Month, a report including:
    - (A) a description of the performance of the Services in the relevant Operating Month, by reference to the Contractor's Obligations, including any incidents which are the subject of the KPIs;
    - (B) a summary of each Notifiable Incident that occurred in the Operating Month;
    - (C) particulars of any other matters arising under this Contract during the relevant Operating Month which affected or may affect the nature, quality, function or performance of the Services or the Contractor's Obligations or which may diminish the respect or confidence of the public in, or otherwise impact on the reputation of, the Facility or the Principal;

- (D) a summary of the activities and meetings of the Prison Industry reference group established under clause 10.8;
  - (E) any other particulars as the Principal may require in respect of any matter arising in connection with this Contract; and
  - (F) any actions taken or proposed to be taken by the Contractor to address the matters identified in respect of the Operating Month; and
- (ii) by no later than one month after the end of each Operating Year, a report including the matters set out in subclauses (A) to (F) of subclause (a)(i) except that the report must address those matters in respect of the Operating Year.
- (b) As soon as practicable after the end of each financial year, and in any event not later than four (4) months after the end of each financial year, the Contractor must provide to the Principal a copy of the most recently audited financial accounts of the Contractor and of the Guarantor. For the purposes of this subclause (b), financial year means, in respect of the Contractor, the financial year adopted for reporting purposes by the Contractor and, in respect of the Guarantor, the financial year adopted for reporting purposes by the Guarantor.
  - (c) Each of the reports and accounts submitted under subclause (a) must be:
    - (i) prepared in accordance with the policies and content and format requirements as the Principal may notify to the Contractor from time to time; and
    - (ii) accompanied by any working papers and supporting documents which may assist interpretation or analysis of those reports or accounts.

The Principal must act reasonably in notifying the Contractor under subclause (i) of its requirements regarding the content and format of reports and accounts and must provide reasonable notice of any such requirements.

- (d) The Principal may at any time request, and the Contractor must provide to the Principal or the Principal's Associates within a reasonable period, any other information in relation to any specific event or generally in relation to the performance of the Services or the Contractor's Obligations.

## **22.7 Monthly Meetings**

- (a) The Contractor Representative and the Contract Manager must meet each month from the Services Commencement Date to discuss the Contractor's performance in performing the Contractor's Obligations during the preceding month and any other matters relating to the operation of the Facility.

- (b) At each monthly meeting following the receipt by the Principal of a Monthly Performance Report, the Contractor Representative and the Contract Manager must:
  - (i) discuss the contents of the Monthly Performance Report; and
  - (ii) endeavour to agree:
    - (A) whether any incidents occurring during the Operating Month to which the Monthly Performance Report relates (whether or not such incidents were reported in the Monthly Performance Report), are the subject of the KPIs; and
    - (B) any actions to be taken to address any performance or other matters identified in respect of the Operating Month.
- (c) The Contract Manager is responsible for convening monthly meetings and may do so by giving not less than five (5) Business Days' notice to the Contractor Representative. The Contract Manager may invite any other person to attend and participate in all or part of any monthly meetings.

## **22.8 Annual Performance Reviews**

- (a) The Contractor acknowledges that the Principal may conduct an annual performance review of the Contractor's performance during each Operating Year (the first Operating Year will be deemed to include the period from the Site Possession Date), which will include consideration of:
  - (i) the information required to be included in the Annual Report for the relevant Operating Year;
  - (ii) the continuing appropriateness of the KPIs; and
  - (iii) areas for improvement of the Services.
- (b) The Contractor must co-operate with, and provide any assistance reasonably requested by, the Principal in the conduct of the annual performance review contemplated by this clause. As soon as reasonably practicable after each annual performance review is completed, the Principal will provide to the Contractor a report in relation to the matters addressed by the annual performance review, including:
  - (i) the continuing appropriateness of the KPIs; and
  - (ii) areas for improvement of the Services for the next Operating Year.
- (c) The Contract Manager and the Contractor Representative must meet within ten (10) Business Days after the Contractor receives a copy of the report specified in subclause (b):
  - (i) to discuss the report; and
  - (ii) agree any changes to the KPIs.

- (d) Subject to subclauses (e) and (f), the Contractor must implement the Principal's recommendations contained in the report.
- (e) The Principal must give a direction in accordance with clause 25.2 if:
  - (i) the Principal's recommendations in the report involve a variation to the Services; and
  - (ii) the Principal considers it appropriate that they be implemented.
- (f) If the Contract Manager and the Contractor Representative cannot agree changes to the KPIs, then, within ten (10) Business Days after either party gives notice to the other of such failure to agree, the Principal's Director Contracted Services (or a person occupying an equivalent position within the Principal) and a senior executive of the Contractor must meet and must negotiate in good faith, to agree such changes. If these senior executives cannot agree such changes within ten (10) Business Days, the matter will be referred for consideration at the next meeting of the Custodial Contracts Management Board.

## **22.9 Annual Prisons Act Reporting by CEO**

The Contractor:

- (a) acknowledges the requirement of section 15G of the *Prisons Act 1981* for the CEO to prepare and deliver to the Minister by 30 September each year an annual report on each contractor who provided prison services under a contract in the preceding twelve (12) months; and
- (b) without limiting any of the provisions of this clause 22, agrees to provide such information in relation to the performance of the Contractor's Obligations and the provision of the Services, and to provide reasonable assistance to the CEO as the CEO may require, to meet the requirements of section 15G of the *Prisons Act 1981* in relation to the Contractor.

## **22.10 Reporting Future Disruption to Services**

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



## **22.11 Contractor to Keep Records**

- (a) The Contractor must establish and maintain true, up to date and complete records relating to all aspects of the provision of the Services and compliance with the Contractor's Obligations including:
  - (i) the ownership, operation and maintenance of Contractor Resources;
  - (ii) its performance against the Service Requirements and KPIs, as required by the Principal;
  - (iii) all its Intellectual Property Rights;
  - (iv) its collection, handling and use of Confidential Information;
  - (v) any information relating to the Facility or a Prisoner as the Principal may require to be recorded;
  - (vi) any other records required to be kept as specified under any other clause of this Contract.
- (b) The records referred to under subclause (a) must:
  - (i) incorporate the detail; and
  - (ii) meet the standards,

reasonably required by the Principal, as notified to the Contractor from time to time.

## **22.12 Financial Records**

- (a) Without limiting any other provisions of this clause 22, the Contractor must maintain all those financial and financial planning records that would be expected of a private operator of prisons.
- (b) The records referred to in subclause (a) must:
  - a. incorporate the detail; and
  - b. meet the standards,

reasonably required by the Principal, as notified to the Contractor from time to time.

## **22.13 Ongoing Access to Records and Information**

- (a) The Contractor must, at the Contractor's cost:
  - a. give the Principal and any persons authorised by the Principal (including its nominated auditors) full and free access to the records required to be kept in accordance with this clause 22, whether held at the Facility or elsewhere, and permit the Principal or such other authorised persons to remove or make copies of any of those records or any other original or copied documents or information held in the Contractor's possession relating to the Services or performance of the Contractor's Obligations; and

- b. give the Principal all information required by the Principal in this clause 22 to assess the Contractor's performance of the Services and the Contractor's Obligations.
- (b) Where any records or information required to be provided by the Contractor under this clause 22 are computerised, the Contractor must give the Principal and its authorised representatives the use of any computer facilities needed to access any of those records.
  - (c) From the Services Commencement Date the Contractor must establish a link from the Contractor's System to the Principal's System, using software and systems which are compatible with the Principal's System, so that the Principal, the Principal's Associates and their authorised representatives:
    - (i) have online 24 hour access to the records required to be kept in accordance with this clause 22; and
    - (ii) can print out and store the records required to be kept in accordance with this clause 22 on the Principal's System.
  - (d) The Contractor must continually, as appropriate, upgrade the software and systems on the Contractor's System.
  - (e) When the Contractor undertakes an upgrade in accordance with subclause (d), the Contractor must as soon as practicable
    - (i) notify the Principal in writing; and
    - (ii) undertake the work and provide the facilities to ensure that it continues to comply with subclauses (b) and (c).

#### **22.14 Records to be held**

All records required to be maintained in accordance with this clause 22 must be held by the Contractor as required by the *State Records Act 2000* and all other applicable Legislative Requirements.

#### **22.15 Legible reproductions**

If any information or thing referred to in this clause 22 is stored or recorded in:

- (a) a medium other than paper; or
- (b) the Contractor's System,

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

## **22.16 Retention of CCTV and Telephone Communications Recordings**

The Contractor must:

- (a) retain all CCTV recordings made within the Facility, in whatever media such recordings are made, for a period of ten (10) Business Days and, at the Principal's request, promptly deliver any CCTV recordings to the Principal; and
- (b) promptly deliver all recordings of Prisoner telephone communications, in whatever media such recordings are made, to the Principal.

## **22.17 Inquiries under the *Prisons Act 1981***

The Contractor:

- (a) acknowledges:
  - (i) the CEO's power under the *Prisons Act 1981* to establish an inquiry into, and report on any matter, incident or occurrence concerning, the security or good order of the Facility, or concerning any Prisoner; and
  - (ii) the role of the Principal's Internal Investigations Unit under Policy Directive 40, to conduct an investigation into any matter arising from, or that impacts on, the Facility; and
- (b) agrees to, and to ensure that the Subcontractors and Contract Workers do, cooperate fully, as may be required, with any inquiries or investigations referred to in subclauses (a)(i) and (ii) and any other inquiries carried out by the Corruption and Crime Commission, the Western Australia Police and other law enforcement agencies of the Principal or the Commonwealth in respect of any matter in relation to the Facility.

## **22.18 Periodic Testing**

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

## **22.19 Access to Contract Workers**

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

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

the Principal and the Principal's Associates in undertaking any matter under or for the purposes of this Contract.

## **23. Intellectual Property**

### **23.1 Intellectual Property Rights warranties and indemnities by the Contractor**

- (a) The Contractor represents and warrants to the Principal that in performing the Services or using any Intellectual Property, the Contractor will not infringe or contravene any third party rights, including any third party Intellectual Property Rights, or any Laws.
- (b) The Contractor warrants that it shall disclose in writing to the Principal:
  - (i) prior to the Services Commencement Date any Pre-Existing Intellectual Property Rights; and
  - (ii) at any time from the Commencement Date any New Intellectual Property Rights,

which are held by a third party and are to be used by the Contractor which may be material in the provision of performing the Services and undertaking the Contractor's Obligations.

- (c) Where any Intellectual Property Rights are identified in clause 23.1(b) above:
  - (i) the Contractor warrants that it has obtained a licence from the relevant third party to use the Intellectual Property Rights for the purposes of this Contract ("Third Party Licence");
  - (ii) the Contractor undertakes to assign and transfer the Third Party Licence to the Principal upon request by the Principal where the Third Party Licence is capable of assignment to the Principal;
  - (iii) if the Third Party Licence is not capable of assignment to the Principal the Contractor must disclose this fact to the Principal prior to usage of the Intellectual Property Rights in the performance of the Services or Contractor's Obligations.
- (d) The Contractor agrees, at all times, to indemnify and keep the Principal indemnified from and against every Loss arising from:
  - (i) any infringement by the Contractor or any Contractor Employee of the Principal's Intellectual Property Rights; and
  - (ii) the use by the Principal, the Principal's Associates or any Successor Operator of any Intellectual Property Rights in a manner contemplated by this clause.

## **23.2 Pre-existing Intellectual Property Rights**

- (a) All Pre-Existing Intellectual Property Rights vested in the Contractor remain vested in and the property of the Contractor, however the Contractor grants to the Principal a non-exclusive, royalty-free and irrevocable licence to exercise for any purpose all and any such Pre-Existing Intellectual Property Rights which are used by the Contractor in connection with the performance of the Services of the Contractor's Obligations. This licence will terminate 12 months after the expiry of termination of this Contract. In the event that the Principal requires support and maintenance from the Contractor to use any IT systems which are comprised in Pre-Existing Intellectual Property Rights during that 12 month period the Principal will pay the Contractor for that support and maintenance at reasonable commercial rates.
- (b) All Pre-Existing Intellectual Property Rights vested in the Principal remain vested in and the Property of the Principal, however the Principal grants to the Contractor a non-exclusive, royalty-free licence to use such Pre-Existing Intellectual Property Rights for the purposes of performing the Services during the Operating Period only.

## **23.3 New Intellectual Property Rights**

- (a) All New Intellectual Property Rights developed by the Contractor are to be vested in and the property of the Contractor, however the Contractor grants to the Principal a non-exclusive, royalty-free and irrevocable licence to exercise for any purpose all and any such New Intellectual Property Rights which are used by the Contractor in connection with the performance of the Services of the Contractor's Obligations in perpetuity.
- (b) All New Intellectual Property Rights developed by the Principal are to be vested in and the property of the Principal, however the Principal grants to the Contractor a non-exclusive, royalty-free licence to use the New Intellectual Property Rights for the purposes of performing the Services during the Operating Period only.
- (c) During the Term, the Principal and the Contractor may agree to jointly develop New Intellectual Property Rights. Such New Intellectual Property Rights would be jointly owned by the parties and each party is entitled to use or exploit these rights in a manner agreed between the parties.

## **23.4 Third Party Intellectual Property Rights**

The Contractor must obtain all necessary copyright and other Intellectual Property Right permissions prior to using any Third Party Intellectual Property Rights in the provision of the Services or the Contractor's Obligations.

## **23.5 Intellectual Property Register**

- (a) Within three (3) months of the Services Commencement Date, the Principal and the Contractor shall jointly develop an Intellectual Property Register.
- (b) The Intellectual Property Register will be reviewed and updated at least annually throughout the Operating Period jointly by the Principal and the Contractor.

## **23.6 Survival of this clause**

This clause 23 survives termination of this Contract.

## **24. Payments**

### **24.1 Payment Mechanism**

The payment mechanism is set out in Schedule 3.

### **24.2 GST**

- (a) GST to be added to amounts payable

If GST is payable on a Taxable Supply made under, by reference to or in connection with this Contract, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.

- (b) Tax Invoice and Adjustment Note.

No payment of any amount pursuant to subclause (a), and no payment of the GST Amount where the Consideration for a Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

- (c) Liability Net of GST

Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability. A party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.

- (d) Revenue exclusive of GST

Any reference in this Contract to price, value, sales, revenue or a similar amount (Revenue), is a reference to that Revenue exclusive of GST.

- (e) Cost exclusive of GST

Any reference in this Contract (other than in the calculation of Consideration) to cost, expense or other similar amount (Cost), is a reference to that Cost exclusive of GST.

- (f) GST obligations survive termination of this Contract

This clause 24.2 survives termination of this Contract.

### **24.3 Overpayment, Adjustments and Disputes**

- (a) If the Principal makes an overpayment to the Contractor, the Contractor must:

- (i) notify the Principal in writing of the overpayment immediately after it becomes aware of the overpayment; and

- (ii) repay to the Principal the full amount of any overpayment,

within ten (10) Business Days after it becomes aware of the overpayment.

- (b) If the Principal discovers an overpayment to the Contractor, the Principal may notify the Contractor and the Contractor must repay the full amount of the overpayment within 10 Business Days after receipt of the Principal's notice.

- (c) If the Principal fails to make any adjustment or deduction which the Principal is entitled to make to any payment, the Principal may make that adjustment or deduction at any later time.

- (d) If the Principal disputes any amount claimed in an invoice:

- (i) the Principal may withhold the disputed amount; and

- (ii) any withholding will not:

- (A) be a breach of the Principal's Obligations; or

- (B) entitle the Contractor to suspend performance of the Services.

### **24.4 Set-off**

- (a) The Principal may set off against any Monthly Services Payment or other payment payable by it under this Contract any amount payable to the Principal under this Contract. If the amount payable to the Principal is unascertained, the Principal may in good faith estimate that amount and set off in respect of the estimate, subject to the Principal accounting to the Contractor when that amount is ascertained.

- (b) The Contractor must make all payments under this Contract without set off or counterclaim and without any deduction.

- (c) Nothing in subclause (a) is effective to create a Security Interest. Subclause (a) is without prejudice to any right of set off or other right to which the Principal is at any time otherwise entitled (whether by operation of law, contract or otherwise).

#### **24.5 Payment Not Acknowledgment that Services Satisfactory**

Payment by the Principal of any Monthly Services Payment is not an acknowledgment or acceptance by the Principal that the Services have been carried out satisfactorily.

#### **24.6 Interest on Overdue Payments**

- (a) If either Party fails to pay any amount due to the other Party under this Contract within twenty (20) Business Days after the due date for payment, that party must pay interest to the other party at the Default Rate.
- (b) The provisions of subclause (a):
  - (i) do not affect any other right of a Party under this Contract; and
  - (ii) are in addition to any other right of a Party under this Contract.

#### **24.7 Interest to Accrue Daily**

Interest will accrue daily, and will be calculated from the due date of payment until the date of payment in full.

### **25. Variations**

#### **25.1 Variations by the Principal**

The Principal may, by giving notice in writing to the Contractor at any time over the term of the Contract, direct the Contractor to vary the Services by expanding or reducing the scope or volume of the Services (or any part of them), by the inclusion of a new service (provided that new service is in the nature of the services contemplated by the *Prisons Act 1981*) or by imposing higher or stricter standards or measures for performance of the Services (a Variation Notice).

#### **25.2 Contractor to Comply**

The Contractor must comply with a Variation Notice given under clause 25.1 and either:

- (a) commence to perform any such varied or additional Services as soon as reasonably practicable after receipt of the Variation Notice, taking into account the nature of the variation and any arrangements required to be made by the Contractor to provide such varied or additional Services; or
- (b) cease to provide any Services as directed by a Variation Notice, from the date of receipt of the Variation Notice or other later date specified in it.



### 25.3 Price for Variation

- (a) Where the Principal has given a Variation Notice to the Contractor and the Principal or the Contractor considers (acting reasonably) that the direction to vary the Services will result in a material increase or a material decrease in the cost to the Contractor in providing the varied Services as determined in accordance with subclause (d), the Principal or the Contractor (as the case may be) may give a notice to the other Party requesting an adjustment to the Month Services Payment and setting out full details of why that Party considers that the variation of the Services will result in such material increase or material decrease (as the case may be) (Price Adjustment Notice). A Price Adjustment Notice given by:
  - (i) the Principal, must be given at the same time as the Variation Notice is given; and
  - (ii) the Contractor, must be given to the Principal within ten (10) Business Days or as otherwise agreed between the Parties after receipt of the Variation Notice.
- (b) Following a Party's receipt of a Price Adjustment Notice given by the other Party, the Parties must negotiate in good faith with a view to agreeing a reasonable adjustment to the Monthly Services Payment to take into account the increased costs or decreased costs (as the case may be) of providing the Services as varied under this clause 25.
- (c) If the Parties cannot agree an adjustment to the Monthly Services Payment within twenty (20) Business Days after receipt of a Price Adjustment Notice and the Principal has not withdrawn the direction to vary the Services within that period, then the variation to the Monthly Services Payment will be determined in accordance with clause 35.
- (d) For the purposes of subclause (a) there will be a material increase or decrease in the cost to the Contractor in providing the Services where the variation to the Services results in a cost increase or decrease of \$10,000 or more. Where one or more variations to the Services in the same Operating Year result in a cost increase or decrease of less than \$10,000 each but, when aggregated, result in a total cost increase or decrease of \$10,000 or more in that Operating Year, those variations may be aggregated and will be deemed together to result in a material increase or decrease for the purpose of subclause (a). In determining whether a cost increase or decrease is equal to \$10,000 or more:
  - (i) the netting effect of cost increases and decreases resulting from different variations in the same Operating Year will be taken into account; and
  - (ii) any variation in the same Operating Year which has previously resulted in a variation to the Monthly Services Payment will not be taken into account.

## **25.4 Changes after Commencement Date**

- (a) If at any time after the Commencement Date:
- (i) there is an amendment to the *Prisons Act 1981*, the Prisons Regulations or any instrument issued under them which affects the provision of the Services or the performance of the Contractor's Obligations; or
  - (ii) there is an amendment to a Legislative Requirement which specifically applies to prisons in Western Australia, including the Facility, and not generally to the community,

(each a Change) and the effect of the Change is that the Services are varied or there is a requirement to vary the Services, either Party may give the other Party a notice setting out the details of the Change and the provisions of subclause (b) will apply in respect of the Change as if it were a direction by the Principal to vary the Services under clause 25.2.

- (b) Where subclause (a) applies:
- (i) a Party's notice setting out the details of the Change will be treated as a direction to vary the Services under clause 25.1; and
  - (ii) clause 25.3 will apply except that either Party may give to the other Party a Price Adjustment Notice within ten (10) Business Days after receipt of the notice setting out the details of the Change given under subclause (a).
- (c) If either Party disputes the occurrence, nature, or effect of a Change notified by the other Party under subclause (a), the dispute will be determined in accordance with clause 35.

## **25.5 Expansion or Modification of Facility**

For the avoidance of doubt, an expansion in the volume of the Services as a result of an extension or modification of the Facility by the Principal, or an increase in Prisoner numbers at the Facility, does not constitute a variation or a Change for the purposes of this clause 25.

## **25.6 Directions**

For the avoidance of doubt, a direction given by the Principal will not constitute a Variation Notice unless it is expressed to be a Variation Notice.

## **26. Termination**

### **26.1 Termination**

The Principal may terminate this Contract by giving the Contractor a notice if an Event of Default occurs.

Termination of this Contract for an Event of Default will take effect upon the date stated in the notice given by the Principal.

## **26.2 Suspension of Payments**

- (a) If the Contractor commits an Event of Default by failing to provide any of the Services or by providing Services which do not meet the requirements or standards set out in this Contract the Principal may:
- a. deduct and retain amounts from any money owing to the Contractor and, in particular, any money owing to the Contractor in respect of the Monthly Services Payment; or
  - b. suspend payment of the whole or part of the Monthly Services Payment to the Contractor,

on the basis that the Principal considers commensurate with the reduction in the quantum or quality of the Services provided by the Contractor.

- (b) Where the Principal:
- a. deducts and retains amounts from monies due to the Contractor, whether in respect of the Monthly Services Payment or otherwise; or
  - b. suspends payment of any money due to the Contractor whether in respect of the Monthly Services Payment or otherwise,

and the Contractor disputes the entitlement of the Principal to make the deduction or the suspension or the amount deducted or suspended under subclause (a), the issue of whether the Principal is entitled to make the deduction or suspend the payment or as to the amount deducted or suspended will be determined in accordance with clause 35.

## **26.3 Termination for Convenience**

- (a) The Principal may terminate this Contract in whole or in part at any time by sixty (60) Business Days (or such other period as may be agreed between the parties) prior written notice. The Contractor will immediately comply with any directions given in the notice and do all that is reasonably possible to mitigate its losses arising from the termination of the Contract. The Principal will compensate the Contractor in respect of any liabilities or expenses (excluding loss of profit, loss of revenue, loss of opportunity or similar losses, liabilities or expenses) which are substantiated and which are properly incurred by the Contractor, to the extent that those liabilities or expenses cannot be mitigated. No further compensation will be payable in the event of termination pursuant to this clause 26.3(a).
- (b) The Contractor will, in each Subcontract, reserve a right of termination in circumstances where this Contract is terminated pursuant to clause 26.3(a).

## **26.4 Principal's Costs of Preparation and Service of Termination Notice**

The Contractor must, on written demand by the Principal, reimburse the Principal for all costs, charges and expenses (including reasonable solicitor's costs on an indemnity basis), incurred by the Principal, in connection with the preparation and service of a termination notice referred to in clause 26.1.

## **26.5 Termination by Agreement**

This Contract may be terminated by the agreement in writing of the Principal and the Contractor.

## **26.6 Statutory Termination by CEO**

This Contract may be terminated by the CEO pursuant to an exercise of the CEO's Statutory Powers of termination under Division 5 of Part IIIA of the *Prisons Act 1981*.

## **26.7 Rights Preserved on Termination**

The termination of this Contract will not affect any rights of a Party against the other Party in respect of any act, omission, matter, or thing occurring under this Contract prior to termination or as a result of any Default by the other Party before the date of termination, nor will it affect the coming into force or the continuance in force of any provision of the Contract which is expressly or by implication intended to come into, or continue in, force on or after termination, including the provisions in clause 29.

## **27. Step-In**

### **27.1 Right of Step-In**

If:

(A) **AN EVENT OF DEFAULT OCCURS**

(B) **THE PRINCIPAL IS PERMITTED OR REQUIRED BY LAW TO ACT TO DISCHARGE A STATUTORY POWER OR DUTY; OR**

(c) the Contractor does not perform the Services (in whole or in part).

('Step-in Event')

The Principal or a nominee of the Principal may elect to:

(a) temporarily assume total or partial management and control of whole or any part of the Services; and/or

(b) take such other steps as are necessary in the reasonable opinion of the Principal to deliver the Services and minimise the effect of the Step-in Event.

### **27.2 Suspension of Contractor's obligations**

If the Principal has exercised its step-in rights in accordance with clause 27.1, the Contractor's obligations in accordance with the Contract will be suspended for the affected period but only to the extent necessary to enable the Principal to exercise those step-in rights.

### **27.3 Payments**

Any Liability suffered or incurred by the Principal or any nominee of the Principal arising out of or in connection with the exercise by the Principal of its step-in rights in accordance with clauses 27.1(a), 27.1(b) (but only to the extent that the Principal's right to discharge the statutory power or duty arose as a result of the Contractor's Event of Default), or 27.1(c), will be a debt due and payable by the Contractor to the Principal within 20 Business Days or written demand.

#### **27.4 Contractor to assist the Principal**

The Contractor must provide the Principal with all necessary assistance in a timely manner to enable it to exercise its step-in rights in accordance with Clause 27.1 effectively and expeditiously.

#### **27.5 Acknowledgments**

The Contractor agrees that the Principal will have no Liability to the Contractor, and Contractor will not be entitled to make any Claim against the Principal in connection with the exercise by the Principal of its rights in accordance with Clause 27.1 except if:

- (a) the Principal has acted fraudulently, in bad faith or with gross negligence; or
- (b) to the extent that this Contract expressly provides otherwise.

#### **27.6 Power of Attorney**

The Contractor irrevocably:

- (a) appoints the Principal, and the Principal's nominees from time to time, jointly and severally as the Contractor's attorney with full power and authority to exercise the Principal's rights in accordance with this Clause 27; and
- (b) agrees to ratify and confirm whatever action is taken by the attorney appointed by the Contractor.

#### **27.7 Cessation of Step-in Rights**

- (a) The Principal may, at any time, cease to exercise its rights in accordance with this Clause 27 on five (5) Business Days notice to the Contractor.
- (b) The Principal must cease to exercise its step-in rights on 5 Business Days notice to the Contractor where the relevant event is remedied or ceases.

If the Principal has ceased to exercise its step-in rights in accordance with clauses 27.7(a) or (b), the Contractor must immediately recommence performing any obligations suspended due to the exercise of such step-in rights.

### **28. Statutory Intervention, Suspension and Termination**

#### **28.1 Definitions in this Clause**

In this clause:

- (a) administrator means a person appointed or engaged under section 15Y or 15Z of the *Prisons Act 1981*; and

(b) intervene has the meaning given in the *Prisons Act 1981*.

## **28.2 Operation of *Prisons Act 1981***

(a) The Parties acknowledge:

(i) that nothing in this Contract limits the operation of Division 5 of Part IIIA of the *Prisons Act 1981* in respect of intervention in, suspension or termination of, this Contract in certain prescribed situations or the appointment of an administrator for those purposes;

(ii) that the Principal's rights under clauses 26 and 27 are contractual rights existing under this Contract and, to the extent permitted by law, are in addition to and do not limit in any way, any rights or remedies available to the Principal or the Principal's Associates including any Statutory Powers granted under Division 5 of Part IIIA of the *Prisons Act 1981*

(iii) the requirements of section 15C(g) of the *Prisons Act 1981* for this Contract to specify the financial and other consequences of:

(A) intervening in this Contract under section 15W

(B) terminating or suspending this Contract under section 15X

(C) requisitioning property under section 15ZC.

## **28.3 Intervention in Contract under Section 15W**

(a) The Contractor acknowledges that the Statutory Powers granted under the *Prisons Act 1981* in respect of intervention in this Contract authorise:

(i) the CEO to intervene in this Contract in the circumstances prescribed in section 15W of the *Prisons Act 1981* and:

(A) give directions as to the manner in which the Services are to be provided; and

(B) provide any Services

(ii) the CEO, to appoint an administrator to do any of the things specified in subclauses (i)(A) and (i)(B), for an initial period not exceeding one (1) year

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

in accordance with the requirements of Division 5 of Part IIIA of the *Prisons Act 1981*.

(b) The Contractor acknowledges its obligations to, and to ensure that each Contract Worker does, comply with the lawful directions of the CEO or an administrator appointed for the purposes of section 15W of the *Prisons Act 1981*.

#### **28.4 Consequences of Intervention**

- (a) If the CEO intervenes in this Contract under section 15W of the *Prisons Act 1981*:
  - (i) the Principal may reduce or suspend the Monthly Services Payment and other payments under this Contract in accordance with clause 28.8
  - (ii) except to the extent required under clause 28.9, neither the Principal nor the Principal's Associates nor any other person is liable to pay any compensation or make any other payment to the Contractor, a Subcontractor, Contract Worker or other person under this Contract or in connection with the intervention.
- (b) The Contractor must pay to the Principal the reasonable costs of the CEO intervening in this Contract under section 15W of the *Prisons Act 1981*, without prejudice to any of the Principal's other rights.

#### **28.5 Suspension or termination under section 15X**

- (a) The Contractor acknowledges that the Statutory Powers granted under Division 5 of Part IIIA of the *Prisons Act 1981* in respect of the termination or suspension of prison services contracts authorise:
  - (i) the CEO to:
    - (A) with the Minister's approval, terminate or suspend (wholly or partially) this Contract in the circumstances prescribed in section 15X of the *Prisons Act 1981*
    - (B) provide, or appoint an administrator for an initial period not exceeding one (1) year to provide, any Services after the termination, or during the suspension, (as the case may be) of this Contract; and
  - (ii) the CEO and the administrator (acting with the CEO's approval), to requisition any property used in relation to the provision of the Services and use that property for the ongoing provision of the Services for a period not longer than twelve (12) months,

in accordance with the requirements of Division 5 of Part IIIA of the *Prisons Act 1981*.

#### **28.6 Consequences of Termination or Suspension**

- (a) If the CEO terminates or suspends this Contract under section 15X of the *Prisons Act 1981*:
  - (i) the Principal may reduce or suspend the Monthly Services Payment and other payments under this Contract in accordance with clause 28.8; and
  - (ii) except to the extent required under clauses 28.7 and 28.9, neither the Principal, nor the Principal's Associates nor any other person is liable to pay to the Contractor or any Subcontractor, Contract Worker or other person, any compensation in respect of the termination or suspension of this Contract under section 15X.
- (b) The Contractor waives any other rights it might have to pursue a claim of restitution of any kind, including a claim of unjust enrichment, as a result of suspension or termination of this Contract under section 15X of the *Prisons Act 1981*.

- (c) The Contractor must, in each Subcontract or order placed with any Subcontractor for the purpose of this Contract, reserve a right of termination or suspension to take account of the CEO's Statutory Power to terminate or suspend this Contract under Division 5 of Part IIIA of the *Prisons Act 1981*.
- (d) Without prejudice to any of the Principal's other rights, the Contractor must pay to the Principal the reasonable costs of the CEO arising in connection with the termination of this Contract under section 15W of the *Prisons Act 1981*, including any costs arising in connection with the appointment or engagement of the administrator.

**28.7 Consequences of Termination or Suspension under Section 15X(2)(e) of the *Prisons Act 1981***

- (a) If the CEO terminates or suspends this Contract solely on the ground set out in section 15X(2)(e) of the *Prisons Act 1981* and the Principal is not otherwise entitled to terminate this Contract in accordance with its terms and the suspension or termination has the effect that the Contractor will not be providing any Services after the termination or during the suspension, the Principal:
  - (i) must, subject to subclause (b), indemnify the Contractor against any loss, liabilities or expenses which are reasonably and properly incurred by the Contractor in connection with this Contract, to the extent that those liabilities or expenses were incurred in consequence of the termination or suspension of this Contract under the *Prisons Act 1981*; and
  - (ii) is not required to pay to the Contractor any amount by way of indemnity under subclause (i) in excess of an amount equal to 100 percent of the Monthly Services Payment for the Operating Year in which the termination or suspension occurs.
- (b) The Contractor must do, and must ensure that each Contract Worker does, everything possible to mitigate the Contractor's losses, liability or expenses arising in consequence of termination or suspension of this Contract under the *Prisons Act 1981*.

**28.8 Intervention In and Termination or Suspension of Part of Services**

- (a) If the CEO intervenes in, or suspends, this Contract with the effect that the Contractor will no longer be providing any Services or performing any of the Contractor's Obligations for the period of the intervention or suspension, the Principal may suspend payment of all Monthly Services Payment and other payments under this Contract for the period of that suspension or intervention.
- (b) If the CEO intervenes in, or suspends or partially terminates, this Contract (under clause 26 or as contemplated by this clause) with the effect that the scope or volume of the Services required to be provided by the Contractor under this Contract is reduced, the Principal may reduce the amount of, or suspend, payment of the Monthly Services Payment and any other payments under this Contract on the basis that the Principal considers, acting reasonably, is commensurate with the reduction in the Services.



- (c) Where the Principal reduces the amount of, or suspends, the Monthly Services Payment under subclause (a) and the Contractor disputes the entitlement of the Principal to make that reduction or suspension, the issue of whether the Principal is entitled to make the reduction or suspension or as to the amount deducted or the period suspended, will be determined by in accordance with clause 35.

## **28.9 Compensation for Requisitioning Contractor Resources**

If any Contractor Resources are requisitioned under Division 5 of Part IIIA of the *Prisons Act 1981*, the Principal must pay to the Contractor, as full and final compensation for the loss of the use of the Contractor Resources for the period in which they are requisitioned:

- (a) an amount agreed by the Principal and the Contractor; or
- (b) failing agreement under subclause (a) within ten (10) Business Days of the requisition, an amount as determined by an independent valuer appointed by the President of the Arbitrators Australia Western Australian Branch on the application of either Party.

## **28.10 No consequential or Economic Loss for Intervention, Suspension or Termination**

Neither the Principal nor any of the Principal's Associates nor any other person is liable to make any payment to the Contractor in respect of any indirect or consequential loss (within the meaning of clause 32.7(b)) suffered by the Contractor, any Contract Worker or any other person in connection with the exercise of a Statutory Power of intervention, termination or suspension under the *Prisons Act 1981*.

## **29. Service Handover and Retendering of Services**

### **29.1 Retendering of Services**

The Principal may, at its discretion, at any time and without derogating from the Principal's rights under clause 4.3, invite any person (including the Contractor) to tender for the operation of all or any part of the Services for the period commencing after the end of the Operating Period (Service Retender).

### **29.2 Preparation for Service Retender**

- (a) The Contractor must, if requested by the Principal, provide the Principal and the Principal's Associates with reasonable access to the Contract Workers and the books, records and other material kept by or on behalf of the Contractor in connection with the Facility, the Services and this Contract, for the purpose of the Principal and the Principal's Associates preparing reports or other documents in connection with a Service Retender.
- (b) The Contractor must use reasonable endeavours to assist the Principal in the preparation for, and the conduct of, a fair and competitive Service Retender process. In particular, the Contractor must make available to the Principal and the Principal's Associates any information, assist in the verification of any information (including the provision of answers to

verification questions) and make premises and activities undertaken at the Facility reasonably available for inspection by a prospective Successor Operator, as the Principal may reasonably require in connection with the Service Retender process. The Contractor's obligations under this subclause do not require the Contractor to undertake activities which will unduly interfere with the operation of the Facility and provision of the Services but the Contractor acknowledges that compliance with this subclause may cause some disruption or interference with the operation of the Facility and provision of the Services.

- (c) The Contractor warrants to the Principal that, to the best of its belief, all information it provides under subclause (b) will be, at the time it is provided, true and correct in all material respects and will not be misleading, by omission or otherwise. The Principal may not provide or purport to provide the benefit of this warranty to any other recipient of the information and must use reasonable endeavours to ensure that the Contractor obtains the benefit of any disclaimer or exclusion of liability in respect of the information which the Principal obtains from the recipient of the information.

### **29.3 Service Handover**

- (a) The Contractor must assist and fully co-operate with the Principal, the Principal's Associates and the Successor Operator for the purposes of:
  - (i) achieving an efficient transition of the operation of the Facility and performance of the Services to a Successor Operator; and
  - (ii) facilitating the continuity of the operation of the Facility and all or any part of the Services on the last day of the Operating Period,(Service Handover). In particular, the Contractor must comply with:
  - (iii) the Service Handover Plan;
  - (iv) the requirements of this clause 29; and
  - (v) any reasonable directions of the Principal.
- (b) The Parties agree that the Service Handover Period is the period:
  - (i) in the case of a termination of this Contract under clause 26, or as contemplated under clause 28, commencing on the date on which the Principal serves a termination notice on the Contractor and ending on expiry or termination of the Operating Period; and
  - (ii) in the case of a Service Handover as a result of the expiry of the Operating Period, the period commencing on the date which is six (6) months prior to the expiry of the Operating Period and ending on the last day of the Operating Period.

### **29.4 Continuing obligations of Contractor**

The Contractor acknowledges that it may be required pursuant to clause 4.3, to continue to provide the Services (or any part of them) in accordance with this Contract after the end of the Operating Period.

## 29.5 Service Handover Plan

- (a) The Contractor must:
  - (i) prepare, with the assistance of the Principal, a plan providing for Service Handover in accordance with this clause (Service Handover Plan);
  - (ii) submit, within six (6) months of the Services Commencement Date, the proposed Service Handover Plan for approval by the Principal; and
  - (iii) review the Service Handover Plan approved by the Principal pursuant to this clause every twelve (12) months after its approval and submit, within twenty (20) Business Days of the date for review, any amendments to that Service Handover Plan for approval by the Principal.
- (b) The Service Handover Plan must specify the Contractor's estimate of the period of time likely to be required to effect the Service Handover and detail how the Contractor proposes to address the following further matters on Service Handover:
  - (i) management of Prisoners, including any transitional arrangements during the Service Handover Period;
  - (ii) management, care and identification of Principal Resources and Facility Equipment;
  - (iii) management, care, identification and transfer of Contractor Resources;
  - (iv) delivery of documentation, materials, records and other information;
  - (v) assignment of relevant contracts and Subcontracts;
  - (vi) management and transfer of Contract Workers, including any transitional arrangements during the Service Handover Period;
  - (vii) management and transfer of the Contractor's System;
  - (viii) continuity of the Services and operation of the Facility; and
  - (ix) any other matters that the Principal requires to be addressed.
- (c) The Principal must review the Service Handover Plan submitted under subclause (a)(ii), and any proposed amendment submitted under subclause (a)(iii), within twenty (20) Business Days of the date on which the Service Handover Plan or amendment was submitted for approval and either:
  - (i) approve the proposal, with or without amendment; or
  - (ii) reject it.
- (d) If:
  - (i) the Principal does not approve a proposed Service Handover Plan or any proposed amendment to the Service Handover Plan, or approves it with specified amendments, the Contractor must submit to the Principal a revised proposal, provided that if the Principal does not approve the revised proposal submitted by the Contractor within a further twenty (20) Business Days; or

- (ii) the Contractor fails to provide a Service Handover Plan or a revised Service Handover Plan in accordance with subclause (a)(ii) or (a)(iii),

then the Principal may itself prepare or review the Service Handover Plan (as the case may be) and the Principal's Service Handover Plan or amendments (as the case may be) will apply on Service Handover. The Contractor, must, on demand by the Principal, pay the Principal's reasonable costs and expenses incurred in the preparation of the Principal's Service Handover Plan.

## **29.6 Non-frustration of Service Handover**

The Contractor must not do anything which directly or indirectly avoids, or materially prejudices or frustrates the Service Handover.

## **29.7 Contract Workers**

The Contractor must:

- (a) use reasonable endeavours to ensure that the Successor Operator has access to the Contract Workers immediately after the Principal notifies the Contractor that a Successor Operator has signed a contract with the Principal for the provision of the Services for the purpose of:
  - (i) receiving information in respect of the Facility and the Services; and
  - (ii) preparations by the Successor Operator for the Service Handover,

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

- (b) ensure that an appropriate number of Contract Workers, having sufficient skills, qualifications and experience (having regard to the number, skills, qualifications and experience of employees required by the Contractor to operate the Facility and provide the Services), are available to be employed by the Successor Operator following the expiry or termination of the Operating Period to enable the Successor Operator to operate the Facility and provide the Services. The Contractor must assist the Principal or the Successor Operator for that purpose:
  - (i) by releasing, subject to the Contractor being lawfully able to do so, those of the Contract Workers as the Principal may nominate, from any contract with the Contractor, so that the Principal or the Successor Operator may engage those persons if those persons are willing to be so engaged; and
  - (ii) by facilitating the preparation of job specifications, advertising and the interviewing of persons for recruitment;
- (c) provide to the Principal and the Successor Operator the employment records of those Contract Workers currently engaged by the Contractor in the provision of Services; and
- (d) provide training to the Successor Operator and those of its staff to be engaged in the performance of prison services at the Facility.

## **29.8 Variation of Terms and Conditions of Employment in Service Handover Period**

The Contractor must not, without the prior written consent of the Principal (which may not be unreasonably withheld), vary, or purport or promise to vary, the terms or conditions of employment (including superannuation entitlements) of any Contract Worker employed by the Contractor where:

- (a) the variation takes effect in the Service Handover Period, unless it is in the ordinary course of business or is a variation imposed by a determination or order of the Australian Industrial Relations Commission and, when aggregated with any other variation which takes effect during that period, represents a percentage increase in the remuneration of the Contract Worker of no more than the percentage increase in CPI over the twelve (12) month period ending on the month for which that index was last published;
- (b) all or part of the variation first takes effect after the end of the Operating Period;
- (c) the variation results in the employment being for a fixed term, the expiry of which is more than six (6) months after the end of the Operating Period;
- (d) the variation relates to a payment or the provision of a benefit triggered by termination of employment (other than the employee's entitlements at law);
- (e) the variation relates to the provision of a benefit (but excluding base salary and the employee's legal entitlements) which the employee will, or may have, a contractual right to receive after the end of the Operating Period; or
- (f) the variation prevents, restricts or hinders the employee from working for a Successor Operator or from performing the duties the employee performed for the Contractor.

## **29.9 Third Party Contracts and the Supply of Goods and Services**

The Contractor must, at the Principal's option:

- (a) transfer or assign to the Principal or the Successor Operator (as the Principal may require) any contract of the Contractor with third parties relating to the Services, including Subcontracts and any leases or other agreements under which Contractor Resources are held or used, that are required by the Principal or the Successor Operator to perform the Services; and
- (b) otherwise provide reasonable assistance to the Successor Operator in securing the supply to the Successor Operator of goods and/or services to the extent that such supply is necessary for the operation of all or any part of the Facility or provision of the Services.

## **29.10 Transfer of Contractor Resources**

The Contractor must, if directed by the Principal, promptly on the termination or expiry of the Operating Period, transfer and deliver the Contractor Resources, or that part of them as the Principal may require, to the Principal or the Principal's nominee (including the Successor Operator), free from encumbrances, in that state of repair and condition that is in accordance with the Contractor's Obligations.

### **29.11 Transfer Price**

- (a) If the Contractor has transferred and delivered to the Principal or the Principal's nominee the Contractor Resources in accordance with clause 29.10, the Principal must pay, or procure that the Principal's nominee pays, to the Contractor that price for those Contractor Resources:
  - (i) as agreed between the Contractor and the Principal; or
  - (ii) failing agreement within ten (10) Business Days of that transfer and delivery, as determined by an independent valuer appointed by the President of the Institute of Arbitrators Australia Western Australian Branch on the application of either Party.
- (b) The valuer referred to in subclause (a)(ii) will act as an expert not an arbitrator and the valuer's determination will be final and binding on the Principal and the Contractor.
- (c) The Principal and the Contractor must each pay half of any costs of the valuer referred to in subclause (a)(ii).

### **29.12 Time for Payment of Transfer Price**

The Principal must pay the amount or price referred to in clause 29.11(a), within one (1) month after:

- (a) the agreement as to the price; or
- (b) failing agreement as contemplated under clause 29.11(a), the valuer referred to in clause 29.11(a)(ii) determining that price.

### **29.13 Removal of Contractor Resources**

Subject to clause 29.10, the Contractor must within ten (10) Business Days after the end of the Operating Period remove from the Facility all the moveable Contractor Resources and other goods that the Contractor has installed or provided at the Facility, including any stock in trade relating to the Facility Canteen Service.

### **29.14 Rectification of Damage**

The Contractor must make good to the Principal's satisfaction all damage to the Facility caused by the Contractor removing the Contractor Resources.

### **29.15 Contractor Resources left**

Subject to clause 29.10, if the Contractor fails to remove from the Facility any Contractor Resources or other goods within the period referred to in clause 29.13:

- (a) those Contractor Resources or goods:
  - (i) will be treated as abandoned by the Contractor; and
  - (ii) will become the property of the Principal; and

- (b) the Principal may elect to:
  - (i) retain the abandoned Contractor Resources; or
  - (ii) dispose of those Contractor Resources as the Principal thinks fit, and retain any money that the Principal may receive in respect of any disposal.

#### **29.16 Condition of the Facility and Principal's Property**

At the end of the Service Handover Period, the Contractor must:

- (a) vacate and leave in a clean and tidy condition and otherwise in a state of repair and condition that is in accordance with the Contractor's Obligations all of the Site, Facility, Facility Equipment, Facility Building and other Principal Resources; and
- (b) deliver to the Principal all keys, security access cards and other devices associated with security and movement throughout the Facility.

#### **29.17 Additional Powers**

The Principal's Powers under this clause are in addition to any other Powers the Principal has, and the Principal may exercise its Powers under this clause notwithstanding that there has been no breach of this Contract.

#### **29.18 Return of Information**

- (a) Subject to subclause (c), the Contractor must immediately on the end of the Operating Period, or on demand, deliver to the Principal all originals and copies of information of whatever kind (whether in hard copy or electronic format) which is owned by or is in the control or possession of the Contractor or its related bodies corporate (including Confidential Information) other than documents containing confidential or strategic planning information of the Contractor or which do not primarily relate to the Services or the performance of the Contractor's Obligations.
- (b) Where information (including Confidential Information) required to be delivered to the Principal under subclause (a) is stored in electronic form, the Contractor must destroy all electronic copies after delivery to the Principal of that information.
- (c) The Contractor may:
  - (i) retain copies of training manuals and policy and procedure manuals developed by the Contractor; and
  - (ii) retain originals or copies of information (including Confidential Information) required by the Contractor to comply with its obligations under any Act or the requirements of a Government Agency, provided that the Contractor:
    - (A) notifies the Principal in writing of the information or Confidential Information retained;
    - (B) in the case of originals retained, delivers copies to the Principal;
    - (C) in the case of copies retained, delivers the originals to the Principal; and

- (D) destroys any electronic copies after complying with subclauses (B) or (C), as the case may be.

## **30. Insurances**

### **30.1 Contractor to Effect and Maintain Insurances**

The Contractor must from the Site Possession Date effect and maintain the insurances specified in Schedule 5 with solvent insurers having a Standard and Poor's rating of 'A' or higher or otherwise approved by the Principal, and which carry on insurance business in Australia and are authorised in Australia to operate as an insurance company, and otherwise on conditions approved by the Principal (including all exclusions and excesses), which approval the Principal may not unreasonably withhold.

### **30.2 Maintenance of Insurance**

The Contractor must:

- (a) punctually pay all premiums and amounts necessary for effecting and keeping current the insurance required under clause 30.1;
- (b) not vary or cancel any insurance required under clause 30.1 or as otherwise required under the Contract or allow it to lapse during the term of the Contract or otherwise do or allow to be done anything which may vitiate, invalidate, prejudice or render ineffective the insurance or entitle the insurer to refuse a claim; and
- (c) without limiting clause 30.2.(b), promptly reinstate any insurance required under clause 30.1 if it lapses or if cover is exhausted.

### **30.3 Evidence of Insurance**

The Contractor must give to the Principal sufficient evidence of the insurances required under clause 30.1 and provide a certificate of currency of insurance as requested by the Principal at any time.

### **30.4 Failure to Prove Insurance**

If the Contractor does not comply with clauses 30.1, 30.2, or 30.3 then without limiting any other remedy available to the Principal may withhold payment of any money due under the Contract to the Contractor until the Contractor has complied.

### **30.5 Incidents and claims**

If the Principal or the Contractor becomes aware of any event or incident occurring which gives rise or is likely to give rise to a claim under any insurance required under clause 30.1, it must as soon as reasonably practicable notify the Principal or the Contractor (as applicable) in writing of that event or incident. Failure to comply with this clause 30.5 will not invalidate or otherwise affect any indemnities, liabilities and releases of the Contract.



### **30.6 Continuing obligation**

The insurances required under clause 30.1 are to be maintained for the duration of the Contract as set out in clause 4.1.

### **30.7 No Limitation of Other Liabilities**

Nothing in this clause 30 limits the Contractor's other liabilities under the Contract or restricts the Contractor from insuring for sums or risks greater than those required under the Contract.

### **30.8 Insurance Policies Primary**

- (a) The insurance policies required under this clause 30 are primary and not secondary to the indemnities referred to in this Contract. However, the Principal is not obliged to make a claim or institute proceedings against any insurer under the insurance policies before enforcing any of its rights or remedies under the indemnities referred to in this Contract, or generally. In addition, the parties acknowledge that if a claim is made under an insurance policy by the Principal, it is their intention that the insurer cannot require the Principal to exhaust any indemnities referred to in this Contract before the insurer considers or meets the relevant claim.
- (b) The Contractor acknowledges that regardless of whether the insurance policies respond or not, and regardless of the reason why the insurance policies respond or fail to respond, the Contractor is not released (in whole or in part), from any of its obligations under the indemnities referred to in this Contract, or generally.

### **30.9 Insurance Review**

- (a) The Principal may from time to time review the adequacy and appropriateness of the insurance policies required under this clause 30. As part of this review, the Principal, must ascertain whether, in the Principal's reasonable opinion, any additional insurance policies are required or whether any insurance policies effected and maintained at the time of the review are still required or require amendment.
- (b) The Contractor must commence negotiations to obtain insurances or amend the insurance policies within ten (10) Business Days of receiving notice from the Principal, and must as soon as practicable thereafter at the Contractor's own cost, obtain insurances or amend the insurance policies to reflect the recommendations of the Principal's review.
- (c) The Contractor must promptly notify the Principal if it is unable to, or it becomes apparent that it will be unable to, comply with the recommendations arising in connection with the Principal's review. The parties must determine what action, if any, is to be taken following receipt of this notification and where a Dispute arises in respect of this matter it must be referred for dispute resolution in accordance with clause 35.

### **30.10 Additional Insurance**

If the Principal at any time reasonably requires the Contractor to:

- (a) arrange Insurance against a risk not specifically provided for or contemplated in this Contract; or
- (b) increase the extent of, or change the terms of, an existing Insurance from that set out in Schedule 5,

it may notify the Contractor and request that the Contractor give effect to the Principal's requirements set out in the notice (Request) and:

- (c) the Contractor must promptly notify (and provide supporting evidence to) the Principal of the amount (if any) of any new or additional premium payable to effect the Request; and
- (d) the Principal will then determine whether or not it still requires the Contractor to give effect to the Request and will notify the Contractor in writing of that decision;
- (e) if the Principal still requires the Contractor to give effect to the Request, and subject to sub-clause (f), the Contractor must promptly effect the new or additional Insurance cover the subject of such Request and the Principal must reimburse the amount of the new or additional premium to the Contractor no later than the due date of the next Monthly Invoice; and
- (f) sub-clause (e) does not apply where the increase required by the Principal either:
  - (i) represents increases in CPI over the Term; or
  - (ii) reflects increased general industry standards for levels of insurance cover other than where the increase is as a result of a non recurring or an extraordinary event.

## **31. Parent Guarantee and Bank Guarantee**

### **31.1 Parent Guarantee**

The Contractor must, no less than five (5) months prior to the Services Commencement Date, procure each Guarantor to sign and deliver to the Principal a Parent Guarantee in the form of Schedule 4.

### **31.2 Provision of Bank Guarantee**

The Contractor must, no less than five (5) months prior to the Services Commencement Date and on or prior to the commencement of any Further Period, procure the issue to the Principal of an unconditional bank guarantee:

- (a) with a face value equal to \$2 million;
- (b) issued by a bank approved by the Principal;
- (c) with an expiry date no earlier than twelve (12) months after the expiry of the Operating Period (including any extension of the Operating Period under clause 4.2) (the Guarantee Expiry Date);
- (d) payable at an office of the issuer in Perth; and
- (e) in a form acceptable to the Principal.

### **31.3 Demands under Bank Guarantee**

The Principal must not make a demand under the Bank Guarantee except in accordance with the following:

- (a) the Principal may make a demand under the Bank Guarantee in respect of any amount which the Principal considers:
  - (i) is payable (but which has not been paid) by the Contractor to the Principal under, or as a result of a breach of, this Contract; or
  - (ii) the Contractor will become liable to pay to the Principal under, or as a result of a breach of, this Contract if a contingency occurs and that contingency is unlikely to occur until after the date the Principal is obliged to return the Bank Guarantee; and
- (b) the Principal may make a demand in respect of an amount referred to in subclause (a) irrespective of whether the amount is, or the circumstances relating to the amount are:
  - (i) in dispute;
  - (ii) subject to dispute resolution procedures set out in clause 35; or
  - (iii) subject to any court or other proceedings.

### **31.4 Repayment by the Principal**

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

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

### **31.5 Notice of Demand under Bank Guarantee**

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

### **31.6 Guarantee to be Kept in Force**

The Contractor must ensure that the Bank Guarantee is kept in full force and effect until the Guarantee Expiry Date.

### **31.7 Return of Bank Guarantee**

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

- (a) the Guarantee Expiry Date; and
- (b) when the Principal is satisfied that there are no amounts which are or may become payable as contemplated by clause 31.3.

### **31.8 Review of Guarantee Amount**

On each Review Date the Guarantee Amount will be adjusted according to the following formula:

$$\text{GAN} = \text{GAO} \times \text{Indexation Adjustment}$$

Where:

**GAN** means the Guarantee Amount to apply from and after the Review Date.

**GAO** means the Guarantee Amount as set out in clause 31.2.

### **31.9 Contractor to Provide Additional or Substitute Guarantees**

- (a) The Contractor must, within twenty (20) Business Days after any Review Date, provide an additional or substitute Bank Guarantee so as to ensure that the aggregate amount available to be drawn under all Bank Guarantees equals the adjusted Guarantee Amount for the increased Guarantee Amount.
- (b) If at any time prior to the Guarantee Expiry Date, the amount available to be drawn under the Bank Guarantee (or if there is more than one Bank Guarantee, the aggregate amounts available to be drawn under all Bank Guarantees) is less than the Guarantee Amount as at that time the Contractor must within twenty (20) Business Days procure the issue to the Principal of an additional or substitute guarantee so as to ensure that the aggregate amounts available to be drawn under all Bank Guarantees equals the Guarantee Amount at that time.
- (c) If at any time prior to the Guarantee Expiry Date the credit rating of the issuer of any Bank Guarantee is downgraded, the Contractor must notify the Principal and the Principal may notify the Contractor that it requires the Contractor to procure a replacement of that Bank Guarantee from a bank or insurance company approved by the Principal and the Contractor must comply with that requirement within twenty (20) Business Days after the Principal's notification.
- (d) The provisions of clause 31.2(b), 31.2(c), 31.2(d) and 31.2(e) will apply to the additional or substitute Bank Guarantee provided in accordance with subclauses (a), (b) or (c).

### **31.10 Failure to provide Substitute or Additional Bank Guarantees**

The Principal may make a demand under any Bank Guarantee if a Bank Guarantee is not provided to the Principal in accordance with clause 31.9, in the amount of the face value of the Bank Guarantee which is required to be provided under clause 31.9.

### **31.11 No Right to Injunct**

Even where the Contractor disputes the Principal's right to payment, the Contractor covenants with the Principal that the Contractor will not institute any proceedings, or exercise any right or take any steps to injunct or otherwise restrain:

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

### **31.12 Survival of this clause 31**

This clause 31 survives termination of this Contract.

## **32. Risk, Indemnities and Limitation of Liability**

### **32.1 Assumption of Risk by Contractor**

Except as otherwise provided in this Contract, the Contractor operates, maintains and occupies the Facility, and provides the Services, at its own risk.

### **32.2 Indemnity**

- (a) The Contractor indemnifies and will keep indemnified the Principal and the Principal's Associates (Indemnified Persons) against any Liability incurred in connection with any:
  - (i) breach by the Contractor of this Contract, or
  - (ii) tortious act or omission of the Contractor or the Contractor's Employees, or
  - (iii) strict liability attaching to acts or omissions of the Contractor or the Contractor's Employees, or
  - (iv) unlawful acts or omissions of the Contractor or the Contractor's Employees, or
  - (v) deliberate acts or omissions of the Contractor or the Contractor's Employees carried out with wilful disregard for the consequences,

provided that the Contractor's Liability will be reduced to the extent that any Liability arises due to:

- (i) a tortious act or omission of Indemnified Persons; or
  - (ii) a breach by the Principal of this Contract.
- (b) The Principal and the Principal's Associates must use reasonable endeavours to mitigate the Losses that may be incurred or sustained by each of them respectively for which they are indemnified under this clause 32.2.
- (c) This indemnity will not exclude any other right of the Principal or the Principal's Associates to be indemnified by the Contractor.

### **32.3 Duration of Indemnities**

All indemnities in this Contract, including the indemnities in this clause 32, survive seven (7) years after the expiry or termination of this Contract.

### **32.4 Lost Property**

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

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

### **32.5 Liability of Officers, Employees and Agents**

Every:

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

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

### **32.6 Principal Trustee**

For the purposes of clause 32.5, the Principal will be treated as acting as agent or trustee on behalf of or for the benefit of the Principal's Associates.

### **32.7 Limitation of Liability**

- (a) General limitation of liability – subject to clause 32.7(c), the total maximum aggregate liability of one party to the other party under this Contract is the greater of:
  - (i) \$25,000,000; and
  - (ii) the sum of the fees paid by the Principal to the Contractor in an Operating Year during the term. Where the amount paid by the Principal varies between Operating Years, the sum for the purposes of this subclause will be the highest sum paid in an Operating Year during the term.

- (b) No liability for indirect loss – subject to clause 32.7(c), no party will have any liability to the other party or any other person for any Loss or liability arising from any claim whether in tort, contract or otherwise, in respect of loss of profit, income, business opportunity, goodwill or reputation, and any other loss or liability which would fall within the second limb of losses referred to in *Hadley v Baxendale* (1854) 9 Ex 341.
- (c) Exclusions to limitation of liability – the limitations of liability in clauses 32.7(a) and clause 32.7(b) do not apply to Loss in the following areas:
  - (i) any statutory fine levied against a party arising from any breach of Law by the other party;
  - (ii) (ii) personal injury, sickness or death;
  - (iii) (iii) damage to property;
  - (iv) (iv) criminal acts of, fraudulent acts or omissions of, and fraudulent misrepresentation by, a party;
  - (v) (v) wrongful acts committed by a party with a reckless indifference to the consequences;
  - (vi) (vi) wilful and intentional default by a party;
  - (vii) (vii) the abandonment of this Contract by the Contractor;
  - (viii) (viii) matters that cannot be excluded at Law;
  - (ix) (ix) a breach of confidentiality or privacy;
  - (x) (x) infringement of Intellectual Property Rights;
  - (xi) (xi) exemplary or punitive damages;
- (d) Losses reduced proportionately – the liability of a party ("1st Party") for Loss sustained by the other party ("2nd party") will be reduced proportionately to the extent that such Loss has been caused by the 2nd Party.
- (e) Termination – if at any time during the Term the amount of damages payable by one party ("1st Party") to another party ("2nd Party") exceed the amount payable under clause 32.7(a) then the 2nd Party may terminate the Contract by giving written notice to the 1st Party.
- (f) No limit on Principal's obligation to pay fees - nothing in this clause 32.7 limits the obligation on the Principal to pay any fee or charge properly payable by the Principal under this Contract in respect of Services previously provided in accordance with the Service Requirements.

### **32.8 Civil Liability Act**

Part 1F of the *Civil Liability Act 2002* does not apply to this Contract.

## **33. Force Majeure**

### **33.1 Notice by Force Majeure Party**

If a Force Majeure Party is unable, wholly or in part, by reason of Force Majeure:

- (a) to perform any obligation imposed on, or receive the benefit of any obligation for the benefit of, the Force Majeure Party under this Contract ('the Affected Obligations'); and
- (b) notifies the Non Affected Party that the Force Majeure Party is affected by Force Majeure,

the Affected Obligations will be suspended during, and the time for undertaking the Affected Obligations under this Contract will be extended by, the period:

- (c) from the giving of the notice that the Force Majeure Party is affected by Force Majeure; and
- (d) until the effects of Force Majeure on the Affected Obligations cease.

### **33.2 Notice to Provide Particulars**

The notice claiming Force Majeure must contain:

- (a) the particulars of the Force Majeure; and
- (b) the extent to which the Force Majeure Party is unable to perform or will be delayed in performing, or receiving the benefit of, an obligation under this Contract.

### **33.3 Force Majeure Party will Implement Reasonable Procedures**

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

### **33.4 Force Majeure Party to keep Non Affected Party Advised of Developments**

- (a) Where a Force Majeure Party gives a notice under this clause, the Force Majeure Party must, after the giving of the notice, and during the continuance of the Force Majeure, at least every three (3) Business Days, give further notice to the Non Affected Party of:
  - (i) the extent to which the Force Majeure Party will be unable to perform, or be delayed in performing, or receive the benefit of, the obligations of the Force Majeure Party; and
  - (ii) any significant changes in relation to the Force Majeure since the Force Majeure Party gave its last notice to the Non Affected Party.
- (b) The Principal may require the Contractor to give notice under subclause (a) at periods of less than three (3) Business Days.
- (c) The Contractor must comply with any request made under subclause (b).

### **33.5 Reduction in Monthly Services Payment**

- (a) If the Force Majeure results in a reduction of Services provided under this Contract, the Monthly Services Payment will be reduced by agreement between the parties to reflect the reduction in the Services.
- (b) If agreement cannot be reached as to the reduction in the Monthly Services Payment, the provisions of clause 35 will apply.



### **33.6 Termination**

If a party is prevented from performing its, or receiving the benefit of the other party's, obligations under this Contract in whole or part by Force Majeure for a period in excess of twenty (20) Business Days then either party may by notice in writing to the other party terminate this Contract.

## **34. Confidential Information**

### **34.1 Contractor's Obligations of Confidentiality**

Subject to clause 34.3, the Contractor must keep the Confidential Information confidential, and must not without the Principal's prior written consent:

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

### **34.2 Principal's System**

The Parties agree that:

- (a) the information stored on the Principal's System forms part of the Confidential Information; and
- (b) the requirements of this clause 34 apply to all information stored on the Principal's System.

### **34.3 Permitted Disclosure**

The Contractor may disclose Confidential Information:

- (a) which is at the time lawfully in the possession of the proposed recipient of the information through sources other than the Contractor, or an Affiliate of the Contractor;
- (b) in enforcing this Contract or in a proceeding arising out of or in connection with this Contract;
- (c) in order to comply with any applicable Legislative Requirements or the applicable rules of any stock exchange on which the Contractor's or Guarantor's shares may be listed;
- (d) as required or permitted by this Contract;

- (e) to its legal advisers for the purposes of this Contract or for the purposes of advising the Contractor in relation to this Contract; or
- (f) with the prior written consent of the Principal.

#### **34.4 Third Parties**

The Contractor undertakes and warrants that any person to whom Confidential Information is made available, communicated or disclosed as permitted under this clause, will be subject to, and maintain, the obligations of confidentiality contained in this clause 34.

#### **34.5 Compulsory Disclosure**

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

#### **34.6 Media Releases**

The Contractor must:

- (a) obtain the Principal's prior written consent to:
  - (i) issue any information, document or article in respect of the Services, the Facility or this Contract for publication in any media; or
  - (ii) nominate the Facility or the Services for any award;
- (b) give due recognition to the Principal where the Principal consents to a matter specified in subclause (a); and
- (c) refer all enquiries from any media concerning the Facility, the Services or this Contract to the Principal, and thereafter, promptly provide to the Principal details of all enquiries, and any material or information released by the Contractor following the Principal's consent.

#### **34.7 Public Documents**

- (a) The Contractor acknowledges that the Principal is obliged under the *Prisons Act 1981* to lay before each House of Parliament:
  - (i) certain reports concerning the operations of the Contractor, the Services, the Facility and this Contract; and
  - (ii) this Contract and any amendments to this Contract.
- (b) Nothing in this Contract prevents or restricts the Principal from complying fully with its obligations under the *Prisons Act 1981*.
- (c) The Contractor further acknowledges that this Contract and any amendment to this Contract will become public documents.

## **34.8 Continuing Obligation**

This clause 34 will survive the termination of this Contract.

## **35. Dispute Resolution**

### **35.1 Negotiation by Contract Manager and Contractor's Representative**

If either party notifies the other party of a dispute between the parties relating to or arising out of this Contract, then within ten (10) Business Days of the date of the dispute notice, the Contract Manager and the Contractor's Representative must meet and must use reasonable endeavours, acting in good faith, to resolve the dispute by joint discussions.

### **35.2 Negotiation by Senior Representatives of the Parties**

If the dispute is not settled under clause 35.1 within fifteen (15) Business Days after the date of the dispute notice then, within twenty (20) Business Days after the date of the dispute notice the Director, Contracted Services, or person occupying an equivalent position within the Principal, and a senior executive of the Contractor must meet and must use reasonable endeavours, acting in good faith, to resolve the dispute by joint discussions.

### **35.3 Referral to Custodial Contracts Management Board**

If the dispute is not settled under clause 35.2 within twenty five (25) Business Days after the date of the dispute notice then the parties must refer the dispute to the Custodial Contracts Management Board, which must use reasonable endeavours, acting in good faith, to resolve the dispute.

### **35.4 No Effect on Available Rights and Remedies**

Clauses 35.1 to 35.3 do not:

- (a) prevent either party applying to a court at any stage for injunctive or other relief; or
- (b) apply to any dispute which is required under this Contract to be referred to a third party.

### **35.5 Contractor must Continue to Perform Services**

The Contractor must continue to perform the Services and comply with the Contractor's Obligations, notwithstanding any Dispute, except for any obligations that cannot be performed because of the Dispute.

## **36. Dealing with Agreement and Change in Control**

### **36.1 Contractor may not deal with Contract**

The Contractor may not Deal With:

- (a) this Contract;

- (b) the Contractor's interest under this Contract;
  - (c) the right to any money or payment under this Contract;
  - (d) any other interest under this Contract;
  - (e) the Facility, the Site or any part of it; or
  - (f) any of the Contractor Resources if such a Dealing could affect the Contractor's ability to provide the Services in accordance with, or to comply with the Contractor's Obligations,
- without the Principal's prior written consent.

### **36.2 Principal may Deal With Contract**

The Principal may at any time, without the consent of the Contractor, deal with:

- (a) this Contract;
  - (b) any payment or any right to receive payment under this Contract; or
  - (c) any other right, benefit or interest of the Principal under this Contract,
- to another Government Agency. The Contractor must, on the Principal's request, do everything reasonably necessary to give effect to any Dealing by the Principal, including the execution of documentation.

### **36.3 Notice of Change in Control**

Without derogating from the Principal's rights under clause 26.1, the Contractor must give notice to the Principal immediately the Contractor becomes aware of a Change of Control, of:

- (a) the Contractor;
- (b) the Guarantor; or
- (c) any Subcontractor.

## **37. Subcontracting and Third Party Services**

### **37.1 Prohibition on Subcontracting all of the Services**

The Contractor may not subcontract any part of the Services described in subclauses (a) and (b) of the definition of Services in clause 1.1 except in accordance with the requirements of this clause 37.

### **37.2 Permitted Subcontracting**

- (a) Subject to subclause (b), the Contractor must obtain the Principal's prior consent to enter into any Subcontracts.
- (b) The Contractor may not subcontract the whole of the Services.

### **37.3 Application for Consent to Subcontractors**

In seeking approval of a proposed Subcontract, the Contractor must clearly specify in writing:

- (a) the specific components of the Services that the Contractor proposes to Subcontract;
- (b) the scope of the proposed Subcontract; and
- (c) the identity, background and qualifications of the proposed Subcontractor and any other information required for a fit and proper person check.

### **37.4 Conditions for Subcontractors**

Unless the Principal otherwise approves, all Subcontracts must:

- (a) contain requirements that the Subcontractor must:
  - (i) have established, and maintain, an occupational health and safety policy and plan approved by the Principal;
  - (ii) as a minimum, pay all the Subcontractor's employees the rates and allowances set out in applicable Industrial Instruments; and
  - (iii) have appointed, and use, in performing any Services, persons who possess appropriate skill, expertise and qualifications to meet the requirements of this Contract;
- (b) contain an acknowledgment of the Principal's rights of intervention, suspension and termination in terms substantially equivalent to clause 28; and
- (c) provide that if this Contract is terminated the Contractor's rights, benefits, obligations and liabilities under the Subcontract may be novated to the Principal, or to a person nominated by the Principal on terms acceptable to the Principal.

### **37.5 Principal's Approval of Subcontract**

The Principal may:

- (a) approve or disapprove any proposed Subcontract in the Principal's discretion and may attach conditions of approval;
- (b) in approving a proposed Subcontract under subclause (a), notify the Contractor if it considers the Subcontractor to be material (Material Subcontractor) in terms of the nature of the services the Subcontractor provides under the Subcontract or the monetary value of the Subcontract; and
- (c) at any time during the Operating Period, withdraw approval of any Subcontract if:
  - (i) the Subcontractor's performance under the Subcontract is deficient;
  - (ii) material misrepresentations were made to the Principal by the Contractor or by the Subcontractor in relation to the Subcontract;

- (iii) the Principal so determines on the basis of any other disputes or unsatisfactory dealings with the Subcontractor; or
- (iv) the Principal has any other reasonable cause for doing so.

### **37.6 Information Requirements**

The Contractor must:

- (a) provide to the Principal a copy of the Subcontract after it has been executed;
- (b) keep the Principal informed in relation any material issues that may arise in relation to the Subcontract and its performance;
- (c) maintain an audit trail of processes undertaken to identify and select Subcontractors; and
- (d) ensure that each Subcontractor undergoes security screening and movement control and maintain, and give the Principal access to, records of the security screening and movement control in accordance with clause 22.

### **37.7 Contractor's Liability Not Affected**

If the Contractor enters into a Subcontract, the Contractor:

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

### **37.8 Liability for Subcontractors**

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

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

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

### **37.9 No Contractual Relationship with Subcontractors**

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

### **37.10 Third Party Services and Supplies**

- (a) Where any services or supplies are provided to the Contractor by a third party, including by an Affiliate of the Contractor, which are necessary for the ongoing continuity of the Services or for the operation, management or security of the Facility, but which are not themselves Services as contemplated in this Contract, the Contractor must:
  - (i) ensure that all the relevant arrangements relating to the provision of those services or supplies, including the nature and scope of the services or supplies and the terms and conditions applicable to their provision, are contractually documented;
  - (ii) advise the Principal of the matters contemplated in subclause (i) as soon as reasonably practicable after any arrangements are entered into and provide to the Principal copies of all executed contractual documents and all other relevant documents;
  - (iii) advise the Principal of any material variations to any of the matters in subclause (i) and provide to the Principal copies of all variation documents as soon as reasonably practicable after those variations are agreed; and
  - (iv) ensure that the Contract Manager is informed as soon as reasonably practicable as to any matters that arise in the course of the provision of those services or supplies that may have a significant impact on any aspect of the provision of Services in accordance with the terms of this Contract.
- (b) Subclause (e) is without prejudice to the operation of this clause 37 in relation to any Subcontract in respect of any part of the Services.

## **38. Representations and Warranties**

### **38.1 Representations and Warranties**

The Contractor represents and warrants to the Principal that:

- (a) authority: the Contractor has full power and authority to enter into this Contract, provide the Services and perform the Contractor's Obligations;
- (b) authorisations: the Contractor has taken all necessary action to authorise the execution, delivery and performance of this Contract in accordance with its terms;
- (c) transaction permitted: the execution, delivery and performance by the Contractor of this Contract do not and will not violate:
  - (i) any law, regulation, authorisation, Government Authorisation, ruling, consent, judgment, order or decree of any Government Agency;
  - (ii) its constitution or other constituent documents; or
  - (iii) any Encumbrance or document that is binding on the Contractor or any of the Contractor's assets,

and does not and will not result in:

- (iv) the creation or imposition of any Encumbrance, or restriction of any nature, on any of the Contractor's assets; or
  - (v) the acceleration of the date of payment of any obligation existing under any Encumbrance, or document that is binding upon the Contractor;
- (d) Government Authorisation: the Contractor has in full force and effect every Government Authorisation necessary to enter into this Contract, provide the Services, perform the Contractor's Obligations and to permit this Contract to be enforced;
- (e) binding obligations: this Contract and the Parent Guarantee constitute legal, valid and binding obligations and, subject to any necessary stamping and registration, are enforceable in accordance with their terms, subject to laws generally affecting creditors' rights, and to principles of equity;
- (f) statements in Contractor's Proposal: all statements, representations and information contained in the Contractor's Proposal are true and accurate, and not misleading;
- (g) own enquiries: in entering into this Contract, the Contractor has relied entirely on its own enquiries, inspections and investigations relating to this Contract, the Services and the Facility and the Contractor has:
- (i) examined all information relevant to the risks, contingencies and other circumstances that could affect the Contractor's Obligations, and that the Contractor could have obtained by making usual and reasonable inquiries;
  - (ii) visited and examined the Site and its surroundings and done everything possible to inform itself fully as to any condition or characteristic of the Site affecting or that may affect the Contractor's performance of the Services;
  - (iii) fully considered all actual and potential risks, contingencies and other circumstances which could have an effect on the cost of performing the Services;
  - (iv) informed itself completely of the nature and extent of the work and Contractor Resources necessary to perform the Services;
  - (v) informed itself as to the availability and cost of:
    - (A) labour in respect of Contract Workers, including the cost of complying with obligations imposed by any Industrial Instrument; and
    - (B) of any materials or other goods or plant and equipment required as part of the Contractor Resources;
  - (vi) informed itself of the requirements of every applicable Act and in relation to the Facility and, in relation to measures necessary to protect the Environment from any adverse effect or damage arising from performance of the Services; and
  - (vii) obtained all appropriate professional and technical advice on all matters and circumstances in respect of the matters referred to in this clause, prior to entering into this Contract;



- (h) no inducements: the Contractor was not induced to enter into this Contract by, and has not relied on:
  - (i) any statements, representations or warranties, whether orally or in writing, or contained in any brochures, expression of interest, tender or request for proposal documents provided by the Principal or the Principal's Associates including any statements, representations, or warranties relating to or in any way connected with this Contract, the Services or the Facility, or about any financial return or income to be derived from the Services or this Contract; or
  - (ii) any information or data made available or provided by the Principal or the Principal's Associates to the Contractor as to the Facility or the Site;
- (i) no collusive arrangements:
  - (i) the Contractor had no knowledge of the price of any other proponent for the Services at the time the Contractor submitted the Contractor's Proposal;
  - (ii) (except as disclosed in the Contractor's Proposal, the Contractor has not entered into any contract, agreement, arrangement or understanding to pay or allow any money, directly or indirectly, to or on behalf of any other proponent, in relation to the Contractor's Proposal or any contract to be entered into consequent thereon, nor paid or allowed any money on that account, nor will the Contractor pay or allow any money on that account;
  - (iii) the Contractor has not paid or allowed or entered into any contract, agreement, arrangement or understanding to pay or allow any money, directly or indirectly:
    - (A) to or on behalf of any other proponent; nor
    - (B) received any money or allowance from or on behalf of any other proponent in relation to the Contractor's Proposal or any contract entered into consequent thereon, nor will the Contractor pay or allow any person to receive any money on that account; and
  - (iv) if the Contractor paid or allowed to another proponent any money in breach of these conditions:
    - (A) the Contractor must hold that money on trust for, and immediately pay that money to the Principal; and
    - (B) the Principal may withhold from any payment due to the Contractor on any account an equivalent sum as liquidated damages;
- (j) ownership of Contractor Resources: the Contractor is the beneficial owner of, and has good title to the Contractor Resources;
- (k) fitness of Contractor Resources: any Contractor Resources used, or that will be used, by the Contractor in performing the Services are and will be:
  - (i) of good and merchantable quality; and
  - (ii) fit in all respects for the purposes for which they are to be used;

- (l) no conflict: the Contractor has no professional or contractual obligations that as at the Commencement Date, or during the Operating Period, will conflict with the performance of the Services;
- (m) no trustee: the Contractor is not entering this Contract as the trustee of any trust or for and on behalf of any other person.

### **38.2 Principal's Reliance on Contractor's Representations and Warranties**

The Contractor acknowledges that in entering into this Contract the Principal is relying on:

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

### **38.3 Continuation, Repetition and Survival of Contractor's Representations and Warranties**

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

- (a) will remain unaffected despite any review, comment, approval or direction by the Principal or any of the Principal's Associates;
- (b) survive the execution of this Contract and the expiry of the Operating Period;
- (c) are regarded as repeated on each day during the Operating Period with respect to the facts and circumstances then subsisting; and
- (d) are independent, and are not limited by reference to any other warranties in this Contract.

### **38.4 Principal's Representations and Warranties**

The Principal represents and warrants that:

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

### **38.5 No other Representations or Warranties by Principal**

The Contractor acknowledges that, except for:

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

the Principal gives no warranties regarding:

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

## **39. Probity Investigation**

### **39.1 Principal's Inquiries**

- (a) The Principal may, at any time, make any inquiries of the Contractor in relation to any issue or matter which may constitute a Probity Event, by giving the Contractor a notice setting out those issues or matters.
- (b) The Contractor must, within twenty (20) Business Days of receipt of a notice under clause 39.1(a) provide full details of the matters or issues requested by the Principal.
- (c) If the information provided by the Contractor leads the Principal to believe on reasonable grounds that a Probity Event has occurred, then clause 39.2 shall apply.

### **39.2 Notification of a Probity Event**

If a Probity Event occurs, the Contractor or the Principal (as the case may be) must notify the other party that they consider a Probity Event has occurred. Such notice must describe the circumstances giving rise to the possible occurrence of the Probity Event.

### **39.3 Action by the Contractor**

- (a) Within three (3) Business Days of receipt of a notice under clause 39.2, the Parties must meet in good faith and discuss the occurrence of such an event and endeavour to agree on the actions to be taken by the Contractor to resolve such Probity Event.

- (b) If the Parties are unable to reach agreement under clause 39.3(a) within five (5) Business Days of meeting or the Contractor fails to meet with the Principal in accordance with clause 39.3(a), then the Principal may serve a further notice on the Contractor setting out the action that the Principal reasonably required the Contractor to take to address the adverse effects of the Probity Event and the time within which such action must be taken including any or all of the following:
  - (i) terminating any contract, Subcontract or contract of employment;
  - (ii) subject to this Contract, procuring that a person cease to have shares, entitlements, contracts, arrangements, significant influence, power of control over the Contractor; or
  - (iii) removing that person from any involvement with the delivery of the Services under this Contract.
- (c) If the Parties agree on a course of action pursuant to clause 39.3(a), then the Contractor must ensure that the actions to be taken by the Contractor, or other Parties as the case may be, are taken within one month of such agreement.

#### **40. Lobbyists**

The Contractor warrants and represents to the Principal that any "Lobbyist" (as that term is defined in Public Sector Commissioner's Circular 2009-13 *Contact with Lobbyists Code and the Register of Lobbyists*) which can be found at:

<http://www.publicsector.wa.gov.au/AgencyResponsibilities/PSMRequirements/Pages/Circulars.aspx>

that it or any of its officers, employees, agents or sub-contractors has employed, engaged or has otherwise involved, directly or indirectly, in connection with this Contract, is duly registered as a "Lobbyist" in terms of that Public Sector Commissioner's Circular and has fully complied with its obligations under it.

#### **41. Privacy**

- (a) The Contractor agrees to comply with its obligations (if any) under or arising pursuant to the *Privacy Act 1988* (Cth) to the extent relevant to this Contract.
- (b) The Contractor also agrees to comply with:
  - (i) such other Commonwealth, State or Territory legislation related to privacy which is relevant to this Contract;
  - (ii) any directions made by a Privacy Commissioner relevant to this Contract;
  - (iii) any other reasonable direction relating to privacy which is given by the Principal.
- (c) If the Contractor is exempt from compliance with the *Privacy Act 1988* (Cth) because its annual turnover is less than the prescribed threshold, and if the Contractor is not subject to an approved privacy code, the Contractor must comply with the National Privacy Principles set out in the *Privacy Act 1988* (Cth) as if it were required to comply with that legislation.

## **42. Auditor General**

The powers and duties of the Auditor General are not limited or otherwise affected by the terms and conditions of this Contract.

The Contractor must allow the Auditor General, or an authorised representative of the Auditor General, to have access to and examine the Contractor's Records concerning this Contract.

## **43. Contractor's Relationship with the Principal**

### **43.1 Independent Contractor**

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

### **43.2 Relationship**

The relationship between the Principal and the Contractor is that of principal and independent contractor, and nothing in this Contract is to be taken as constituting the Contractor or any Contract Workers as employees or agents of the Principal or the Principal's Associates.

### **43.3 No Agency**

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

### **43.4 No Employment**

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

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

#### **43.5 Contrary Legislative Requirement**

Clause 43.4 and each other provision of this Contract is subject to any contrary Legislative Requirement.

### **44. Protection of the Interests of Principal's and Principal's Associates**

#### **44.1 Reputation**

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

#### **44.2 Conflict of Interest**

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

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

#### **44.3 Good Faith**

The Contractor will exercise a duty of good faith to the Principal and the Principal's Associates in the provision and performance of the Services and in complying with the Contractor's Obligations.

#### **44.4 No Association**

The Contractor must not:

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

without obtaining the Principal's prior written consent.

#### **44.5 Provisions of any Permitted Association**

The Contractor acknowledges that the Principal may stipulate provisions in relation to the Principal's consent to any proposal or action by the Contractor by which the Contractor may benefit from association or connection with the Principal, including a condition requiring the payment of remuneration to the Principal on provisions to be agreed.

#### **44.6 Corrupt Gifts and Payments of Commission**

(a) The Contractor must not:

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

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

- (b) Any breach of this clause by the Contractor or any Contract Worker (whether with or without the knowledge of the Contractor) or the commission of any criminal offence by the Contractor, or by any Contract Worker while the Contract Worker is at the Facility, will entitle the Principal to terminate this Contract immediately by service of a notice on the Contractor specifying the reason for termination.

#### **45. Notices**

Every notice:

- (a) must be in writing and given in accordance with the following details, and where more than one person is specified under the details of a party, then to every person at the address;
- (b) must be signed by:
  - (i) in the case of the Contractor – the Contractor's Representative; and
  - (ii) in the case of the Principal - the Contract Manager; and
- (c) will be treated as having been given by the sender and received by or served on the addressee:
  - (i) if by delivery in person - when delivered to the addressee;

- (ii) if posted by registered post within Australia to an address within Australia on the day which is the third Business Day after the date of posting;
- (iii) if posted by air mail registered post from a place within Australia to an address outside Australia or posted from a place outside Australia to an address within Australia on the day which is the eighth Business Day after the date of posting; or
- (iv) if by facsimile transmission - on the date of transmission where a transmission report is produced by the facsimile machine by which the facsimile message was transmitted which indicates that the facsimile message was transmitted in its entirety to the facsimile number of the recipient. If the transmission is on a day which is not a Business Day, or is after 4.00 pm (addressee's time), it will be treated as having been duly given on the succeeding Business Day.

## **46. General**

### **46.1 Costs**

- (a) Unless otherwise stated, the Contractor must provide the Services and comply with the Contractor's Obligations at the Contractor's cost.
- (b) The Principal and the Contractor must each pay their own legal and other costs in connection with the preparation and signing of this Contract.

### **46.2 Stamp Duty**

The Contractor is solely responsible for, and must indemnify the Principal against, any stamp duty that is payable on or in relation to:

- (a) this Contract; and
- (b) any instrument or transaction that this document contemplates.

### **46.3 Approvals, Consents, Determinations or Waivers**

Subject to any express provision of this Contract, where any approval, consent, determination or waiver is required from or to be made by the Principal:

- (a) the Contractor must obtain that approval, consent, determination or waiver in writing; and
- (b) the Principal may:
  - (i) grant or refuse that approval or consent, make that determination or waiver, in the Principal's absolute discretion, without giving any reason for that grant or refusal or making; and
  - (ii) grant that approval or consent, or make that determination or waiver, subject to any conditions the Principal may impose.



#### **46.4 Authority to Date**

The Principal, and any employee or solicitor acting for the Principal, may date this Contract.

#### **46.5 Enforcement of Indemnity**

A party need not incur expense or make payment before enforcing a right of indemnity conferred by this Contract.

#### **46.6 Ensure Compliance by Others**

Where a provision of this Contract requires the Contractor to do a thing or prohibits the Contractor from doing a thing, or imposes on a Contract Worker any obligation, the Contractor must ensure that the Contract Workers, the Subcontractors and others over whom the Contractor exercises control comply with that provision or obligation.

#### **46.7 Entire Contract**

This Contract constitutes the entire agreement between the parties and supersedes any prior agreement between the parties.

#### **46.8 Exercise of Powers**

- (a) A party may exercise a Power at that party's discretion, and separately or concurrently with any other Power.
- (b) A single exercise of a Power, by a party does not prevent a further exercise of that, or of any other Power, by that party.
- (c) If a party fails to exercise, or delays in exercising, a Power, that does not prevent its exercise.
- (d) Subject to any express provision in this Contract, the Powers of a party under this Contract are cumulative, and are in addition to any other Powers of that party.

#### **46.9 Further Assurances**

Each party will promptly, at that party's expense, do any thing that the other party reasonably requires to effect, perfect or complete the provisions of this Contract.

#### **46.10 Governing Law**

- (a) This Contract is governed by the laws of Western Australia.
- (b) Each of the parties irrevocably submits to the exclusive jurisdiction of the courts of Western Australia.

#### **46.11 Prohibition, Enforceability and Severance**

- (a) Any provision of, or the application of any provision of, this Contract or any Power of a Party under this Contract which is prohibited in any jurisdiction or fetters or affects any statutory power is ineffective only to the extent of that prohibition or to the extent it fetters or affects any statutory power.
- (b) If any part of this Contract is, or becomes, illegal, void or unenforceable, that part is or will be severed from this Contract so that all parts that are not, or do not become, illegal, void or unenforceable remain in full force and effect and are unaffected by that severance.

#### **46.12 Statutory Powers**

Nothing contained in or implied by this Contract has the effect of constraining, or placing any fetter on, any person, in exercising any such power and, except to the extent inconsistent with this Contract or permitted by law, Statutory Powers are cumulative and are in addition to, or in augmentation of, the Powers contained in this Contract.

#### **46.13 Survival**

Nothing will release the Contractor from any of the Contractor's Obligations that are expressed to survive, or by their nature, survive completion of the Services or the termination of this Contract, including all warranties and obligations of indemnity or confidentiality.

#### **46.14 Variation and Waiver**

- (a) A provision of, or right created under, this Contract may not be:
  - (i) waived except in writing signed by the Party granting the waiver; or
  - (ii) varied except by an instrument in writing signed by the parties, unless it is a variation of a Service made by the Principal in accordance with clause 25.
- (b) The waiver by a Party of a breach by another Party of any provision of this Contract, does not operate as a waiver of another or continuing breach by that Party of the same, or any other, provision of this Contract.

#### **46.15 Counterparts**

- (a) This Contract may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this Contract by signing any counterpart.

#### **46.16 Attorneys**

Each attorney who executes this Contract acknowledges that, at the time of executing this Contract, the attorney has received no notice of revocation of the power of attorney under which the attorney executes this Contract.

#### **47. Information Technology**

The Contractor must maintain information and communications technology software and infrastructure for the Services ("Contractor's System") that has the capacity to undertake all functions necessary for the performance of the Contractor's obligations under this Contract. This excludes any information and communications technology software and infrastructure provided by the Principal ("Principal's Resources" and/or "Principal's Systems").

- (a) The Contractor must comply with the Principal's instructions regarding the exchange of electronic information to and from the Contractor and the Principal including any instructions regarding file specifications and encryption.
- (b) The Contractor must keep current the Contractor's System, which must be based upon equipment and software that is currently available in the information and communications technology market and is supported by the manufacturer or its agents of such equipment and software.

In particular:

- (i) the Contractor must maintain suitable telecommunications and Internet based technologies to enable the secure and reliable exchange of data;
  - (ii) the Contractor must maintain suitable firewall technologies used to protect against intrusion, attacks and loss or theft of Information; and
  - (iii) where the Contractor's System involves dial-up access, the Contractor must maintain suitable protection to separate the dial-up infrastructure from the technical infrastructure that is used to host data.
- (c) The Contractor must maintain a suitable environment for the Contractor's System and the Principal's Resources in accordance with applicable elements of AS2834:1995 for Computer Accommodation. The Contractor must maintain an environment which, at minimum, complies with the following provisions of AS2834:1995:
- (i) maintenance of an operating temperature range between 18C and 26C and operating relative humidity range between 40% and 60% humidity;
  - (ii) maintenance of power quality requirements including power surge protection systems that protect against voltage disturbances; and
  - (iii) maintenance of stand-by and emergency power backup systems/Uninterruptible Power Supply.

- (d) The Contractor must prepare backup copies of data every 24 hours and retain backup copies for a minimum of twenty (20) Business Days.
- (e) The Contractor must store backup copies at a secure location offsite to the Contractor's main processing location and the Contractor must advise the Principal of the current address together with a description of the offsite location.
- (f) The Contractor must prepare and retain end of month backup copies of Information for a period of twelve (12) months.
- (g) The Principal reserves the right to request the Contractor to amend its information storage and backup procedures from time to time by notice in writing to the Contractor.
- (h) The Contractor must maintain the Contractor's System in proper working order.
- (i) The Contractor must promptly notify the Principal of any material failure, fault or downtime in the Contractor's System.
- (j) The Contractor must promptly reconstruct data which is lost or destroyed as a result of any failure, fault or downtime of the Contractor's System at the Contractor's cost.
- (k) In the event of complete or material failure for more than five (5) Business Days of the Contractor's System, the Contractor must implement the Disaster Recovery Plan to continue business operations within five (5) Business Days from the date of the disaster occurring.
- (l) The Contractor acknowledges that the Principal may make changes to their information technology system which may require changes to the Contractor's System. In the event that the Contractor's System requires changes, the Contractor must:
  - (i) bear all costs arising from such changes; and
  - (ii) ensure that after such changes, the Contractor's System continues to satisfy the requirements of this Contract.
- (m) To the extent to which the Contractor has, or ought reasonably to have knowledge, the Contractor warrants that programs used on the Contractor's System are free of inaccuracies, defects or errors.
- (n) The Contractor must maintain up-to-date anti-virus software and ensure that virus updates are updated on a daily basis.
- (o) The Contractor must ensure that all data transmitted to the Principal using e-mail, exchange of disks or any other method of electronic transfer must be scanned for computer viruses prior to being dispatched to the Principal using fully current virus checking software and if any virus is detected, the Contractor must remove all viruses.
- (p) The Contractor must comply with the data exchange procedures as determined by the Principal from time to time.

- (q) Notwithstanding any disclaimer which may be made by the Contractor in respect of viruses, the Contractor agrees to pay on full indemnity basis any costs incurred by the Principal, arising from, or in connection with, any virus transmitted by the Contractor.
- (r) No data may be transmitted outside of Australia without the Principal's prior written consent.
- (s) The Principal shall have unrestricted access to any data centre facilities comprising hardware that stores the Principal's data or information and/or media which stores the Principal's data or information. If the Contractor is not the owner of the data centre facilities, or is not the party that stores the media, then the Contractor must ensure access by means of a tripartite agreement between the Contractor, the lessor/sub-lessor (or other relevant party) and the Principal. All such tripartite agreements must be in place one (1) month prior to Services Commencement or prior to the Contractor receiving any data from the Principal, whichever is sooner. Any such tripartite agreements must be in a form acceptable to the Principal

#### **48. Change of Law**

- (a) As soon as the Contractor is aware of a Change of Law that may result in a Change of Law Variation, (and prior to the Change of Law taking effect if a skilled, diligent and experienced contractor engaged in similar undertakings as the Contractor in Australia would be aware of the Change of Law prior to it taking effect), the Contractor must promptly give to the Principal a Change of Law Notice.
- (b) A Change of Law Notice must be in writing and set out:
  - (i) full details of the Change of Law and the possible Change of Law Variation;
  - (ii) any change in the cost of providing the Services that may result in performing the Change of Law Variation, including the Monthly Service Payment; and
  - (iii) the obligations under this Contract that the Contractor would not be able to comply with (if any) if the Contractor did not give effect to the Change of Law Variation (including any part of the Contractor's Obligations or the Services which would be prohibited as a consequence of the Change of Law).
- (c) On receipt of a Change of Law Notice, and without limiting the Contractor's obligation to comply with all Laws, the Principal may, subject to subclause (d), by notice to the Contractor, advise the Contractor as to its preferred method for the Contractor to address the Change of Law (which may or may not implement the Change of Law Variation). The effect of the Principal's advice will be determined as if it were a Variation Order under clause 25.
- (d) If the Principal Disputes any aspect of the Change of Law Notice, including that a Change of Law has occurred, the Principal must notify the Contractor and the parties must meet to resolve the Dispute. If the parties have not resolved the Dispute within 10 Business Days of the Principal

notifying the Contractor of the Dispute, either party may refer the Dispute for resolution under clause 35.

- (e) If the Contractor does not agree that implementing the Principal's advice will allow the Contractor to comply with the Law, the Contractor may refer the matter for resolution under clause 35.
- (f) If the Contractor does not follow the Principal's advice or refer the matter for resolution in accordance with clause 35, the limit of the Contractor's entitlement against the Principal arising out of the Change of Law is the amount that the Contractor would have been entitled to recover had the Contractor implemented the Principal's advice given under subclause (c).
- (g) Without limiting any express right in respect of change of law (including a Change of Law) conferred under this Contract, the Contractor's rights in relation to a Change of Law Variation are the Contractor's sole remedy in respect of any change of law (including a Change of Law).

Execution of the Contract - Signed for and on behalf of the:

Principal's representative

Name (print)

~~Jan Jones~~

Position

Commissioner

Signature and date

[Signature] 20 / 3 / 2012

Principal's witness

Name (print)

LOUISE ROWE

Position

MANAGER EXECUTIVE SERVICES

Signature and date

[Signature] 20 / 03 / 2012

Contractor's representative

Name (print)

PAUL MAHONEY

Position

MANAGING DIRECTOR

Signature and date

[Signature] 19 / 3 / 2012

Contractor's witness

Name (print)

PETER MAY

Position

COMMERCIAL DIRECTOR

Signature and date

[Signature] 19 / 3 / 2012

**Schedule 1 – Service Requirements**

The Service Requirements for this Contract DCS0012011 are set out in Schedule 6 - Appendix 1 and the documents therein referenced.



## Schedule 2 – Key Performance Indicators

### 1. Introduction

#### 1.1 This Schedule 2

The Contractor must deliver the Services in accordance with the Contract.

This Schedule 2 sets out the Key Performance Indicators (KPIs) which shall be used to assess the Contractor's performance against its obligations as set out in the Contract and in particular the Service Requirements (Schedule 1) thereto.

#### 1.2 Definitions

The following defined terms apply to this Schedule. Where there is any inconsistency between the definitions in this Schedule and the Contract, the meanings in the Contract shall prevail. Capitalised terms which are not defined below bear the meaning given to those terms in the Contract (including the Schedules thereto).

**Abatement** means a Specified Event Abatement or Performance Linked Abatement.

**Abatement Amount** has the meaning given in the Payment Mechanism Schedule.

**Abatement Regime** means the arrangements, methods and calculations for abating the Monthly Services Payment when the Contractor does not meet the requirements of the Services Requirements or this Contract, as set out in this Schedule (and Abate means the act of applying the Abatement Regime).

**Abatement Waive Period** has the meaning given in section 4.6 of this Schedule.

**Baseline Target(s)** means, with respect to a Performance KPI, the monthly level of service provision as at the Services Commencement Date, determined using historical performance data and as set out in Column E of the Performance Measures Table.

**Customer Satisfaction Survey** means the quarterly measurement of the Contractor's performance through customer satisfaction reviews as described in section 3.5.3 of this Schedule.

**Daily Average Population (DAP)** has the meaning given in the Payment Mechanism Schedule.

**DAP Band** has the meaning given in the Payment Mechanism Schedule.

**Dollar or \$** means the lawful currency of the Commonwealth of Australia.

**Failure** means a non fulfillment by the Contractor to satisfy or achieve a KPI in accordance with and to the standard specified in the Service Requirements and/or this Schedule.

**Incident** has the meaning given in the Service Requirements.

**Innovation Sharing** has the meaning given in section 5 of this Schedule.

**Key Performance Indicator (KPI)** means the measures as set out in this Schedule that shall be used by the Principal during the Operating Period to assess the Contractor's performance against its obligations described in the Contract and in particular the Service Requirements thereto, and to identify opportunities to improve the level of Service delivered. A KPI is classified as either a Specified Event or a Performance KPI.

**Maximum Remedy Period** means the period between the expiry of the Rectification Time and the expiry of the Maximum Remedy Period (as set out in section 4.4.2 of this Schedule) within which a Failure must be remedied without attracting a Failure Multiplier as set out in section 4.5 of this Schedule.

**Multiplication Factor** has the meaning given in section 4.5 of this Schedule.

**Key Performance Indicator Assessment Schedule** means the Schedule 6 Appendix 2 to the Contract that sets out the agreed definitions, mitigation and calculation requirements of each KPI in accordance with section 6 of this Schedule.

**Performance KPI** means a KPI classified as a Performance KPI as set out in section 3.2.2 of this Schedule.

**Performance Improvement Notice (PIN)** means a written notice by the Principal requesting the Contractor to improve its performance of the Services as specified in section 3.4 of this Schedule.

**Performance Linked Abatement** means the amount in dollars of Abatement in respect of a Performance KPI, calculated by reference to the Contractor's achievement of the Progressive Targets and Baseline Targets.

**Performance Measures Table** means the table in section 3.2.2 of this Schedule.

**Progressive Target(s)** means, with respect to a Performance KPI, each of the target levels of service provision for that Performance KPI as set out in Column E of Performance Measures Table of this Schedule.

**Rectification Plan** means the plan that sets out the Contractor's response to a Performance Improvement Notice in accordance with section 3.4 of this Schedule.

**Rectification Time** means the period between the commencement of the Rectification Time and the earlier of:

- the expiry of Rectification Time; or

- the completion of any Temporary Fix agreed in accordance with section 4.3.1 of this Schedule.

The Rectification Times are defined in section 4.3.1 of this Schedule.

**Rectify, Rectified, Rectifying or Rectification** means the Contractor doing all that is required of it in accordance with the Service Requirements and the Contract to remedy a Failure or an Incident, including in order to ensure that the Facility (or any part of it) is fit for intended purpose and the Contractor otherwise meets or exceeds the performance standards set out in the Service Requirements.

**Specified Event** means a KPI classified as a Specified Event as set out in section 3.2.1 of this Schedule.

**Specified Event Abatement** means each amount in dollars of abatement in respect of a Specified Event as set out in Column C of the Specified Events Table.

**Specified Events Table** means the table in section 3.2.1 of this Schedule.

## 2. KPI Monitoring and Reporting

The Contractor shall monitor and report on the delivery of the Services using the method set out in the approved Facility Operating Manual or such other method approved by the Principal. The minimum monitoring methods required for each KPI is set out below:

Monitoring Method	
1	Contractor self-monitoring and reporting as described in the Facility Operating Manual or other appropriate method.
2	Reviews, monitoring and reporting by the Principal, statutory bodies or third party audit.
3	On-site monitoring by the Principal's Monitors. The Contractor must ensure that the Principal and its Monitors have open access to the Facility, all records and activities in the Facility including meeting with staff and committees etc.

### 2.1 Performance assessment

The Principal and the Contractor agree that the Abatement Amount will be assessed and reviewed applying the processes, procedures and counting rules set out in this Schedule, the Key Performance Indicator Assessment Schedule and by reference to:

- (i) data collected and recorded in TOMS and other applicable Principal's Systems;
- (ii) on-site monitoring; and
- (iii) any other processes, information, data, records and reports available to the Principal, or which the Principal may reasonably require the Contractor to provide, from time to time.

### **2.1.1 Records and data integrity**

The Contractor must collect, and record in TOMS, accurate and reliable data in accordance with processes prescribed by the Principal to enable the Principal to assess the Contractor's performance against the KPIs and to calculate the Abatement Amount.

The Contractor must use its own internal measures and audit processes to ensure achievement of the Baseline Targets and Progressive Targets. Such processes should include the analysis of event data so that incident levels and types are monitored, analysed and managed effectively.

### **2.1.2 Cooperation**

The Contractor must cooperate with the Principal, and provide, as soon as practically possible, any information reasonably requested by the Principal, to assist the Principal in verifying the Abatement Amount.

### **2.1.3 Access for verification**

The Contractor must ensure that the Principal has access to the Contractor's data, records, systems and Contractor Employees to enable the Principal to verify the accuracy and integrity of the Contractor's recording and reporting of data for the purposes of assessment of the Contractor's performance and the calculation of the Abatement Amount.

### **2.1.4 System failure**

If as a result of any fault in TOMS or other Principal's Systems (including the Prison Performance and Measures System (**PPMS**)) or a failure to accurately record any relevant information, the Abatement Amount cannot be determined, the Principal may determine the Abatement Amount on the basis of any recorded manual information and other available source(s).

## **2.2 Mitigation**

### **2.2.1 Mitigation Event**

A failure by the Contractor to satisfy or achieve a KPI in accordance with and to the standard specified in the Service Requirements and the Contract, shall be a Failure except to the extent that the:

- (i) Contractor is able to demonstrate to the satisfaction of the Principal that all reasonable actions were taken by the Contractor to prevent the failure/incident from occurring;
- (ii) Contractor is able to demonstrate to the satisfaction of the Principal that the Contractor's actions (or non-actions) did not contribute to the failure/incident occurring;
- (iii) Failure is a consequence of a breach by the Principal of its obligations under the Contract;
- (iv) Failure is a consequence of the negligent acts or omissions of the Principal or any of its officers, employees, agents or consultants;

- (v) Failure is a consequence of acting on the instructions of the Principal;
- (vi) Failure is a consequence of any event of Force Majeure (as defined in the Contract) provided that the Contractor meets its obligations in attempting to overcome that event of Force Majeure;

provided that any failure to satisfy or achieve a KPI due to circumstances to which any of the paragraphs (i) to (vi) apply will constitute a Failure to the extent that the Contractor does not use its reasonable endeavours to rectify the effects of such circumstances (**Mitigation Event**).

### **2.2.2 Mitigation Claim**

The Contractor may seek adjustment to the Abatement Amount payable for an Operating Month on the basis that its performance during that Operating Month was adversely affected by a Mitigation Event (a **Mitigation Claim**).

### **2.2.3 Timing of Mitigation Claim**

A Mitigation Claim must be notified to the Principal as soon as the Contractor becomes aware that its performance has been adversely affected by a Mitigation Event, and in any event, no later than 5 Business Days after the end of the Operating Month in which the Contractor's performance was affected.

The Mitigation Claim must be accompanied by:

- (i) evidence of the circumstances which have adversely affected the Contractor's performance during that Operating Month;
- (ii) an explanation as to why those circumstances are considered to be a Mitigation Event; and
- (iii) a description of the steps taken by the Contractor to mitigate the effect of the Mitigation Event.

### **2.2.4 Consideration of Mitigation Claim**

The Principal must consider the Mitigation Claim and any evidence which accompanies it and may request any additional information to consider the merits of the Mitigation Claim. All Mitigation Claims will be discussed at the Monthly Meeting referred to in the Contract.

The Principal must, acting reasonably, decide whether or not to adjust the Abatement Amount (as applicable) in response to the Contractor's Mitigation Claim and must notify the Contractor of its decision as soon as practicable and, in any event, within 5 Business Days after the Monthly Meeting referred to above. The Principal's notice must specify the amount of the adjustment (if any) which will apply to the Abatement Amount (as applicable).

In exercising its discretion in respect of a Mitigation Claim, the Principal shall take account of the following matters:

- (i) restrictions imposed on the Contractor by the Principal whether under the Contract, the Legislative Requirements or otherwise;

- (ii) the reasonable compliance by the Contractor with any such restriction and the circumstances surrounding or affecting the achievement or otherwise of a KPI; and
- (iii) any report or explanation provided by the Contractor to the Principal in relation to any fact or circumstance relevant to the Contractor's achievement or otherwise of a KPI.

### **2.2.5 Payment of Abatement Amount pending determination**

Pending determination of a Mitigation Claim by the Principal, the Abatement Amount for that Operating Month will be deducted by the Contractor from the Monthly Services Payment without adjustment in accordance with this Schedule. The amount of the adjustment must be included by the Contractor on the Monthly Invoice following notification of the Principal's determination under section 2.2.4 of this Schedule.

### **2.3 Failure disputes**

If there is a dispute between the Contractor and the Principal as to whether a Failure has occurred, either Party may refer the matter for dispute resolution in accordance with the Dispute Resolution clause in the Contract.

Until the Contractor and Principal otherwise agree or a determination is made in accordance with the dispute resolution process, the occurrence of the relevant Failure shall be determined by the Principal; and the Contractor shall ensure that such determination is reflected on the relevant Monthly Invoice.

If, following resolution of the dispute an adjustment is agreed or determined in respect of the alleged Failure, then that adjustment will be added to or deducted from (as the case may be) the next Monthly Services Payment after that agreement is reached or that determination is made (as the case may be).

## **3. Key Performance Indicators**

### **3.1 Classification of KPIs**

A failure by the Contractor to satisfy or achieve a KPI will constitute a Failure.

A Failure is classified as either a Specified Event or a Performance KPI Failure (herein referred to as Type of Failure).

The Payment Mechanism (Schedule 3) sets out the mechanism for calculating deductions to the Monthly Services Payment for Failures.

#### **3.1.1 Specified Event**

The Contractor acknowledges that the Principal's agreement to make the Monthly Services Payment is subject to the Contractor operating and maintaining the Facility, and providing the Services, in such a way as to avoid the occurrence of any Specified Event.

A Specified Event shall occur if the Contractor fails to comply with a KPI specified in section 3.2.1 of this Schedule.

### 3.1.2 Performance KPIs

A Performance KPI Failure occurs when the Contractor fails to satisfy the Baseline Target for a Performance KPI specified in section 3.2.2 of this Schedule.

## 3.2 Key Performance Indicators

### 3.2.1 Specified Events

KPIs 1 to 10, shown in the Specified Events Table below, are classified as Specified Events.

The Contractor acknowledges that that the Specified Event Abatement Amount for each Specified Event:

- (i) has been determined by the Principal in good faith;
- (ii) is a genuine pre-estimate of the value of the Services as a result of the occurrence of any Specified Event;
- (iii) has been designed to avoid the difficulties of proof of damages in connection with the occurrence of a Specified Event; and
- (iv) is reasonable and not intended to operate as a penalty.

**Table 1: Specified Events Table**

No	Specified Event KPI	Specified Event Abatement Amount
Column A	Column B	Column C
1.	A death	<b>\$100,000</b> per death
2.	An escape	\$25,000 per escape per Prisoner, other than in respect of Escort Services  <b>\$10,000</b> per escape per Prisoner in respect of Escort Services  Capped at <b>\$75,000</b> per Incident (for all Services including Escort Services)
3.	An abscond	<b>\$5,000</b> per abscond per Prisoner
4.	A loss of control	<b>\$25,000</b> per Incident
5.	The unlawful release of a Prisoner	<b>\$10,000</b> per unlawful release
6.	The unlawful detention of a person	<b>\$300</b> per person unlawfully detained per day
7.	A failure to comply with a Performance	<b>\$5,000</b> for 1 <sup>st</sup> failure to comply with a PIN issued

No	Specified Event KPI	Specified Event Abatement Amount
Column A	Column B	Column C
	Improvement Notice (PIN)	<b>\$10,000</b> for each subsequent repeat failure to comply with the same PIN
8.	A failure to notify and/or report a Critical Incident within the times and requirements specified in clause 22 of the Contract	<b>\$5,000</b> per failure in respect of a Critical Incident
9.	A failure to obtain a cell certificate	<b>\$300 \</b> per uncertified prison cell per day
10.	A failure to obtain a prison certificate	<b>\$25,000</b> per uncertified Facility per day



**3.2.2 Performance KPIs**

KPIs 11 to 19, shown in the Performance Measures Table below, are classified as ‘Performance KPI Type of Failures.

**Table 2: Performance Measures Table**

No	Performance KPI	Fixed Percentage	DAP Band	Baseline Targets and Progressive Targets	Performance Based Percentage	Performance Range
Column A	Column B	Column C	Column D	Column E	Column F	Column G
11.	The number of Serious Assaults	1%	0-48	Greater than 2 2 1 0 <b>(Baseline Target)</b>	0% 60% 80% 100%	Red Red Amber Green
			49-66	Greater than 2 2 1 0 <b>(Baseline Target)</b>	0% 60% 80% 100%	Red Red Amber Green
			67 and above	Greater than 3 3 1-2 0 <b>(Baseline Target)</b>	0% 60% 80% 100%	Red Red Amber Green
12.	The number of Serious Self-harms	1%	0-48	Greater than 2 2 1 0 <b>(Baseline Target)</b>	0% 60% 80% 100%	Red Red Amber Green
			49-66	Greater than 2 2 1 0 <b>(Baseline Target)</b>	0% 60% 80% 100%	Red Red Amber Green

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No	Performance KPI	Fixed Percentage	DAP Band	Baseline Targets and Progressive Targets	Performance Based Percentage	Performance Range
Column A	Column B	Column C	Column D	Column E	Column F	Column G
			67 and above	(Baseline Target) Greater than 3 3 1-2 0 (Baseline Target)	0% 60% 80% 100%	Red Red Amber Green
13.	The percentage of random urine sample tests identifying a positive urine sample test result	1.0%	All DAP Bands	Greater than 20% 16-20% 10-15% Less than 10% (Baseline Target)	0% 60% 80% 100%	Red Red Amber Green
14.	The percentage of agreed critical positions fully staffed	1.0%	All DAP Bands	Less than 100% 100% (Baseline Target)	0% 100%	Red Green
15.	The percentage of Prisoners in employment upon release	1%	All DAP Bands	Less than 50% 50-75% Greater than 75% (Baseline Target)	0% 75% 100%	Red Amber Green
16.	The percentage of Prisoners engaged in constructive work	1.5%	All DAP Bands	Less than 80% 80-90% Greater than 90% (Baseline Target)	0% 75% 100%	Red Amber Green
17.	The percentage of Prisoners that	1.5%	All DAP Bands	Less than 90% 90-95%	0% 75%	Red Amber

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No	Performance KPI	Fixed Percentage	DAP Band	Baseline Targets and Progressive Targets	Performance Based Percentage	Performance Range
Column A	Column B	Column C	Column D	Column E	Column F	Column G
	successfully completed agreed course modules			Greater than 95% <b>(Baseline Target)</b>	100%	Green
18.	The level of agreed Facility Maintenance Services achieved	1.0%	All DAP Bands	Less than 70% 71-80% 81-90% Greater than 90% <b>(Baseline)</b>	0% 60% 80% 100%	Red Amber Amber Green
19.	The rating obtained from the quarterly Customer Satisfaction Survey	1.0%	All DAP Bands	Less than 50% 50-70% 71-90% Greater than 90% <b>(Baseline Target)</b>	0% 60% 80% 100%	Red Amber Amber Green

### **3.3 Continuous improvement of KPIs**

The Contractor must be committed to continuous improvement in relation to the quality and standards of the Services and customer satisfaction and must implement systems to achieve this objective.

At the commencement of each Operating Year, the Contractor must, in conjunction with the Principal:

- (i) agree the Performance KPIs for each of the applicable Services (being, those indicated in the Performance Measures Table or such other KPIs as the Parties agree or which the Principal, acting reasonably, may require); and
- (ii) agree the performance ranges (Baseline Target and Progressive Targets) for each of the Performance KPIs. Ranges should be set such that:
  - (a) improved or excellent performance falls within the green range;
  - (b) current performance, other than improved or excellent performance, (or, in the first Operating Year, the expected performance) falls within the green or amber range;
  - (c) performance assessed as unsatisfactorily falls within the red range;
  - (d) movement from one DAP Band to another may be reasonably expected over the course of an Operating Year; and
  - (e) no range is set to a lesser standard than the previous agreed range.

### **3.4 Performance Improvement Notice (PIN)**

#### **3.4.1 Request to improve performance of the Services**

The Contractor shall establish and maintain effective relationships with the Principal to ensure effective delivery of the Services. At each Monthly Meeting the Contractor and the Principal will discuss the Contractor's performance against the Service Requirements and the KPIs.

#### **3.4.2 Issuance of a Performance Improvement Notice**

If the Principal determines that the Contractor has breached an obligation in the Contract or has failed to perform any element of the Services in the manner or in accordance with the Service Requirements, the Principal may request the Contractor to improve its performance of the Services, by implementing a better or alternative method of performing the Services (**Performance Improvement Notice**).

In addition, the occurrence of any of the following events may result in the Principal issuing a Performance Improvement Notice to the Contractor:

- (i) the Contractor's performance is found to fall within the red Performance Range as set out in the Performance Measures Table;

- (ii) one or more Failures occurs which results in deductions to the Monthly Services Payment, on average:
  - (a) of between 5% and 10% of the gross Monthly Services Payment for any 3 consecutive Operating Months; or
  - (b) of between 4.5% and 7.5% of the gross Monthly Services Payment for any 6 consecutive Operating Months; or
  - (c) of between 3.5% and 5% of the gross Monthly Services Payment for any 12 consecutive Operating Months; or
- (iii) the Principal assesses that the Contractor has persistently failed to perform any element of the Services in the manner or in accordance with the Service Requirements and/or the Contract.

### 3.4.3 Responding to a Performance Improvement Notice

Each Performance Improvement Notice must:

- (i) specify the Contractor's breach or failure;
- (ii) outline the nature of the improvement being requested, what action or outcome the Principal reasonably considers may be required from the Contractor in respect of the Services and the preferred time frame for the Contractor to complete any actions or achieve the outcome required,

provided that the Contractor must be given at least seven (7) Business Days to respond in writing to the Performance Improvement Notice issued by the Principal.

The Principal may also require the Contractor to:

- (i) provide further information in respect of its performance of the relevant Services, within the timeframes specified by the Principal;
- (ii) meet with the Principal to discuss the Performance Improvement Notice, within the timeframes specified by the Principal;
- (iii) submit to the Principal within ten (10) Business Days of receipt of a Performance Improvement Notice, or as otherwise agreed between the Principal and the Contractor, a rectification plan in form and substance reasonably acceptable to the Principal (**Rectification Plan**); and
- (iv) implement and diligently comply with the Rectification Plan, for so long as is required for the Contractor to complete the agreed actions and/or achieve the outcomes set out in the Rectification Plan.

The Rectification Plan must contain full details of all steps which the Contractor is taking, or proposes to take, in order to prevent a reoccurrence of the event(s) that resulted in the Principal issuing the Performance Improvement Notice.

The Contractor must respond to, and fully comply with, each Performance Improvement Notice and any failure by the Contractor to do so will result in the deduction of the Abatement Level specified in KPI 7 and the Principal may

issue a second Performance Improvement Notice informing the Contractor that a repeat failure to comply with the Performance Improvement Notice may in the Principal's discretion be deemed to be an unremediable Event of Default resulting in the Principal terminating the Contract.

### 3.5 Customer Satisfaction Survey

#### 3.5.1 Relationship management

The Contractor shall establish and maintain effective relationships with the Principal and the Principal's external service providers to ensure effective delivery of the Services.

#### 3.5.2 User satisfaction

The Contractor shall ensure high levels of satisfaction among users including staff, prisoners and visitors, thereby encouraging staff motivation and performance and enhancing the Contractor's ability to attract and retain required staff, based on the following element:

- (a) User satisfaction.

#### 3.5.3 Customer Satisfaction Surveys

The Contractor's performance will be subjected to regular measurement through satisfaction reviews (**Customer Satisfaction Surveys**) based on achievement of specific objectives.

The **Customer Satisfaction Service Level table** below provides a description of the service elements and measurement criteria.

Table 3: Customer Satisfaction Service Level Table

Service element	Description	Measurement criteria
Principal and third-party relationship management	A quarterly assessment of the relationship the Contractor has with the Principal, based on overall service delivery, flexibility, relationship management, including third-party relationships, and customer focus.	Based on the arithmetic average score achieved from the Customer Satisfaction Survey, a score of 1 to 10 will be allocated according to the following scale: 2 – very dissatisfied 4 – below expectations 6 – meets expectations 8 – above expectations 10 – very satisfied
User satisfaction	User satisfaction based upon a quarterly survey of users.	

### **3.5.4 Form of the Customer Satisfaction Survey**

The Customer Satisfaction Survey will take the form described below.

- (a) The Customer Satisfaction Surveys will be conducted and completed during the Operating Month following the end of each Operating Quarter. The first survey will be conducted at the end of the first full Operating Quarter following the Abatement Waive Period.
- (b) Persons participating in the Customer Satisfaction Surveys may include:
  - (i) the Contract Manager;
  - (ii) the Principal's Representatives and 4 persons selected by the Principal Representative;
  - (iii) the Principal's Monitors;
  - (iv) persons that may be involved in Critical Incidents and non-critical Incidents. This group is likely to include service users such as Prisoners, Contractor Employees, WA Police officers, etc.
  - (v) 4 persons nominated by the Contractor's Representative;
  - (vi) 25% of Prisoners; and
  - (vii) 2 persons from external third parties nominated by the Principal Representative.
- (c) The Customer Satisfaction Surveys will utilise a ten point satisfaction scale which will allow the Principal to assess the level of customer satisfaction and to track whether customer satisfaction is improving or declining over time. The numerical satisfaction scale will have defined end points; representing very dissatisfied at the lowest level and very satisfied at the highest level.
- (d) The Customer Satisfaction Surveys will include a best and worst service selection, which will list the range of Services and ask participants to choose their top three and bottom three services based on the performance of the Contractor in delivering the Services. This will establish both the areas customers are satisfied with and those they feel require improvement.
- (e) The Principal and the Contractor will seek to agree on the questions and process for conducting the Customer Satisfaction Surveys prior to the Services Commencement Date but in the absence of agreement the questions and process for conducting the Customer Satisfaction Surveys will be determined by the Principal.

### **3.5.5 Customer Satisfaction Fee**

The Contractor must deduct from each Monthly Services Payment the Customer Satisfaction Fee, being an amount calculated in accordance with the Payment Mechanism (Schedule 3).

### **3.5.6 3Customer Satisfaction Performance Fee**

The Customer Satisfaction Performance Fee is a fee calculated and payable quarterly to the Contractor in respect of each Operating Quarter by reference to the results of the most recently conducted Customer Satisfaction Survey. The Customer Satisfaction Performance Fee will be calculated with reference to the Performance Measures Table in accordance with the Payment Mechanism (Schedule 3).

## **4. Abatement Regime**

This section sets out the basis for calculating the level of abatements that applies to Failures. The determination as to what a Failure is, when abatement may apply and some key components used in calculating abatements are provided in this section.

### **4.1 Abatement Amount calculation**

The Payment Mechanism (Schedule 3) sets out the basis for calculating the level of abatements that applies to Failures. The **Specified Event Abatements** calculation is set out in section 5.3 of the Payment Mechanism and the **Performance Linked Abatement** calculation is set out in section 5.4 of the Payment Mechanism.

### **4.2 Overlap of Failures**

If a Failure occurs which is both a Specified Event and Performance KPI Failure, the Monthly Services Payment will be reduced by the Abatement Amount applicable to the Specified Event.

If more than one Specified Events occur at the same time (for example a loss of control and an escape during the loss of control) then the Monthly Services Payment will be reduced by the higher Abatement Amount of the applicable Failure events.

If a Failure occurs that adversely impacts on the Contractor's achievement of more than one Performance KPI, then the Performance Linked Abatement for that Operating Month will be determined by reference to the Contractor's performance against each of the impacted Performance KPIs.

### **4.3 Rectification period**

#### **4.3.1 Rectification Times**

Where an Incident occurs for which a Rectification Time has been provided in this Schedule, Abatement Amounts will only be incurred in the event that the Incident is not remedied by the expiry of the Rectification Time.

Rectification Times are only applicable to the following KPIs:

- (a) KPI 9 – A failure to obtain a Cell Certificate;
- (b)



- (b) KPI 10 – A failure to obtain a Prison Certificate; and
- (c) KPI 18 – The level of agreed Facility Management Services achieved.

The Rectification Time applicable to an Incident depends on the priority level of the Incident. The Principal has a priority system in place for addressing breakdowns and repairs as set out in section 5.1.2.3 of the Service Requirements. The applicable Rectification Time for each priority level is set out in the table below.

**Table 4: Rectification Times**

Priority level	Response Time	Attendance Time	Completion Time	Rectification Time
Column A	Column B	Column C	Column D	Column E
KPI 9 (cell certificate), KPI 10 (prison certificate) and KPI 18 (Facility Management Services)				
0	1 Hour	2 Hours	4 Hours	<b>7 hours</b>
1	2 Hours	1 Calendar day	1 Calendar day	<b>2 Calendar days and 2 hours</b>
2	1 Calendar day	3 Calendar days	3 Calendar days	<b>7 Calendar days</b>
3	1 Calendar day	7 Calendar days	7 Calendar Days	<b>15 Calendar days</b>
<p><b>Response Time</b> means the maximum time taken to notify a service provider or contract worker who will be attending to the Incident and an anticipated on site arrival time. Note, in some instances the notification may also be for diagnostic purposes. The Response Time commences when the Incident occurs.</p> <p><b>Attendance Time</b> means the maximum time taken to attend to the Incident.</p> <p><b>Completion Time</b> means the maximum time to rectify the Incident and complete the required work.</p> <p><b>Rectification Time</b> is equal to the Response Time plus the Attendance Time plus the Completion Time.</p>				

If the Incident is not remedied prior to the expiry of the first Rectification Time (as set out in Column E of the table above), an Abatement Amount will be incurred.

#### 4.3.2 Temporary fixes

If the Contractor reasonably considers that it is not able to Rectify an Incident within the Rectification Time, it may propose to the Principal for its approval a course of action that will temporarily ameliorate the consequences of the Incident whilst the Incident is being Rectified (**Temporary Fix**). The Contractor must also specify a proposed time by which Rectification will occur (**Permanent Fix Time**).

The Contractor may not proceed to perform a Temporary Fix without the Principal’s prior approval. The Principal will not refuse a Temporary Fix if, having regard to the particular circumstances (including the visual appearance

of the Temporary Fix), the Temporary Fix and the Permanent Fix Time are reasonable.

The Parties acknowledge that the Principal is entitled not to allow a Temporary Fix in circumstances:

- (a) which contravene any standards, policies or laws relating to health and safety;
- (b) which otherwise pose a danger to health and safety of the Facility and/or the Prisoners;
- (c) where the need for a Temporary Fix is due to a failure on the part of the Contractor to adhere to Best Industry Practice, including for the avoidance of doubt, the identification, purchasing and storage of spare parts for plant and equipment whose failure may have a significant impact upon the Facility; or
- (d) where the Temporary Fix gives rise to additional costs to the Principal or would unreasonably disrupt the delivery of the Principal's obligations.

If the Principal permits a Temporary Fix, the Contractor must diligently pursue the Temporary Fix within the applicable Rectification Time defined section 4.3.1 of this Schedule unless otherwise agreed with the Principal, and will ensure that the Incident is Rectified by the Permanent Fix Time.

No approval of a Temporary Fix or Permanent Fix Time by the Principal will:

- (a) relieve the Contractor of any of its obligations or liabilities under this Contract; or
- (b) entitle the Contractor to make any claim against the Principal.

Any decision by the Principal to approve a Temporary Fix or Permanent Fix Time does not create a precedent nor prejudice the Principal's right to exercise its entire discretion in making future decisions.

#### **4.4 Failure period**

##### **4.4.1 Time weighting**

The Time Weighting is only applicable to the Specified Event KPIs that are time based, for example:

- (a) KPI 6 – The unlawful detention of a person;
- (b) KPI 9 – A failure to obtain a Cell Certificate; and
- (c) KPI 10 – A failure to obtain a Prison Certificate.

The Specified Event Abatement (as per Column C of the Specified Events Table) is a per day amount. Therefore the Time Weighting will be equal to the number of days (or part thereof) that elapse from the expiry of the Rectification Time until the Contractor has Rectified the Failure.

The calculation will be performed once the relevant failure is Rectified. If, however, the failure is not remedied at the end of the Operating Month in respect of which the Abatement is being calculated, then the Abatement for that Operating Month shall be calculated using a Time Weighting equal to the number of days in the relevant Operating Month in which the failure(s) persists. A further calculation shall be completed in the following Operating Month using a Time Weighting equal to the number of days for the failure to Rectify in that Operating Month in which the failure(s) persists.

If an Incident occurs and the Principal agrees to accept a Temporary Fix:

- (a) no Abatement will be calculated with respect to the relevant Incident so long as the Temporary Fix is in place prior or up to the agreed Temporary Fix Time and the Incident is Rectified by the agreed Permanent Fix Time; and
- (b) if the Temporary Fix is not in place prior or up to the agreed Temporary Fix Time or the Incident is not Rectified by the agreed Permanent Fix Time, then the Abatement calculation shall be made using a Time Weighting calculated as if no Temporary Fix had been agreed and using the applicable original Rectification Time (as set out in section 4.3.1).

**4.4.2 Maximum Remedy Period**

In the event there is a Failure of KPIs, the Maximum Remedy Periods shown in the table below will apply, unless otherwise agreed by the Principal.

In the event that one of these KPIs is not remedied within the relevant Maximum Remedy Period then the KPI shall be deemed to have occurred again and the relevant Abatement Amount will apply again.

Additional Abatements shall apply at the end of each subsequent maximum Remedy Period until the KPI is remedied.

A Maximum Remedy Period is only applicable to KPIs 4, 6, 7, 8, 9 and 10 as shown in the table below:

**Table 5: Maximum Remedy Periods**

KPI	KPI description	Remedy Period
Column A	Column B	Column C
4	A Loss of Control	48 hours unless otherwise agreed with the Principal
6	The unlawful detention of a person at the Facility	5 calendar days
7	Performance Improvement Notice	Agreed period as per the Rectification Plan
8	A failure to report an Incident within the times and requirements specified in the Service Requirements	Each subsequent failure to comply with the times as specified in the Contract in respect of Critical

KPI	KPI description	Remedy Period
Column A	Column B	Column C
		Incidents
9	A failure to obtain a Cell Certificate	14 calendar days
10	A failure to obtain a Prison Certificate	4 calendar days

The Maximum Remedy Period means the period between the expiry of the Rectification Time and the expiry of the Maximum Remedy Period (as set out above) within which a Failure must be remedied without attracting a Failure Multiplier as set out in section 4.5 of this Schedule.

#### 4.5 Failure Multipliers

A Failure that occurs on multiple occasions will attract a Multiplication Factor. The Multiplication Factor for Failures is determined by reference to the frequency of occurrence. Multiple Failures of KPIs 1 and 2 and Critical Incidents may in the Principal's discretion be deemed to be an Event of Default entitling the Principal to terminate the Contract.

For the avoidance of doubt, Failure Multipliers (as set out in section 4.5 of this Schedule) may apply against the same KPI where each Failure is as a result of a separate event or where the Maximum Remedy Period has been exceeded.

The Multiplication Factor for KPIs is shown in the table below:

**Table 6: Failure Multiplier Table**

Failure Frequency	Multiplication Factor
Column A	Column B
<b>Failures in respect of KPIs 4, 6, 7, 8, 9 and 10</b>	
Maximum Remedy Period in respect of Failure is exceeded once	1.5
Maximum Remedy Period in respect of Failure is exceeded twice	2.0
Maximum Remedy Period in respect of Failure is exceeded three times	3.0
Maximum Remedy Period in respect of Failure is exceeded three or more times	4.0
<b>Failure in respect of KPIs 1, 2, 3, 4, 5, 6, 7 and 11 to 19</b>	
Failure in respect of KPI occurs in 2 consecutive months within an Operating Year	1.5
Failure in respect of KPI in 3 consecutive months within an Operating Year	2.0
Failure in respect of KPI occurs in 4 consecutive months within an Operating Year	3.0
Failure in respect of KPI occurs in 5 or more consecutive months within an Operating Year	4.0

#### 4.6 Abatement Waive Periods

#### **4.6.1 Performance KPIs**

Effective from the Services Commencement Date for a period of three (3) consecutive Operating Months (the **Abatement Waive Period**) the Performance Linked Abatement for an Operating Month will **not** be calculated by reference to the Contractor's performance against the Performance KPIs as set out in the Performance Measures Table. Therefore, the Maximum Performance Linked Fee (as applicable) will be paid to the Contractor during this period.

The Abatement Waive Period also applies to the period commencing on the Commencement Date and ending on the Services Commencement Date.

The Principal may elect, at its absolute discretion, to extend the Abatement Waive Period for up to a maximum further period of three (3) consecutive Operating Months.

Following the expiry of the Abatement Waive Period, the Abatement Regime will apply as described in this Schedule.

#### **4.6.2 Specified Events**

No Abatement Waive Period applies in respect of KPIs classified as Specified Events. The Multiplication Factors apply during the Abatement Waive Period.

However, the triggers for a Performance Improvement Notice will not be activated during the Abatement Waive Period in respect of the Services, other than the Transition Services. The triggers for a Performance Improvement Notice will be in effect in respect of Transition Services.

## **5. Innovation Sharing**

### **5.1 An Innovation**

Where the Contractor proposes to implement:

- (i) a new or varied system or procedure;
- (ii) a new or varied technology; or
- (iii) any other matter or thing,
- (iv) in connection with the Services which has the effect, or potential effect, of:
- (v) a decrease in the cost of providing the Services; and/or
- (vi) improving the operation or management of the Facility
- (vii) (an **Innovation**) and the Innovation will be transferable to:
- (viii) other prisons operated by or on behalf of the Principal; and/or
- (ix) to the State's criminal justice system,

the Contractor may lodge an Innovation Application in accordance with this section.

For the purpose of this section an Innovation does not include any matter or thing which the Contractor is required to perform or undertake pursuant to another clause of the Contract.

### **5.2 Innovation Application**

The Contractor's Innovation Application must:

- (i) detail the nature of the Innovation; and
- (ii) incorporate a business case which demonstrates how the Innovation will satisfy the requirements described in section 5.1 above (**Innovation Scheme**).

The Principal must consider each Innovation Application from the Contractor and determine whether or not to approve the Innovation Application. Any approval by the Principal must identify any specific conditions or requirements which must be satisfied before the Innovation Savings will be shared. The determination as to whether or not to approve the Innovation Application will be at the absolute discretion of the Principal, including assessing critical factors such as risk to the Principal (and/or the State) and any new or varied operating procedures proposal, specifically in the wake of an Incident. The Innovation Savings will be shared equally between the Parties, unless otherwise agreed.

The Principal must notify the Contractor of its determination within three (3) months after receipt of the Innovation Application.

If the Principal approves the Innovation Application the Contractor must proceed to implement the Innovation in accordance with the proposal contained in its Innovation Application and any conditions and requirements of the Principal specified in the Principal's approval.

### **5.3 Payment of Innovation Savings Sharing**

After the Principal's approval of the Innovation Application, the Contractor may make an adjustment to the Monthly Invoice in respect of the Innovation Savings Sharing in respect of all approved Innovations. The Contractor's adjustment note must demonstrate that:

- (i) each Innovation has been implemented in accordance with the approved Innovation Application;
- (ii) the Innovation has been tested and proven as meeting the objectives set out in section 5.1 above and the objectives set out in the Innovation Application; and
- (iii) any conditions or requirements set out in the Principal's approval have been satisfied.

All Intellectual Property Rights in any Innovation developed and implemented in accordance with this section will vest in the Principal unless the Contractor can demonstrate to the reasonable satisfaction of the Principal that the Intellectual Property Rights of the Innovation were pre-existing and that the Innovation has application to other operations of the Contractor.

If the Intellectual Property Rights in any Innovation will not vest in the Principal in accordance with the above, the Contractor grants the Principal a perpetual, irrevocable, non-exclusive, transferable licence (with the right to sub-license) to use and apply the Innovation with effect from the date of sharing the Innovation Savings in respect of that Innovation.

## **6. Key Performance Indicator Assessment**

The Key Performance Indicator Assessment, in Appendix 2 to Schedule 6, sets out, at the Commencement Date, the agreed definitions, mitigation and calculation requirements in respect of each Specified Event and Performance KPI.

The definitions applicable to KPIs as set out in this Appendix 2 may be amended from time to time to take into account Policy Directive 41 as amended from time to time.

At the commencement of each Operating Year, or as agreed from time to time, the Principal and the Contractor must review this Schedule and, if required, agree on any updates.

## **Schedule 3 – Payment Mechanism**

(Confidential)



## Schedule 4 – Guarantee

**THIS DEED OF GUARANTEE is given on**                      **day of**                      **20[#]**

**THIS DEED** is made on the                      day of                      20[#]

**By**

[#Parent Company name, ACN and address] ("**the Guarantor**")

**In favour of**

Ian Johnson in his capacity as Commissioner of the Department of Corrective Services, of 141 St George's Terrace, Perth, Western Australia, 6000, for and on behalf of the State of Western Australia (the "**Principal**")

### **Background**

The Principal has entered into the agreement set out in the Schedule (the "**Contract**") with [#] (the "**Contractor**").

The Guarantor agrees to guarantee and indemnify the Principal in respect of the Contractor's obligations under the Contract in accordance with the terms of this Deed.

### **Operative provisions**

- 1 The Guarantor irrevocably and unconditionally guarantees to the Principal the due performance, observance and fulfilment by the Contractor of all the warranties, terms and conditions expressed in the Contract and on the part of the Contractor to be performed, observed or fulfilled.
- 2 The Guarantor indemnifies the Principal and agrees at all times hereafter to keep the Principal indemnified from and against all damages, costs, losses, expenses and claims which the Principal may suffer or incur as a consequence of or arising out of the breach by the Contractor of any of the covenants, terms and provisions or conditions contained in the Contract and on the part of the Contractor to be performed, observed or fulfilled.
- 3 As a separate and distinct obligation from the Guarantor's obligations in Clauses 2 and 3 above, the Guarantor must on written demand by the Principal perform all of the Contractor's obligations under the Contract provided demand has first been made on the Contractor and the Contractor has failed to remedy the non-performance within a period of 10 Business Days of written notice by the Principal requiring the Contractor to do so.
- 4 As a separate and distinct obligation from the Guarantor's obligations in Clauses 2 and 3 above the Guarantor agrees to indemnify and keep indemnified the Principal against any loss that the Principal may suffer by reason of:

- (a) the Contractor going into liquidation (except for the purpose of amalgamation or reconstruction);
  - (b) the Contractor going into receivership;
  - (c) the Contractor being wound up or making any arrangement, assignment or composition with its creditors;
  - (d) the Contract being wholly or partly void, voidable, illegal, invalid or unenforceable against the Contractor; or
  - (e) a disclaimer of any contract or property (including the Contract) made by a liquidator of the Contractor pursuant to Part 5.6, Division 7A of the *Corporations Act 2001* (Cth) or other applicable laws;
- 5 The liability of the Guarantor under this Deed shall not be affected by the granting of time or other indulgence or concession to the Contractor or by the compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any of the rights of the Principal against the Contractor or by any neglect or omission to enforce such rights or by the liquidation of the Contractor or by any other act, matter or thing which under the law relating to sureties would or might but for this provision release the Guarantor from its obligations hereunder or any part thereof.
- 6 Each liability and obligation of the Guarantor contained in this Deed:
  - (a) shall be a continuing guarantee, indemnity or obligation and shall be irrevocable and shall remain in full force and effect until all of the obligations of the Guarantor required to be performed and observed under this Deed have been performed and observed and all of the moneys payable under this Deed and all other moneys payable under this Deed have been paid in full;
  - (b) shall not be or be considered as wholly or partially discharged by the payment at any time of any of the moneys payable under it by a settlement of account or by any other matter or thing and shall apply to the present and future balance of the moneys payable under it; and
  - (c) shall be enforceable notwithstanding that any negotiable or other instrument, security interest, guarantee or agreement shall be still in circulation or outstanding.
- 7 Subject to clause 11 of this Deed, this Deed shall continue and shall remain in full force until fulfilment by the Contractor of all the terms, provisions and conditions on the part of the Contractor to be performed, observed and fulfilled in accordance with the terms of the Contract.
- 8 The aggregate liability of the Guarantor under this Deed shall not exceed the aggregate liability of the Contractor under the Contract.
- 9 This Deed shall be governed by and take effect and be construed according to the laws from time to time in force in the State of Western Australia and the parties hereby submit to the exclusive authority of the courts having jurisdiction in the State of Western Australia and any injunctions, orders or judgments issued or

granted therefrom shall be enforceable, insofar as they are enforceable at law, within the State of Western Australia.

## 10 Goods and Services Tax

### 10.1 Definitions

Capitalised expressions which are not defined in this Clause 10.1 but which have a defined meaning in the GST Law have the same meaning in this Clause 10.1.

In this Deed:

**GST** means the goods and services tax as imposed by the GST Law including, where relevant, any related interest, penalties, fines or other charge arising directly as a result of a default by the Guarantor of an obligation under this Deed but does not include any interest or penalty, fine, or other charge imposed on the Principal after it has received the relevant guarantee or indemnity payment due under this Deed;

**GST Amount** means, in relation to a Payment, an amount arrived at by multiplying the Payment (or the relevant part of a Payment if only part of a Payment is the consideration for a Taxable Supply) by the prevailing rate of GST;

**GST Law** has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999, or, if that Act is not valid or does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act; and

**Payment** means:

- (a) the amount of any monetary consideration (other than a GST Amount payable under this paragraph); and
- (b) the GST Exclusive Market Value of any non-monetary consideration, paid or provided by the Guarantor for any Supply made under or in connection with this Deed and includes any amount payable by way of indemnity, reimbursement, compensation or damages.

### 10.2 Payment exclusive of GST

The parties agree that:

- (a) all Payments have been set or determined at an amount which is net of GST;
- (b) if the whole or any part of a Payment is the consideration for a Taxable Supply made by the Principal to the Guarantor, the GST Amount in respect of the Payment must be paid to the Principal as an additional amount, either concurrently with the Payment or as otherwise agreed in writing; and

- (c) the Principal will provide to the Guarantor a Tax Invoice, before any GST Amount is payable under this clause 10.

## 10.2 **Net Down of Reimbursements**

If a payment (including a Payment as defined in this clause 10) to the Principal is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by the Principal, then the payment will be reduced by the amount of any input tax credit to which the Principal is entitled for that loss, cost or expense.

## 11 **Expiry and Termination**

11.1 Subject to clause 11.2, this Deed terminates on a date that is 6 months after the date on which the Contract expires or is otherwise terminated in accordance with its terms.

11.2 Notwithstanding clause 11.1:

- (a) the Guarantor remains liable in respect of any Accrued Liability which was incurred up to and including the date referred to in clause 11.1; and
- (b) the Principal's right to make any claim in relation to such Accrued Liability survives termination of this deed.

In this clause 11, "Accrued Liability" means a liability of the Guarantor under this Deed which crystallises prior to the termination or expiry of this Deed.

**IN WITNESS THEREOF** the parties have executed this Deed on the day and year hereinbefore mentioned.

**[#Insert the Guarantor's execution clause for a Deed]**

**[#Insert the Principal's execution clause for a Deed]**

## **SCHEDULE**

**[#Insert details of the contract including date, parties and title]**

## Schedule 5 – Insurances

<p><b>1. Public Liability</b></p>	<p>Public liability insurance covering the legal liability of the Contractor and the Contractor’s Employees arising out of the Services for an amount of not less than <b>AUD\$100 million</b> for any one occurrence and unlimited in the aggregate.</p>
<p><b>2. Workers’ Compensation</b></p>	<p>Workers’ compensation insurance in accordance with the provisions of the Workers’ Compensation and Injury Management Act 1981 (WA), including cover for common law liability for an amount of not less than <b>AUD\$75 million</b> for any one occurrence in respect of workers of the Contractor. The insurance policy must be extended to cover any claims and liability that may arise with an indemnity under section 175(2) of the Workers’ Compensation and Injury Management Act 1981.</p>
<p><b>3. Motor vehicle third party</b></p>	<p><b>Motor vehicle third party</b> insurance covering legal liability against property damage and bodily injury to, or death of, persons (including bodily injury gap protection) caused by motor vehicles used in connection with the Services for an amount of not less than <b>AUD\$50 million</b> for any one occurrence and unlimited in the aggregate.</p>
<p><b>4. Compulsory third party</b></p>	<p><b>Compulsory third party</b> insurance as required under any statute relating to motor vehicles used in connection with the Services.</p>
<p><b>5. Medical Treatment</b></p>	<p><b>Medical Treatment Liability/Medical Malpractice</b> insurance covering any negligent act or omission by the Contractor in the rendering of or failure to render professional medical or dental services arising out of the Services provided in the Contract for an amount of not less than <b>AUD\$20 million</b> for any one claim and in the annual aggregate with a provision of one automatic reinstatement of the full sum insured in any one period of insurance. The insurance policy must be maintained for a period of at least 6 years after termination or expiration of the Contract.</p>
<p><b>6. Contract Works (If the Contractor carries out Enabling Works or Minor Works only)</b></p>	<p>Contract Works Insurance covering the construction works, plant, equipment, materials or supplies to be used in connection with or forming part of the Works or temporary works (including property of the Principal used in connection thereof) for its full replacement value, against physical loss or damage caused by an accident and any other insurable risk commonly insured against in relation to such property including:</p> <ul style="list-style-type: none"> <li>(a) the cost of removal of material and debris from the Site including demolition fees;</li> <li>(b) materials, plant and equipment and all other things in storage off Site, on Site and in transit to the Site; and</li> <li>(c) professional fees and expenses;</li> <li>(d) covering the cost of making good resultant damage arising</li> </ul>

	in connection with faulty design.
<b>7. Property Insurance</b>	<b>Industrial Special Risks or Property</b> insurance in respect of contents, fixtures and fittings belonging to the Contractor at the Facility for its full replacement value.

**Minimum Evidence of Insurance Requirements**

1. Names of Insured entities.
2. Name of Insurer(s).
3. Class of insurance.
4. Limits of Liability/sum insured per event/occurrence and in the aggregate, and including any sub limits.
5. If applicable, any excess of loss/umbrella policy information - including limits of liability, name of insurer(s), listing any difference in conditions.
6. Deductibles/excesses.
7. Whether the policy is constructed on an “occurrence” or “claims made” wording.
8. Scope of cover.
9. Territorial limits of the policy.
10. Policy exclusions and conditions, and any variation that limits cover in relation to this Contract.

**Schedule 6 – Additional Documents**

The following Appendices to this Schedule 6, whilst issued as separate documents, form part of this Contract DCS001201.

- Appendix 1                      Contract DCS0012011 Service Requirements - Confidential
- Appendix 2                      Contract DCS0012011 Key Performance Indicators Assessment
- Appendix 3                      Contract DCS0012011 Site Plan



# **Operation and Maintenance of the Young Adults Facility Contract**

## **Schedule 6 – Appendix 2**

### **Key Performance Indicators Assessment**

**The Commissioner of the Department of Corrective Services, for and on behalf  
of the State of Western Australia**

**and**

**Serco Australia Pty Limited  
(ABN 44 003 677 352)**

**Contract no DCS0012011  
March 2012**





## Operation and Maintenance of the Young Adults Facility

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## Introduction

This document which forms Appendix 2 to Schedule 6 of Contract DCS00212011 specifies the Key Performance Indicators Assessment under this Contract.

### 1. KPI 1 – A Death

#### Definitions

The following definitions apply in respect of KPI 1.

A **Death** means the:

- the death of a Prisoner or
- the death of a person (including Contract Workers and Visitors).

**Contract Worker** has the meaning given in the Contract.

**Visitor** means any person who is a visitor to the Facility, and is provided access to the Facility by the Contractor for that purpose.

#### Mitigation

Mitigation will be considered in the following circumstances:

- a death resulting from natural causes;
- where reasonable care was taken by the Contractor to prevent a death; or
- a Mitigation Event.

#### Count

Count the number of deaths.

### 2. KPI 2 – AN ESCAPE

#### Definitions

The following definitions apply in respect of KPI 2.

**Escape** means when a Prisoner absents himself or herself from the charge/custody of the Contractor, without lawful authority, or from the Facility. A Prisoner who escapes in the following circumstances is to be classified as an escapee:

- from the Facility by breaching a physical barrier such as a wall or secure accommodation which was expected to hinder the Prisoner from leaving (including the secure perimeter);
- from a medical facility, public hospital or another place whilst under guard by the Contractor (if applicable);
- from a secure escort vehicle and the Prisoner is out of sight of the Contract Worker; or
- from leave of absence whilst expected to be under guard/lawful custody of the Contractor.

**Physical Barrier** means all elements of a security barrier including the secure perimeter solution, and all associated systems and the outside wall, fence, reception or declared boundary of that unit.

**For Escort Services:** Escape means when a Prisoner absents himself or herself from the charge of the Contractor, without lawful authority, whilst on escort.

### **Mitigation**

Mitigation will be considered in the following circumstances:

- an attempted Escape;
- an absence without leave;
- an Abscond; or
- a Mitigation Event.

**Attempted escape** means a failed or prevented attempt by a Prisoner to remove him/herself from:

- the Facility secure perimeter (note: this includes situations where the attempt has been terminated before the secure perimeter has been breached);
- the custody of Contract Workers/volunteers or staff whilst on escort or accompanied leave; or
- a vehicle or other form of transport conveying him/her to or from a place of lawful confinement or other approved places (e.g. on escort attending a funeral, sporting event, court, hospital, etc).

**Absent without leave** means a Prisoner who did not return from an unescorted authorised absence.

### **Count**

Count the number of Escapees in the Operating Month and not the number of Incidents (or events).

## **3. KPI 3 – AN ABSCOND**

### **Definitions**

The following definitions apply in respect of KPI 3.

#### **Abscond means where a Prisoner:**

- departed from a Section 95 program outside the Facility when unguarded (an incident of failure to return);
- departed from a hospital or another place when unguarded;
- failed to return from authorised unescorted leave at the expiry period of his temporary release;
- departed from the Facility without breaching a physical barrier; or
- left a place of custody, without permission, that does not have a Physical Barrier.

**Temporary release** means where a Prisoner is granted temporary release under the Prison Act in order for him to engage in employment. The Prisoner is not subject to any particular supervision of the Contractor whilst on temporary release but is obliged to return to the Facility at a specified time.

### **Mitigation**

Mitigation will be considered in the following circumstances:

- a Mitigation Event.

### **Count**

Count the number of Absconders in the Operating Month and not the number of Incidents (or events).

## **4. KPI 4 – A loss of control**

### **Definitions**

The following definitions apply in respect of KPI 4.

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

- a significant part of the Facility;
- a significant number of Prisoners at the Facility; and/or
- the welfare of a significant number of Prisoners at the Facility,

for which the Contractor requires external assistance (such as ESG or WA Police) to regain control.

### **Mitigation**

Mitigation will be considered in the following circumstances:

- a Mitigation Event.

### **Count**

Count the number of Loss of Control Incidents/events in the Operating Month.

## **5. KPI 5 – The unlawful release of a prisoner**

### **Definitions**

The following definitions apply in respect of KPI 5.

**Unlawful release** means the unauthorised release of a Prisoner prior to the expiration of a term of imprisonment or in contravention of an order issued by a court or other lawful authority.

Unlawful release includes a **release in error**, where a prisoner has been released from custody as a result of an administrative error.

### **Mitigation**

Mitigation will be considered in the following circumstances:

- those due solely due to errors by the Principal; or
- a Mitigation Event.

### **Calculation**

Count the number of Prisoners who were unlawfully released in the Operating Month.

## **6. KPI 6 – The unlawful detention of a person**

### **Definitions**

The following definitions apply in respect of KPI 6.

**Unlawful Detention** means releasing a person late by keeping or confining the person in custody without:

- any lawful reason; or
- the consent of the person.

### **Mitigation**

Mitigation will be considered in the following circumstances:

- consent provided by a person to be detained (e.g. where person is awaiting transit for release close to home);
- those due solely due to errors by the Principal; or
- a Mitigation Event.

### **Count**

Count the number of days each person was unlawfully detained in the Operating Month. Part of a day will be counted as one full day.

## **7. KPI 7 – A failure to comply with a Performance Improvement Notice (PIN)**

### **Definitions**

The following definitions apply in respect of KPI 7.

The **Performance Improvement Notice (PIN)** requirements are set out in section 3.4 of this Schedule. The Contractor shall complete the actions and achieve the outcomes as set out in the PIN/Rectification Plan or otherwise agreed to by the Principal (as applicable).

### **Mitigation**

Mitigation will be considered in the following circumstances:

- a Mitigation Event.

### **Count**

Count the number of first failures to comply with PINs in the Operating Month.

Count the number of repeat failures to comply with PINs in the Operating Month.

## **8. KPI 8 – A failure to notify and/or report a critical incident**

### **Definitions**

The following definitions apply in respect of KPI 8.

**Critical Incident** means an event or incident that impacts on the requirement of the Contractor to provide a safe and secure environment and a duty of care for Prisoners, including those events and incidents defined as such in the Contract.

A Critical Incident must be reported to the Principal within the times (hours) and requirements set out in clause 22 of the Contract.

### **Mitigation**

Mitigation will be considered in the following circumstances:

- a Mitigation Event.

### **Count**

Count the number of times where a Critical Incident was not verbally reported in accordance with the time period specified in the Contract.

Count the number of times where a written report was not provided for the Critical Incident in accordance with the time period specified in the Contract.  
Count the number of times where a Critical Incident was verbally reported but not in accordance with the requirements for a verbal report specified in the Contract.

Count the number of times where a written report was provided for a Critical Incident but not in accordance with the requirements for a written report as specified in the Contract.

The sum of the above will be the total count for this KPI for the Operating Month.

**9. KPI 9 – A failure to obtain a cell certificate**

**Issuance of a Cell Certificate**

At the Services Commencement Date a certificate will be issued by the Principal for each Prison Cell (**Cell Certificate**) to the effect that a Prison Cell is suitable for occupation and use by a Prisoner (**Cell Requirement**).

If during the Operating Period the Principal determines that a Prison Cell does not comply with the Cell Requirement the Principal may withdraw the Cell Certificate for that Prison Cell.

If the Principal withdraws a Cell Certificate the Principal will not issue a Cell Certificate for that Prison Cell until all necessary Facility Management Services to that Prison Cell has been undertaken and the Prison Cell satisfies the Cell Requirement.

Where the Principal withdraws a Cell Certificate the Principal must give notice in writing to the Contractor of, and reason for, the withdrawal of the Cell Certificate.

Where a Cell Certificate has been withdrawn; and the Principal has decided to issue a new Cell Certificate for a Prison Cell where a Cell Certificate has been withdrawn, the Principal must give notice in writing to the Contractor of the issue of the Cell Certificate for that Prison Cell.

**Use of a Cell or functional unit**

The occurrence of a Failure referable to a Cell or a functional unit does not prevent the Principal from electing, in its absolute discretion, to use that unit notwithstanding the occurrence of the Failure. The continued use of the unit does not in any way limit the Principal's right to exercise its rights in respect of the Failure in accordance with the Contract and the Service Requirements or the Abatement Regime.

**Definitions**

The following definitions apply in respect of KPI 9.

**Prison Cell** means a secure unit of accommodation for occupation by a Prisoner or Prisoners including segregation units and secure units for occupation by a Prisoner or Prisoners.

**Cell Certificate** means a certificate issued by the Principal to the effect that a Prison Cell satisfies the Cell Requirement.

**Cell Requirement** means that a Prison Cell is in all respects suitable for occupation and use by a Prisoner in accordance with Best Industry Practice and fit for intended purpose] as set out in the Service Requirements.



### Mitigation

Mitigation will be considered in the following circumstances:

- the applicable Rectification Time; or
- a Mitigation Event.

### Calculation

Count the number of days a Prison Cell was uncertified and multiply this with the Specified Event Abatement amount for this KPI. Part of a day will be counted as one full day.

## 10. KPI 10 – A failure to obtain a prison certificate

### Issuance of a Prison Certificate

At the Services Commencement Date a certificate will be issued by the Principal for the Facility (**Prison Certificate**) to the effect that the Facility is in all respects suitable for occupation, fit for intended purpose and use as a prison (**Prison Requirement**).

It is acknowledged that as at the Services Commencement Date a Prison Certificate in respect of 80 Available Prisoner Places will have been issued for the Facility.

During the Operating Period the Prison Certificate may be updated to include any Additional Prisoner Places as set out in the table below.

**Table 1: Prisoner Places and Prison Cells**

Description	Total number of Prison Cells	Total number of Prisoner Places
Column A	Column B	Column C
<b>At Services Commencement Date</b>		
Single cell with single bed	34*	34
Single cell with double bunk beds (2 beds with one on ground)	20	40
Double cell with twin beds (2 beds on ground) (N1)	3*	6
<b>Total Available Prisoner Places at Services Commencement Date</b>	-	<b>80</b>
Additional double bunk beds that the Principal may partially or fully install at the Facility during the Operating Period in response to managing a fluctuating prisoner population ( <b>Additional Prisoner Places</b> )	Cells marked with * may be impacted	15

If during the Operating Period the Principal determines that the Facility does not satisfy the Prison Requirement the Principal may:

- (i) withdraw the Prison Certificate; or
- (ii) amend or re-issue the Prison Certificate in respect of a reduced number of Available Prisoner Places.

If the Principal withdraws the Prison Certificate the Principal will not issue a Prison Certificate for the Facility until all necessary Facility Management Services has been undertaken so that the Facility meets the Prison Requirement and on completion of that Facility Management Services, the Principal must issue a Prison Certificate in accordance with the following:

- Where the Principal withdraws, amends or re-issues the Prison Certificate, the Principal must give notice in writing to the Contractor of, and reasons for, the withdrawal, amendment or re-issue of the Prison Certificate.
- Where the Prison Certificate has been withdrawn; and the Principal determines to issue a new Prison Certificate, the Principal must issue a new Prison Certificate; and notify the Contractor of the issue of the new Prison Certificate.

This KPI does not otherwise limit the rights of the Principal under the Contract.

## **Definitions**

The following definitions apply in respect of KPI 10.

**Prison Certificate** means a certificate issued by the Principal to the effect that the Facility satisfies the Prison Requirements.

**Prison Requirement** means that the Facility is in all respects suitable for occupation and use by a Prisoner in accordance with Best Industry Practice and fit for intended purpose] as set out in the Service Requirements.

**Available Prisoner Places** are the number of places for Prisoners created or available at the Facility by virtue of and evidenced by:

- the issue of a Prison Certificate by the Principal certifying the maximum number of Prisoners who can be accommodated and held at the Facility; and
- the issue of Cell Certificates by the Principal certifying the number of Prison Cells which are available for use and occupation by Prisoners.

## **Mitigation**

Mitigation will be considered in the following circumstances:

- the applicable Rectification Time; or
- a Mitigation Event.

### **Count**

Count the number of days the Facility was ‘uncertified’ and multiply this with the Specified Event Abatement amount for this KPI. Part of a day will be counted as one full day.

## **11. KPI 11 – The number of serious assaults**

### **Definitions**

The following definitions apply in respect of KPI 11.

A **Serious Assault** (including prisoner on prisoner, prisoner on staff and prisoner on visitor, staff on prisoner and prisoner on another person whilst on Temporary Release or escorted authorised absence) is an act of Assault against a Prisoner, or any other person resulting in actual bodily harm or injury and requires treatment by a medical practitioner in an external medical facility.

All acts of sexual assault where there is clear evidence of such as assault having occurred, which results in a related charge being laid by Police, irrespective of whether the person has been hospitalised or not, is a Serious Assault.

**Assault** means an act of physical violence against a Prisoner or any other person at the Facility resulting in physical harm or injury which does not require medical intervention or requires medical treatment at the Facility.

### **Mitigation**

Mitigation will be considered in the following circumstances:

- there is no evidence that an assault took place as defined above;
- there are no reliable witness to the assault;
- the alleged victim does not claim to have been assaulted and there is no obvious reason to doubt this claim;
- there is no visible injury and there is insufficient circumstantial or other evidence to make an assault the most likely cause of the injury; or
- a Mitigation Event.

### **Count**

Count each victim (not each Incident) of the Serious Assault.

## **12. KPI 12 – The number of serious self-harms**

### **Definitions**

The following definitions apply in respect of KPI 12.

**Self-harm** means the self-infliction of an injury by a person on themselves that may require medical treatment at the Facility but does not require medical treatment at an external medical facility.

**Serious self-harm** is an act of self-harm which:

- requires medical treatment and assessment by a medical practitioner resulting in medical treatment at an external medical facility; or
- is classified as an attempted suicide.

**Attempted suicide** is an act of self-harm which:

- intends to lead to a Prisoner's death (as determined by a psychologist); or
- Is a non-habitual act (as determined by a psychologist) with a non fatal outcome;

that

- is deliberately initiated and performed by the individual involved; or
- causes self-harm or without intervention by others will do so; or
- consist of ingesting a substance in excess of its generally therapeutic dosage.

### **Mitigation**

Mitigation will be considered in the following circumstances:

- a Mitigation Event; or
- where the self harm act is not in accordance with the definition above.

### **Count**

Count each Incident of Serious Self-harm.

## **13. KPI 13 – The percentage of random urine sample tests identifying a positive urine sample test result**

### **Definitions**

The following definitions apply in respect of KPI 13.

A **positive urine sample test result** is:

- where a Prisoner refuses to supply a urine sample for testing;
- where a laboratory accredited by the National Australian Testing Authority returns a positive confirmation to an illicit substance;
- where a prior urine sample test provided a baseline and the new test indicates an increase in the level of an illicit substance; or
- where the test returns a positive result to the presence of an illicit substance that is to be tested for in accordance with the Principal's applicable Policy Directive.

**Illicit substance** means any substance that is tested for in accordance with the Principal's applicable Policy Directive.

**Medication effect** means the effect of medication prescribed by a medical practitioner on the test result obtained in respect of a urine sample provided by a Prisoner.

**Refusal** means the refusal by a Prisoner to provide a urine sample for testing.

**Residual Effect** means the residual effect of an illicit substance use which has previously been detected in a Positive Urine Sample Test Result.

**Sample** means a sample of urine taken from a person into specially designed secure cup to be screened for illicit substances. To minimise opportunities for tampering, a direct line of sight between the observer and the specimen bottle must be maintained during collection of a urine sample.

**RUST List** means a daily Random Urine Sample Test List issued by the Principal, which shall include no more than two Prisoners to be tested on any given day, with 10% of the Daily Average Population (DAP) to be tested each Operating Month.

**Window period** means the period after reception into the Facility in which the effect of illicit substances taken prior to:

- first reception into Facility; or
- can cause a positive urine sample test result (e.g. the window period for cannabis is 72 days) as determined by the Principal.

The minimum waiting periods required before a prisoner may be charged after first reception into prison (or charged again) will be in accordance with the Principal's applicable Policy Directive.

### **Mitigation**

Mitigation will be considered in the following circumstances:

- the positive test identifying the presence of an illicit substance was taken during the window period, which is applicable only for the residual effect of the illicit substance;
- the positive result is the medication effect of current legally prescribed medication which has been confirmed by a medical practitioner or accredited laboratory certificate; or
- a Mitigation Event.

### **Calculation**

The Contractor's achievement of this KPI will be determined by applying the following formula:

$$\text{PPUSTR} = [ \text{TPUSTR} / \text{TUST} ] * 100$$

Where:

PPUSTR = The percentage of random urine sample tests identifying a Positive Urine Sample Test Result during the Operating Month.

TPUSTR = The total number of positive urine sample test results during the Operating Month.

TUST = The total number of urine sample tests during the Operating Month.

Note Failure by the Contractor to perform a test will be counted as a positive urine sample test result.

The final result of any such calculations shall be rounded to the nearest whole percentage.

#### 14. **KPI 14 – The percentage of agreed critical positions fully staffed**

##### **Definitions**

The following definitions apply in respect of KPI 14.

**Agreed Critical Positions** is the number and function of positions agreed from time to time between the Principal and the Contractor as being critical. As at the Commencement Date it is agreed that the critical positions are the Contract Director and the three senior managers as per the Staffing Plan. Where a critical position staff member is absent due to leave, training, secondment, sickness, resignation, etc, then the Principal expects that a suitable alternate will fully fulfil the role during such staff member's absence.

**Staffing Plan** has the meaning as described in the Contract.

##### **Mitigation**

Mitigation will be considered in the following circumstances:

- events that cause mass inability of staff to attend work (e.g. pandemic); or
- instances where the Contractor was able to use a suitable alternate to fully staff a critical position; or
- a Mitigation Event.

##### **Count**

Count the number of times that any critical position was not fully staffed by a suitable alternative after [5] days.

If any critical position was not fully staffed by a suitable alternative after [5] days then less than 100% was achieved for this KPI.

Part of a day will be counted as one full day.

**15. KPI 15 – The percentage of prisoners in employment or training upon release**

**Definitions**

The following definitions apply in respect of KPI 15.

**Employment** means that a Prisoner, post release, has

- an offer of employment accepted by both the Prisoner and an employer for at least 20 hours of work; or
- been accepted for enrolment at a registered education institution, with commencement of course at the next available opportunity of release of the Prisoner; or
- been accepted and enrolled at a registered trainee institution offering qualifications that are formally certified and nationally recognised. (eg TAFE or equivalent).

The following institutions, authorities or bodies will be regarded as **registered education institutions**:

- an organisation that is registered by the relevant State or Territory training recognition authority in accordance with the Australian Quality Training Framework to provide one or more vocational education and training programs; and/or
- an organisation defined as such in the Student Assistance Act 1973, as amended from time to time.

**Course** has the meaning as defined in the Student Assistance Act 1973.

**Mitigation**

Mitigation will be considered in the following circumstances:

- Prisoners not able to be employed due to medical conditions, as certified by a medical practitioner;
- Prisoners not able to be employed due to offence type as agreed 1 month in advance of the release date with the Principal, for example some sex offenders; or
- a Mitigation Event.

**Calculation**

The Contractor's achievement of this KPI will be determined by applying the following formula:

$$\text{PPE} = [ \text{PE} / \text{PR} ] * 100$$

Where:

- PPE = The percentage of Prisoners in employment upon release from the Facility during the Operating Month.
- PE = The total number of Prisoners in employment upon release from the Facility during the Operating Month.
- PR = The total number of Prisoners released from the Facility during the Operating Month. Note: 'Release' does not include a transfer of a Prisoner to another Prison or equivalent facility.

The final result of any such calculations shall be rounded to the nearest whole percentage.

**16. KPI 16 – The percentage of prisoners engaged in constructive work or training**

**Definitions**

The following definitions apply in respect of KPI 16.

**Constructive Work** includes those Prisoners:

- employed external to the Facility in respect of paid employment;
- enrolled at a registered education institution;
- enrolled at a registered trainee institution (e.g. TAFE or equivalent);
- having a purposeful activity; and/or
- used by the Contractor to provide services at the Facility (e.g. cooking, maintenance, industries, etc.).

**Purposeful activity** means any visit in respect of meaningful activities such as employment (internal and external), education, programs, and participants in structured recreation.

**Constructive Work Hours** will be calculated per Prisoner per week. Constructive Work hours exclude:

- time taken to travel to / from employment;
- any hours employed in a week in excess of 30 hours;
- any social visits (other than family visits); and
- any official visit (such as visits from Police, Community Corrections, Aboriginal Visitors Scheme and Legal Organisations (Lawyers, Legal Aid)).

**Mitigation**

Mitigation will be considered in the following circumstances:

- an activity directly related to the resettlement or reintegration of a prisoner;
- a Mitigation Event.



### Calculation

The Contractor's achievement of this KPI will be determined by applying the following formula:

$$PCW = [ ACW / (MCW \times MDAP) ] *100$$

Where:

- PCW = The percentage a Prisoner is engaged in Constructive Work during the Operating Month. For calculation purposes this percentage may not exceed 100% for a prisoner.
- ACW = The total number of actual hours spent by the Prisoner on Constructive Work during the Operating Month.
- MCW = Is 4.3 hours per day (Mon to Sun).
- MDAP = The number of days the Prisoner was in the Facility in the Operating Month.

The percentage of Prisoners engaged in Constructive Work during the Operating Month will be calculated by adding all the individual PCWs together and dividing this by the DAP for the Operating Month.

The final result of any such calculations shall be rounded to the nearest whole percentage.

### 17. KPI 17 – The percentage of prisoners that successfully completed agreed course modules

#### Definitions

**Agreed Course Modules** means the components / units of an Agreed Course delivered at a site with site accreditation.

**Excusable Withdrawal** means when a Prisoner is unable to successfully complete an Agreed Course Module due to being released from custody at the Facility while enrolled in an Agreed Course Module.

The **Agreed Course Modules** are as per each Prisoner's Facility Specific Individual Management Plan which is to be based on the Prisoner's Individual Management Plan (IMP).

#### Mitigation

Mitigation will be considered in the following circumstances:

- where a Prisoner is unable to complete an Agreed Course Module due to:
  - hospitalisation;
  - authorised leave;
  - participation in a Section 95 program (other than Agreed Course Modules) outside the Facility; and/or
- a Mitigation Event.

### **Calculation**

The Contractor's achievement of this KPI will be determined by applying the following formula:

$$\text{PCM} = [ \text{ACM} / \text{MCM} ] * 100$$

Where:

- PCM = The percentage each Prisoner is successfully completed Agreed Course Modules during the Operating Quarter.
- ACM = The total number of Agreed Course Modules successfully completed by the Prisoner during the Operating Quarter.
- MCM = The maximum number of Agreed Course Modules for the Prisoner for the Operating Quarter, which is to be determined from the Prisoner's Facility Specific Individual Management Plan.

The average percentage of Prisoners successfully completed Agreed Course Modules will be calculated by adding all the individual PCMs together and dividing this by the DAP for the Operating Month.

The final result of any such calculations shall be rounded to the nearest whole percentage.

The Contractor must deduct from each Monthly Services Payment the Fixed Percentage for this KPI as set out in column C of the Performance Measures Table.

The percentage of Prisoners that successfully completed Agreed Course Modules is to be calculated quarterly by the Contractor. The Performance Based Percentage achieved is therefore payable quarterly to the Contractor in respect of each Operating Quarter by reference to the previous quarter's performance.

### **18. KPI 18 – The level of agreed facility maintenance services achieved**

The management and conduct of scheduled maintenance represents the protection of State assets to ensure useful service life is achieved and hence is used as an indicator of the Facilities Maintenance Services.

#### **Definitions**

**Scheduled maintenance** means the maintenance necessary to keep the Facility's assets in an operating condition as defined in the regularly updated approved Maintenance Services Plan. Scheduled maintenance includes inspections, testing and certifications related to assets as required by legislation.

### **Mitigation**

Mitigation will be considered in the following circumstances:

- where adequate notice of scheduled maintenance is provided, however access to the site is not granted due to unforeseen operational reasons;
- where scheduled maintenance requirements are negated due to prior reactive maintenance activity; and/or
- a Mitigation Event.

### **Calculation**

The Contractor's achievement of this KPI will be determined by applying the following formula:

$$\text{PFM} = [ \text{FMComp} / \text{FMSched} ] * 100$$

#### **Where:**

- PFM = The level of agreed facility maintenance services achieved during the Operating Month.
- FMComp = The total number of scheduled maintenance tasks completed during the Operating Month.
- FMSched = The total number of scheduled maintenance tasks planned for completion during the Operating Month in accordance with the Maintenance Services Plan.

The final result of any such calculations shall be rounded to the nearest whole percentage.

## **19. KPI 19 – The rating obtained from the customer satisfaction survey**

### **Definitions**

Refer to section 3.5 of this Schedule.

### **Mitigation**

Mitigation will be considered in the following circumstances:

- A Mitigation Event.

### **Calculation**

The Customer Satisfaction Performance Fee will be calculated quarterly in accordance with the Payment Mechanism (Schedule 3).



# Operation and Maintenance of the Young Adults Facility Contract

## Schedule 6 – Appendix 3

### Site Plan

**Between**

**The Commissioner of the Department of Corrective Services, for and on behalf  
of the State of Western Australia**

**and**

**Serco Australia Pty Limited  
(ABN 44 003 677 352)**







