

2018

STATE OF WESTERN AUSTRALIA

AND

SERCO AUSTRALIA PTY LIMITED

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DEED OF VARIATION AND AGREEMENT  
ACACIA PRISON SERVICES AGREEMENT

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State Solicitor's Office  
Commercial  
141 St Georges Terrace  
Perth WA 6000  
Tel 61 08 9264 1888  
Ref VRJ



Deed of Variation and Agreement dated

8 AUGUST

2018

Between

**Dr. Adam Tomison** in his capacity as Chief Executive Officer of the Department of Justice, of 28 Barrack Street, Perth, Western Australia, 6000, for and on behalf of **the State of Western Australia (the State)**

and

**Serco Australia Pty Limited** ABN 44 003 677 352 of Level 24, 60 Margaret Street, Sydney, New South Wales, 2000 (the **Contractor**)

The Parties agree as follows:

## 1. DEFINITIONS AND INTERPRETATION

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### 1.1 Definitions

In this Document, unless the context otherwise requires:

**Additional Bed** has the meaning given in clause 4.1(a)

**Agreement** means the Acacia Prison Services Agreement between the State and the Contractor dated 15 May 2006, as amended from time to time.

**Approved Additional Bed Plan** means the plan endorsed by the Parties pursuant to clause 4.1(d) as the Approved Additional Bed Plan.

**Cease Date** has the meaning given in clause 3.1(c).

**Come Online**, in respect of:

- (a) a Golf Bed, means the circumstance where that bed is the subject of a notice given under clause 3.1(b)(ii); and
- (b) a Kilo Bed or a November Bed, means the circumstance where that Prisoner Bed is the subject of a notice given under clause 4.2(f)(ii).

**DAP Band** has the same meaning as in clause 15.1A(b) of the Agreement.

**Defective** means, in respect of an Additional Bed, where that Additional Bed:

- (a) has any error, deficiency, omission, non-conformity, fault, failure, malfunction, irregularity or other defect other than as a direct result of the State or the Maintenance Contractor using or maintaining the Additional Bed in a manner inconsistent with usual practice; or

- (b) fails to perform at its expected range of capacity and operation in accordance with the relevant technical specifications and requirements set out in the Approved Additional Bed Plan,

and **Defect** has a corresponding meaning.

**Document** means this document and its schedules.

**Effective Date** means the date of this Document or, if this Document is undated, the date on which the State executes this Document.

**First Variation Agreement** means the Extension and Variation of Acacia Prison Services Agreement between the State and the Contractor, undated but executed by the State on 14 February 2011.

**Golf Beds** has the meaning given in clause 3.1(a).

**Golf Online Date** means the date on which all of the Golf Beds have Come Online.

**Kilo Beds** has the meaning given in clause 4.1(a).

**Kilo Online Date** means the date on which all of the Kilo Beds have Come Online.

**November Beds** has the meaning given in clause 4.1(a).

**November Online Date** means the date on which all of the November Beds have Come Online.

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

**Receipt Date** means, in respect of a notice given by a Party to the other Party, the date on which that notice is taken under clause 7.3(d) to have been received by the other Party.

**Second Variation Agreement** means the Deed of Extension, Variation and Agreement – Acacia Prison Services Agreement between the State and the Contractor dated 22 February 2016.

## **1.2 Other Defined Terms**

- (a) Unless the context otherwise requires, terms which are defined in the Agreement have the same meaning when used in this Document.
- (b) A reference to a DAP Band by inclusion of numbers before it, such as "**1476-1525 DAP Band**", is a reference to the DAP Band for which those numbers appear in column A of Table E in section 6 of Schedule 2 of the Agreement.

## **1.3 Rules for Interpreting this Document**

The rules for interpreting the Agreement set out in clause 1.2 of the Agreement also apply to this Document, as if a reference to the Agreement in clause 1.2 of the Agreement were to this Document.

## 2. VARIATION OF AGREEMENTS

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### 2.1 This clause

This clause 2 sets out variations of:

- (a) the Agreement, to take effect variously prior to the November Online Date, as set out in clause 2.2;
- (b) the Agreement, to take effect on and from the November Online Date, as set out in clause 2.3; and
- (c) the Second Variation Agreement, to take effect on and from the Effective Date, as set out in clause 2.4.

### 2.2 Variation of Agreement prior to November Online Date

- (a) The Parties agree that the Agreement is varied with effect on and from the Effective Date by, in clause 1.1, deleting the definition of "Second Availability Trigger Date".
- (b) The Parties agree that the Agreement is varied with effect on and from the Golf Online Date or the Kilo Online Date (whichever first occurs) by deleting Table E in section 6 of Schedule 2 and replacing it with Table E set out in Schedule 1 of this Document.

### 2.3 Variation of Agreement at November Online Date

The Parties agree that the Agreement is varied with effect on and from the November Online Date as follows:

#### (Definitions)

- (a) in clause 1.1:
  - (i) the definition of "Availability Date" is deleted and replaced with the following definition:  
**"Availability Date** means the November Online Date as defined in the Third Variation Agreement"; and
  - (ii) the following definition is inserted in appropriate alphabetical order:  
**"Third Variation Agreement** means the Deed of Variation and Agreement – Acacia Prison Services Agreement dated on or about 6 August 2018 between the State and the Contractor.";

#### (DAP Transition Payment)

- (b) in clause 15.1AB(a), "1451" is deleted and replaced with "1476";

**(Operation Payment When 1525 Available Beds)**

- (c) in sections 2(b) and 2(c) of Schedule 2, "1470" where it appears is deleted and replaced with "1525"; and
- (d) in sections 3(b) and 3(c) of Schedule 2, "1470" where it appears is deleted and replaced with "1525".

**2.4 Variation of Second Variation Agreement**

The Parties agree that the Second Variation Agreement is varied with effect on and from the Effective Date as follows:

- (a) clause 3.1(a)(iii) is deleted and replaced with the following clause:  
"(iii) not used.";
- (b) clause 3.1(c) is deleted;
- (c) clause 3.6 is deleted and replaced with the following clause:  
**"3.6 Not Used"**;
- (d) clause 3.8(d) is deleted and replaced with the following clause:  
"(d) not used;"
- (e) in clause 3.8(e):
  - (i) the words, "(b), (c) and (d) above" are deleted and replaced with the words, "(b) and (c) above"; and
  - (ii) the words, "or Second Availability Trigger Date (as applicable)" are deleted;
- (f) clause 4.4 is deleted and replaced with the following clause:  
**"4.4 Not Used"**;
- (g) the paragraph letter "(a)" of clause 4.5(a) is deleted and clause 4.5(b) is deleted;
- (h) Schedule 2 is deleted.

**2.5 Transitional Payment Mechanisms until November Online Date**

- (a) The Parties agree that, from and including the Effective Date until immediately prior to the November Online Date:
  - (i) paragraph (b) of section 2 of Schedule 2; and
  - (ii) paragraph (b) of section 3 of Schedule 2,of the Agreement do not apply to any Operation Month for which the DAP is 1476 or greater.
- (b) The Parties acknowledge that:

- (i) they intend the Golf Beds to Come Online earlier than the time at which the Kilo Beds Come Online and they intend the Kilo Beds to Come Online earlier than the time at which the November Beds Come Online;
  - (ii) if during any Operation Month either, but not both, of the Golf Beds or the Kilo Beds have Come Online and the DAP for an Operation Month equals or exceeds 1476, the Operation Payment will be calculated using the 1476-1525 DAP Band but the DAP will not, until the other beds Come Online, exceed 1499; and
  - (iii) the State does not wish to pay for 25 or more Prisoners to be accommodated in the Prison when they cannot yet be so accommodated,
- and the Parties agree that the Operation Payment for the Operation Months during which this occurs will be adjusted in accordance with clause 2.5(c).
- (c) For each Operation Month where all of the following occurs:
    - (i) the circumstances are such that:
      - (A) either, but not both, of the Golf Beds or the Kilo Beds have Come Online (including, in either case, where they Come Online during that Operation Month); or
      - (B) the Golf Beds and the Kilo Beds have Come Online (including, in either case, where they Come Online during that Operation Month), the Cease Date has occurred because the State has given notice to the Contractor under clause 3.1(c) and the DAP is less than 1500;
    - (ii) the DAP is 1476 or greater; and
    - (iii) the November Beds have not Come Online,the following adjustments to the calculation of the Operation Payment for that Operation Month will apply:
    - (iv) in the calculation of the Base Operating Sum under section 2 of Schedule 2 of the Agreement, the OOS (prior to the application of the CPI Adjustment) will be the Original Operating Sum which corresponds to the DAP for that Operation Month as set out in Column B of Table E of section 6 of the Agreement, less \$71,838.44 (which amount, for the avoidance of doubt, includes the amount of \$17,500 that section 2 of Schedule 2 provides is to be deducted in the calculation of the Original Operating Sum); and
    - (v) in the calculation of the Performance Adjustment under section 3 of Schedule 2 of the Agreement (and for the purposes of the calculation of a Maximum Performance Linked Fee under section 3.3 of Schedule 5 of the

Agreement), the OPLF (prior to the application of the CPI Adjustment) will be the Original Performance Adjustment which corresponds to the DAP for the Operation Month as set out in Column D of Table E of section 6 of the Agreement, less \$2,717.

(d) For the first Operation Month where clause 2.5(c) applies but then ceases to apply because either of the following also occurs:

(i) the Golf Beds and the Kilo Beds have Come Online and the Cease Date has not occurred; or

(ii) the November Beds Come Online,

and the DAP is 1476 or greater, subject to clause 2.6(e), the Operation Payment for that Operation Month will be reduced to an amount calculated as follows:

$$\text{Operation Payment} = (\text{PreNovOP} \times \text{PreNovD} / \text{OMDays}) + (\text{NovBedsOP} \times \text{NovBedsD} / \text{OMDays})$$

Where:

**PreNovOP** means the Operation Payment for the Operation Month, calculated as if clause 2.3(c) applies.

**PreNovD** means the number of days in the Operation Month which fall before the day on which the Golf Beds and the Kilo Beds have Come Online (if this clause 2.5(d) applies because the conditions in paragraph (i) are met) or the day on which the November Beds Come Online (if this clause 2.5(d) applies because the conditions in paragraph (ii) are met), as the case may be.

**NovBedsOP** means the Operation Payment for the Operation Month, calculated as if clause 2.5(c) does not apply.

**NovBedsD** means the OMDays less the PreNovD.

**OMDays** means the number of days in the Operation Month.

(e) Clause 2.6(d) will not apply to an Operation Month if the November Online Date falls on the first day of that Operation Month and section 2(b) of Schedule 2 of the Agreement and section 3(b) of Schedule 2 of the Agreement operate to alter the definitions of "OOS" and "OPLF" in the Agreement respectively.

(f) If, despite the Parties' mutual intention, the November Beds Come Online without the Kilo Beds having at that time Come Online, the Parties will apply the adjustments to the calculation of the Operation Payment set out in clause 2.5(c)(iv) and (v) for each Operation Month during which that circumstance continues.



### 3. TEMPORARY USE OF BEDS IN GOLF BLOCK

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#### 3.1 Use of beds

- (a) The Contractor agrees to make available 24 beds located in Golf Block of the Prison (**Golf Beds**) for temporary use as Prisoner Beds for 24 additional Available Prisoner Places, until the time referred to in clause 3.1(c).
- (b) The Contractor agrees to:
  - (i) make all necessary arrangements to use the Golf Beds for Available Prisoner Places as soon as possible after the Effective Date;
  - (ii) give notice to the State once all of the Golf Beds are available for use for Available Prisoner Places and by giving such a notice the Contractor will be deemed to represent and warrant to the State under clause 29.1 of the Agreement that all of those Golf Beds are as at the date of the notice available for use for Available Prisoner Places; and
  - (iii) accept Prisoners to fill the Available Prisoner Places created with the Golf Beds at a rate of at least 10 Prisoners per Business Day.
- (c) The Parties:
  - (i) acknowledge and agree that the Contractor's use of the Golf Beds for Available Prisoner Places will cease after the November Beds have Come Online, or at such earlier time as notified by the State to the Contractor, which time must be not less than 5 Business Days after the Receipt Date in respect of the State's notice (in either case, the **Cease Date**);
  - (ii) acknowledge that, due to the need for orderly Prisoner movements, the Contractor may not be in a position to cease using the Golf Beds for Available Prisoner Places immediately on the Cease Date; and
  - (iii) in the event that the Contractor is not in a position to cease using the Golf Beds for Available Prisoner Places immediately on the Cease Date, agree to work towards the cessation of use of the Golf Beds for Available Prisoner Places as soon as possible after the Cease Date.

#### 3.2 Consultation

The Parties agree to consult, acting reasonably, at the request of either Party about any matter in connection with the use of the Golf Beds for Available Prisoner Places.

## **4. EXPANSION OF CAPACITY**

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### **4.1 Agreed Expansion of Capacity**

- (a) The Parties agree that:
  - (i) notwithstanding clause 11.7(a) of the Agreement, the Contractor will at its cost undertake the supply and installation of an additional 50 Prisoner Beds (**Additional Beds**) in accordance with the procedure set out in this clause 4.1; and
  - (ii) 24 of the Additional Beds will be installed in Kilo Block of the Prison (**Kilo Beds**) and the remaining 26 of the Additional Beds will be installed (as to 14) in November A Block of the Prison and (as to 12) in November B Block of the Prison (**November Beds**).
- (b) The Parties acknowledge their intention that the installation and use of the Additional Beds will be staged, with the Kilo Beds being installed and Coming Online in a group as the first stage and the November Beds being installed and Coming Online in a group as the second stage.
- (c) The Contractor must not use an Additional Bed for an Available Prisoner Place unless and until the State has approved that Additional Bed under clause 4.2(c) or the State is taken to have approved the Additional Beds pursuant to dispute resolution under clause 4.3.
- (d) The Parties agree that they will settle and endorse a plan in respect of the supply and installation of the Additional Beds which, once endorsed, will be the Approved Additional Bed Plan.

### **4.2 Supply and installation of Additional Beds**

- (a) The Parties agree that the procedure set out in this clause 4.2 will apply to the supply and installation of the Kilo Beds and the supply and installation of the November Beds and, unless the context otherwise requires:
  - (i) where this clause applies in the case of supply and installation of the Kilo Beds, a reference to "Additional Beds" is to be taken as a reference to the Kilo Beds; and
  - (ii) where this clause applies in the case of supply and installation of the November Beds, a reference to "Additional Beds" is to be taken as a reference to the November Beds.
- (b) The Contractor must carry out the supply and installation of the Additional Beds in accordance with the Approved Additional Bed Plan.

- (c) When the Contractor has completed the installation of the Additional Beds in accordance with the Approved Additional Bed Plan, it must give notice to the State. The State must, subject to all appropriate facilitation being provided by the Contractor, inspect the Additional Beds within 10 Business Days of the Receipt Date in respect of the Contractor's notice and:
- (i) if the State considers that the Additional Beds comply with the Approved Additional Bed Plan, the State must approve them by notice to the Contractor within 20 Business Days of the Receipt Date in respect of the Contractor's notice; and
  - (ii) if the State considers that the Additional Beds do not comply with the Approved Additional Bed Plan, the State must give notice to the Contractor, within 20 Business Days of the Receipt Date in respect of the Contractor's notice, that it does not approve the Additional Beds, in which case the State must include in its notice to the Contractor details as to the manner in which the Additional Beds do not comply with the Approved Additional Bed Plan,
- and if the State does not give notice to the Contractor within 20 Business Days as required under clause 4.2(c)(i) or (ii):
- (iii) the Contractor may give notice to the State that it requires the State to give notice in accordance with clause 4.2(c)(i) or (ii) within a period of time specified (which must not be less than 5 Business Days from the Receipt Date in respect of the Contractor's notice); and
  - (iv) if the State does not give notice under clause 4.2(c)(i) or (ii) by the time required by the Contractor in a notice given in accordance with clause 4.2(c)(iii), the State will be deemed to have given notice to the Contractor under clause 4.2(c)(ii) in respect of the Additional Beds.
- (d) If the State gives notice to the Contractor under clause 4.2(c)(ii), the Contractor must:
- (i) rectify any notified issues and again give notice to the State under clause 4.2(c); or
  - (ii) give notice to the State that it is referring the matter of the reasonableness of the State's non-approval of the Additional Beds, the reasonableness of the State's failure to give a notice under clause 4.2(c)(i) or (ii) as required by a notice given by the Contractor under clause 4.2(c)(iii), or the reasonableness of the issues notified by the State in respect of the Additional Beds, to dispute resolution under clause 4.3.

- (e) If the State gives the Contractor a notice under clause 4.2(c)(ii) in respect of the Additional Beds for a second time, either Party may, within 5 Business Days after the Receipt Date in respect of the State's notice under clause 4.2(c)(ii), give notice to the other Party that it is referring the matter of the reasonableness of the State's non-approval of the Additional Beds or the issues notified by the State in respect of the Additional Beds to dispute resolution under clause 4.3.
- (f) Once the State has approved all the Kilo Beds or all the November Beds (as the case may be) under clause 4.2(c) or the State is taken to have approved all the Kilo Beds or all the November Beds (as the case may be) pursuant to dispute resolution under clause 4.3, the Contractor must:
  - (i) make all necessary arrangements to use those Additional Beds for Available Prisoner Places as soon as possible;
  - (ii) give notice to the State once all of those Additional Beds are available for use for Available Prisoner Places and by giving such a notice the Contractor will be deemed to represent and warrant to the State under clause 29.1 of the Agreement that all of those Additional Beds are as at the date of the notice available for use for Available Prisoner Places; and
  - (iii) within 15 Business Days after giving notice under clause 4.2(f)(ii) in respect of the November Beds, give to the State a statement which sets out the cost of undertaking the supply and installation of the Additional Beds in accordance with this clause 4, based on direct cost to the Contractor and not including any margin for profit, as further described in clause 5.1(a)(i), together with evidence to verify the amounts included in the statement.
- (g) The Contractor agrees that it will be able to accept Prisoners to fill the Available Prisoner Places created with the Additional Beds at a rate of at least 10 Prisoners per Business Day.
- (h) The State will own the Additional Beds.
- (i) The State acknowledges that, subject to clauses 4.4(d) and 4.4(f), the Additional Beds will be maintained by the Maintenance Contractor as part of Prison Maintenance.

#### **4.3 Dispute resolution**

Where a Party gives notice to the other Party in accordance with clause 4.2 or clause 5.1(b) that it is referring a matter to dispute resolution under this clause 4.3, the following will apply:

- (a) the Department's Director, Operating Standards and Procedures (or a person occupying an equivalent position within the State) and a senior executive of the

Contractor must meet within 5 Business Days of the Receipt Date in respect of the referring Party's notice (**Referral Date**) and must negotiate in good faith, to attempt to resolve the matter;

- (b) if the senior executives referred to in clause 4.3(a) cannot resolve the matter within 10 Business Days after the Referral Date, the CEO and the Contractor's managing director responsible for the Agreement must meet within 15 Business Days of the Referral Date and must negotiate in good faith, to attempt to resolve the matter; and
- (c) if the CEO and the Contractor's managing director responsible for the Agreement cannot resolve the matter within 20 Business Days of the Referral Date, either Party may notify the other that it requires the matter to be submitted to resolution as a dispute by an independent expert and the Parties must follow the procedure set out in clause 26.5 of the Agreement in relation to that dispute.

#### **4.4 Terms of supply and installation of Additional Beds**

- (a) The Parties agree that the Contractor will supply and install the Additional Beds on the terms and conditions set out in this clause 4.4.
- (b) The Contractor must do everything reasonably necessary to obtain the benefit of all manufacturer and other third party warranties which apply to the materials used for the Additional Beds, including any warranties that are obtained by any subcontractor, and where obtained, must ensure that the State has the benefit of those warranties.
- (c) The Contractor represents and warrants to the State that:
  - (i) it has title to and the right to supply each Additional Bed to the State and that it supplies each Additional Bed free from encumbrances;
  - (ii) for the period of 4 months after it Comes Online, each Additional Bed will comply with the specification and other description set out in the Approved Additional Bed Plan, save (in the case of an Additional Bed inspected by the State under clause 4.2(c)) where the State's inspection of the Additional Bed should have revealed that failure to comply; and
  - (iii) for the period of 4 months after it Comes Online, each Additional Bed will be reasonably fit for the purpose of use as a Prisoner Bed, save (in the case of an Additional Bed inspected by the State under clause 4.2(c)) for any Defects which the State's inspection of the Additional Bed should have revealed.
- (d) The Contractor must install the Additional Beds in a good and workmanlike manner.

- (e) Title to an Additional Bed will pass upon approval by the State of that Additional Bed.
- (f) If a representation or warranty of the Contractor made under clause 4.4(c)(ii) or clause 4.4(c)(iii) is untrue in respect of an Additional Bed or an Additional Bed is otherwise Defective (in which case it is a **Faulty Additional Bed**), the State may, by notice to the Contractor:
  - (i) require the Contractor to replace the Faulty Additional Bed with a bed of the same kind and quality as the Additional Beds; or
  - (ii) require the Contractor to repair or rectify the Faulty Additional Bed, and the Contractor must:
    - (iii) comply with the State's notice within:
      - (A) in the case that no more than 5 Additional Beds require replacement, repair or rectification at any given time, 10 Business Days after the Receipt Date in respect of the State's notice; or
      - (B) in the case that more than 5 Additional Beds require replacement, repair or rectification at any given time, 20 Business Days after the Receipt Date in respect of the State's notice; and
    - (iv) in the event that the Contractor does not comply with the State's notice within the timeframes required under clause 4.4(f)(iii), reimburse the State for the State's reasonable costs and expenses resulting from not having the Additional Bed used for an Available Prisoner Place while the Faulty Additional Bed is being replaced, repaired or rectified.

## **5. PAYMENTS**

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### **5.1 State to pay for Additional Beds**

- (a) The State will:
    - (i) reimburse the Contractor for the cost of the Additional Beds as fully installed, including for the cost of:
      - (A) bed materials and manufacture;
      - (B) one desk, one general purpose electrical outlet and one data point outlet all to be located in the resettlement room; and
      - (C) lighting and associated electrical works and escort requirements for electrical works,
- based on direct cost to the Contractor and not including any margin for profit, as verified to the satisfaction of the State (acting reasonably) by

such evidence provided to the State by the Contractor as the State reasonably requests; and

- (ii) comply with its obligation under clause 5.1(a)(i) by allowing the Contractor to add the amount referred to in clause 5.1(a)(i), once verified to the satisfaction of the State in accordance with this Agreement or settled pursuant to dispute resolution under clause 4.3, to an invoice given under clause 15.1(b) of the Agreement after the date on which the amount is so verified or settled and all of the Additional Beds have Come Online.
- (b) Either party may give notice to the other Party that it is referring a dispute about the amount payable by the State under clause 5.1(a)(i) to dispute resolution under clause 4.3.

### **5.2 Early time for payment of DAP Transition Payment**

The Parties:

- (a) acknowledge that, when the DAP for an Operation Month increases to 1476 or more for the first time after the Effective Date, clause 15.1A(a) of the Agreement will require the State to pay a DAP Transition Payment as set out in that clause; and
- (b) agree that the Contractor may invoice the State for the DAP Transition Payment referred to in clause 5.2(a) within 5 Business Days after the Golf Online Date or the Kilo Online Date (whichever first occurs), instead of invoicing the State for that DAP Transition Payment at the time referred to in clause 15.1A(c) of the Agreement. The Parties agree that an invoice issued by the Contractor under this clause 5.2(b) will, for the purposes of clause 15.1A(d) of the Agreement, be taken to be an invoice issued by the Contractor under clause 15.1A(c) of the Agreement.

### **5.3 Recruitment and Training Band Entry Costs**

Following the date on which the Contractor gives notice under clause 4.2(f)(ii) in respect of the Kilo Beds, the State must pay the Contractor the amount set out in Column G of Table E in section 6 of Schedule 2 of the Agreement which corresponds to a DAP of 1476-1525, multiplied by the CPI Adjustment applicable to the most recent Review Date prior to the commencement of the Operation Month during which the Contractor gives notice under clause 4.2(f)(ii). The Contractor may invoice the State for payment of that amount at the same time as it invoices the State under clause 5.2(b).

## **6. RATIFICATION OF AGREEMENT**

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Except as varied by this Document the State and Contractor ratify and confirm the Agreement, the First Variation Agreement and the Second Variation Agreement.

## **7. GENERAL**

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### **7.1 Effect of variations**

Nothing done or effected under or contemplated by this Document constitutes a variation or a Change for the purposes of clause 16 of the Agreement.

### **7.2 Representations and warranties**

The representations and warranties given by the Contractor in the Agreement also apply to this Document.

### **7.3 Notices**

Every notice, document or other communication that may or must be given under this Document:

- (a) must be in writing;
- (b) must be given by:
  - (i) in the case of the Contractor – the Contractor Representative; and
  - (ii) in the case of the State – the Contract Manager;
- (c) must be:
  - (i) hand-delivered or sent by prepaid post to the address of the Party receiving that notice or other communication set out below; or
  - (ii) transmitted by electronic mail to the email address of the Party receiving the notice or other communication set out below;
- (d) subject to paragraph (e), is taken to be received:
  - (i) in the case of hand delivery, on the date of delivery;
  - (ii) in the case of post, on the seventh Business Day after posting; and
  - (iii) in the case of email, on the date the email is sent if the Party giving the notice has a confirmation report or any other written evidence that the email has reached the recipient's mailbox; and
- (e) if received after 5.00 pm or on a day other than a Business Day, is taken to be received on the next Business Day.

Address for service of notices, unless otherwise notified:



**State**

David Malcolm Justice Centre  
Level 16, 28 Barrack Street  
Perth WA 6000

**Email**

David.Hughes@justice.wa.gov.au

**Attention:** Contract Manager, Acacia  
Prison Services Agreement

**Contractor**

Level 23  
60 Margaret Street  
Sydney NSW 2000

**Email**

David.Thompson@serco-ap.com

**Attention:** Contractor  
Representative, Acacia Prison  
Services Agreement

**7.4 Costs**

The State and the Contractor must each pay their own legal and other costs in connection with the preparation and signing of this Document.

**7.5 Governing law**

- (a) This Document 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.

**7.6 Counterparts**

- (a) This Document may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this Document by signing any counterpart.

Execution page

EXECUTED as a deed.

Any attorney executing this Document states that he or she has no notice of revocation or suspension of his or her power of attorney.

Signed by Dr Adam Tomison for and on behalf of the State of Western Australia in the presence of:

  
Witness Signature

J CAMPOPIANO  
Print Name



Signature

8/8/18

Date

Executed by Serco Australia Pty Limited in accordance with section 127(1) of the Corporations Act 2001 (Cth):

  
Director Signature

MARK W. IRWIN  
Print Name

  
Director/Secretary Signature

HEATH WATT  
Print Name

## Schedule 1

"Table E

Table E applies in all situations other than where Table F applies.

<b>TABLE E</b>						
<b>PRICING TABLE</b>						
<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>	<b>Column G</b>
<b>DAP for Operation Month</b>	<b>Original Operating Sum for Operation Month</b>	<b>Annualised Operation Payment</b>	<b>Original Performance Adjustment</b>	<b>Annualised Performance Adjustment</b>	<b>Band Entry Costs</b>	<b>Recruitment and Training Band Entry Costs</b>
0 - 600	\$2,242,013	\$26,904,156	\$112,101	\$1,345,208		
601 - 625	\$2,260,092	\$27,121,104	\$113,005	\$1,356,055		
626 - 650	\$2,352,115	\$28,225,380	\$117,606	\$1,411,269		
651 - 675	\$2,388,230	\$28,658,760	\$119,412	\$1,432,938		
676 - 700	\$2,433,809	\$29,205,708	\$121,690	\$1,460,285		
701 - 725	\$2,476,617	\$29,719,404	\$123,831	\$1,485,970		
726 - 750	\$2,506,352	\$30,076,224	\$125,318	\$1,503,811		
751 - 775	\$2,545,587	\$30,547,044	\$127,279	\$1,527,352		
776 - 800	\$2,558,547	\$30,702,564	\$127,927	\$1,535,128		
801 - 825	\$2,617,540	\$31,410,480	\$130,877	\$1,570,524	\$38,905	
826 - 850	\$2,682,550	\$32,190,600	\$134,128	\$1,609,530	\$36,093	
851 - 875	\$2,749,398	\$32,992,776	\$137,470	\$1,649,639	\$40,311	
876 - 900	\$2,820,798	\$33,849,576	\$141,040	\$1,692,479	\$42,654	
901 - 925	\$2,943,195	\$35,318,340	\$147,160	\$1,765,917	\$82,966	
926 - 950	\$3,014,505	\$36,174,060	\$150,725	\$1,808,703	\$47,811	
951 - 975	\$3,064,430	\$36,773,160	\$153,222	\$1,838,658	\$22,499	
976 - 1000	\$3,133,731	\$37,604,772	\$156,687	\$1,880,239	\$17,812	

<b>TABLE E</b>						
<b>PRICING TABLE</b>						
1001-1025	\$3,237,718	\$38,852,613	\$161,886	\$1,942,631	\$24,168	\$198,715
1026-1050	\$3,260,833	\$39,129,998	\$163,042	\$1,956,500	\$16,928	
1051-1075	\$3,299,001	\$39,588,017	\$164,950	\$1,979,401	\$18,573	
1076-1100	\$3,401,830	\$40,821,960	\$170,091	\$2,041,098	\$24,036	
1101-1125	\$3,524,224	\$42,290,682	\$176,211	\$2,114,534	\$26,467	\$274,818
1126-1150	\$3,559,974	\$42,719,686	\$177,999	\$2,135,984	\$18,043	
1151-1175	\$3,629,544	\$43,554,530	\$181,477	\$2,177,727	\$19,864	
1176-1200	\$3,713,778	\$44,565,339	\$185,689	\$2,228,267	\$22,626	
1201-1225	\$3,790,702	\$45,488,422	\$189,535	\$2,274,421	\$22,590	
1226-1250	\$3,840,025	\$46,080,305	\$192,001	\$2,304,015	\$20,802	
1251-1275	\$3,948,101	\$47,377,215	\$197,405	\$2,368,861	\$25,929	\$245,222
1276-1300	\$3,994,635	\$47,935,625	\$199,732	\$2,396,781	\$20,004	
1301-1325	\$4,031,056	\$48,372,672	\$201,553	\$2,418,634	\$21,770	
1326-1350	\$4,086,966	\$49,043,590	\$204,348	\$2,452,180	\$22,501	
1351-1375	\$4,139,173	\$49,670,073	\$206,959	\$2,483,504	\$19,840	
1376-1400	\$4,075,575	\$48,906,900	\$203,779	\$2,445,345	\$18,725	
1401-1425	\$4,148,353	\$49,780,236	\$207,418	\$2,489,012	\$21,460	
1426-1450	\$4,221,131	\$50,653,572	\$211,057	\$2,532,679	\$21,999	
1451-1475	\$4,293,909	\$51,526,904	\$214,695	\$2,576,345	\$19,012	
1476-1525	\$4,398,406	\$52,780,873	\$219,920	\$2,639,044	\$21,599	\$91,711

This Table E is subject to the CPI Adjustment. "