DATED 18th DAY OF March 2019

CONTRACT FOR THE MANAGEMENT AND OPERATION OF THE ADELAIDE REMAND CENTRE

BETWEEN

MINISTER FOR CORRECTIONAL SERVICES

("STATE")

-AND-

SERCO AUSTRALIA PTY LTD

(ABN 44 003 677 352)

("CONTRACTOR")

Government of South Australia

CROWN SOLICITOR
Level 9, 45 Pirie Street, Adelaide SA 5000

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DATED day of

PARTIES:

THE MINISTER FOR CORRECTIONAL SERVICES for and on behalf of **THE STATE OF SOUTH AUSTRALIA** of Level 2, 45 Pirie Street, Adelaide SA 5000 ("**State**")

AND

SERCO AUSTRALIA PTY LTD (ABN 44 003 677 352) whose registered business address is Level 24, 60 Margaret Street, Sydney NSW 2000 ("**Contractor**")

BACKGROUND:

A. The State is the owner of the Adelaide Remand Centre ("the Prison") which is situated on the whole of the land comprised in Certificate of Title Register Book Volume 5458 Folio 337 being Lot 1 in Filed Plan 7267; Certificate of Title Register Book Volume 5470 Folio 939 being Lot 2 in Filed Plan 18140; and Certificate of Title Register Book Volume 5704 Folio 794 being Lot 10 in Deposited Plan 13622, all in the area named Adelaide in the Hundred of Adelaide.

B. The Prison provides for the accommodation of remand and sentenced prisoners. It accommodates male high security prisoners in cell style accommodation. The Prison accommodates both mainstream and protection prisoners and facilitates the regular transfer of prisoners to the Courts.

C. The State wishes to outsource the management and operation of the Prison to a private contractor. After a competitive selection process the Contractor has been selected and the Contractor has agreed to manage, operate and maintain the Prison on the terms and conditions set out in this Contract.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In the Contract, unless the context otherwise requires:

1.1.1 **"Act"** means the Correctional Services Act 1982 (SA);

1.1.2 **"Asset Register"** means the register of assets referred to in clause 10.1.5;

1.1.3 "**Associations or Relationships Declaration**" means a declaration in such form as is prescribed by the Chief Executive from time to time detailing any associations or relationships of the person that may, or may reasonably be perceived by others to, compromise their ability to perform the Works.

1.1.4 **"Audit"** means the activity undertaken by an Auditor including monitoring the Contractor's compliance with the Contract, the operation of the Prison and the Contractor's compliance with the Statement of Requirements and Specifications;

1.1.5 **"Auditor"** means a person or persons appointed by the State to carry

out an Audit;

1.1.6 "**Change in Laws**" means a change in, or repeal of, existing Law; or the enactment or judicial determination of a new Law.

1.1.7 **"Change in Control"** means, in relation to a corporation other than a corporation the shares in which are listed on a stock exchange, that the power (whether formal or informal, whether or not having legal or equitable force, whether or not based on legal or equitable rights and whether direct or indirect, including through one or more entities):

(a) to control more than half of the voting power of the corporation;

(b) to control the composition of the board of directors or the corporation; or

(c) to control more than half of the issued share capital of the corporation excluding any part thereof which carries no right to participate beyond a specified amount in the distribution of either profit or capital,

resides with a person other than those holding that power on the Commencement Date;

1.1.8 **"Chief Executive"** means the person holding or acting in the position of Chief Executive Officer of the Department;

1.1.9 **"Chief Executive Rules"** means the rules made by the Chief Executive relating to the management of the institution in accordance with section 83 of the Act;

1.1.10 **"Commencement Date"** means 1 April 2019;

1.1.11 **"Confidential Information"** means information, documentation or material relating to the Prison or Prisoners, the State or any aspect of the performance of the Work, that is designated as confidential information under the Act or any information that is designated by either of the Parties as confidential information;

1.1.12 **"Consumables"** means items of a consumable nature including clothing, bedding, kitchenware, cleaning materials, food, uniforms, pharmaceuticals, medical supplies and manufacturing and craft supplies;

1.1.13 **"Contract"** means this Contract for the operation and management of the Prison (including all Schedules to it);

1.1.14 **"Contract Administrator"** means the persons referred to in clause 2;

1.1.15 **"Contract Year"** means each period of twelve calendar months commencing on the Commencement Date;

1.1.16 "**Contracting and Official Records Standard"** means the standard relating to record management amended by the Manager (Director), State Records pursuant to section 14(1) of the *State Records Act 1997* and which can be found at *http://www.government.archives.sa.gov.au.*

1.1.17 **"Contractor"** includes the employees, agents and subcontractors of the Contractor;

1.1.18 **"Contractor's Obligations"** means the obligations of the Contractor under this Contract or imposed by law in relation to the performance of the Work;

1.1.19 **"Contractor's Tender"** means the tender submitted by the

Contractor to carry out the Work as updated with all modifications, clarifications and additions agreed between the Parties;

1.1.20 **"Contractor's Staff"** means any employees, officers, agents or subcontractors of the Contractor whether permanent or temporary, full time or part time or volunteer engaged in the Contractor's performance of the Work;

1.1.21 **"Correctional Officer"** means the Contractor's Staff whose duties include the supervision of prisoners;

1.1.22 **"Correctional Officer Training"** means the pre-service training specified in the Statement of Requirements and Specifications;

1.1.23 **"Day"** means a calendar day;

1.1.24 **"DCS Contract Compliance Officer"** means the person nominated in Schedule 2;

1.1.25 **"DCS Delegate"** means the DCS employee that has the delegated authority to make decisions about the operation of the Prison;

1.1.26 **"Department or DCS"** means the Department for Correctional Services, a Department of the Public Service constituted from time to time as an administrative unit under the *Public Sector Act, 2009*;

1.1.27 **"Default"** means any breach or default by the Contractor of the Contractor's Obligations and includes but is not limited to:

(a) a failure by the Contractor to observe the requirements of the Statement of Requirements and Specifications;

(b) a failure by the Contractor to comply with the Policies and Procedures;

(c) a reduction in the number of staff specified in the Staffing Schedule in breach of clause 6.3;

(d) a failure by the Contractor to comply with an instruction or direction from the State made under clause 7.8;

1.1.28 **"Default Notice"** means a written notice by the State of a Default given to the Contractor under clause 30.2;

1.1.29 **"Drug"** has the meaning given to it in the *Correctional Services Act 1982*;

1.1.30 "**Drug Test**" has the meaning given to it *Correctional Services Act 1982*;

1.1.31 "**Executive Director's Instructions**" means directions issued from time to time by Executive Director, Custodial Services in relation to the management of the Prison;

1.1.32 **"Electronic and Physical Security Systems"** means the series of access controlled physical barriers and electronic detection and surveillance systems which are interfaced to a Security Management System operated within the Main Control Room by Correctional Officers;

1.1.33 **"Emergency/Unplanned Escorts"** has the meaning in clause 7.1;

1.1.34 **"Further Term"** means the period notified by the State in a notice under 4.2 up to a maximum of five (5) years commencing immediately upon the expiration of the Initial Term;

1.1.35 **"Hospital"** means any hospital or medical facility in which a Prisoner is required to be treated or hospitalised but not a hospital or medical facility within the Prison;

1.1.36 **"Industry Equipment"** means the machinery and other items necessary to operate and maintain a prison industry at the Prison;

1.1.37 **"Initial Term"** means seven (7) years from the Operational Start Date;

1.1.38 "Insolvency Event" means:

(a) a general acknowledgement by the Contractor that it is insolvent;

(b) the Contractor informs the State in writing or creditors generally that the Contractor is insolvent;

(c) the Contractor enters into a scheme of arrangement or composition with creditors;

(d) the Contractor is placed under official management or a resolution is passed at a meeting of creditors to place the Contractor under official management;

(e) a receiver of the property or part of the property of the Contractor is appointed;

(f) the Contractor, being a company, takes or has taken or instituted against it any action or proceeding whether voluntary or compulsory which has an object or may result in the winding up of the company (where the action or proceeding is not discharged within 45 days), other than a voluntary winding up by members for the purpose of reconstruction or amalgamation, or is placed under official management or enters into a compromise or other arrangement with its creditors or a receiver or receiver and manager is appointed to carry on its business for the benefit of its creditors or any of them;

(g) execution is levied against the Contractor by creditors, debenture holders or trustees or under a floating charge;

(h) a mortgagee takes possession of the business affairs of the Contractor; or

(i) an administrator under the Corporations Act is appointed in respect of the Contractor;

1.1.39 **"Inventory"** means all those items of Prison Equipment listed in Schedule 3 of this Contract as at the Commencement Date;

1.1.40 **"Key Performance Indicators"** or **"KPIs"** means the selected Service Levels referred to in clause 28 and specified in the Performance Schedule;

1.1.41 "**JIS**" means the Justice Information System;

1.1.42 **"Law"** means the law in force in Australia and South Australia, including the common law, statutes, statutory instruments and the requirements of the Minister for Correctional Services, the Parole Board or any other authority having power to regulate any aspect of the activity conducted at the Prison;

1.1.43 **"Month"** means a calendar month;

1.1.44 "**Monthly Performance Withholding Fee**" means 5% of the monthly Operating Price that is withheld from the payment of the Operating Price each month as an offset against a failure to perform a KPI specified in Table 2 under item 2 of Schedule 7- Performance Schedule;

1.1.45 **"Operating Price"** means the fee specified in Schedule 4 for the operation and management of the Prison which, subject to the terms of the Contract, shall be payable to the Contractor in accordance with clause 20.1;

1.1.46 **"Operational Start Date"** means 10 August 2019;

1.1.47 **"Parties"** means the Contractor and the State and **"Party"** means either one of them;

1.1.48 **"Performance Monitoring"** means the State's monitoring and auditing of the Contractor's performance of the Contract;

1.1.49 "**Performance Schedule**" means Schedule 7 of this Contract;

1.1.50 **"Personal Information"** means information or an opinion, whether true or not, relating to a natural person or the affairs of a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion that is collected by the Contractor for and on behalf of the State or to which the Contractor has access in connection with this Contract;

1.1.51 **"Policies and Procedures"** mean the administrative procedures that the Chief Executive of the Department is required by the Act to make to facilitate the effective and efficient management of correctional services and that are published and apply from time to time including without limitation the particular policies and standard operating procedures (**SOP**) specified in the Statement of Requirements and Specifications;

1.1.52 **"Pricing Schedule"** means Schedule 4 of this Contract;

1.1.53 **"Prison"** means the Adelaide Remand Centre being the facility on the Site consisting of all existing buildings, improvements, fixtures, fittings and equipment on the Site and such further improvements as the State may authorise to be carried out at the Site from time to time;

1.1.54 **"Prison Manager**" means the Contractor's employee that is responsible for the overall operation and management of the Prison on behalf of the Contractor;

1.1.55 **"Prison Equipment"** means all those items of equipment and utensils described in the Inventory and the Prison Industry Equipment together with all replacement items obtained by the Contractor in accordance with clause 10.2 of this Contract but does not include the Consumables;

1.1.56 **"Prison Employment Programs"** means programs that engage prisoners in the provision of domestic services within the Prison, including food preparation and cleaning;

1.1.57 **"Prisoner"** means a prisoner within the meaning of the Act required by Law to be detained for a period or sentenced to a period of imprisonment and admitted for detention at the Prison pursuant to the Contract;

1.1.58 **"Rebates"** means a credit or rebate payable in relation to a failure to

meet a Service Level that is a Key Performance Indicator;

1.1.59 **"Records"** means the detailed records of the Contractor concerning every aspect of the operation and management of the Prison, the Prisoners, every matter relating to the performance of the Work and all records required to be kept in accordance with the Contract including without limitation all financial, maintenance, employee and Prisoner records;

1.1.60 **"Service Levels"** means the service levels specified in the Performance Schedule;

1.1.61 **"Site"** means the whole of the land comprised in Certificate of Title Register Book Volume 5458 Folio 337 being Lot 1 in Filed Plan 7267; Certificate of Title Register Book Volume 5470 Folio 939 being Lot 2 in Filed Plan 18140; and Certificate of Title Register Book Volume 5704 Folio 794 being Lot 10 in Deposited Plan 13622, all in the area named Adelaide in the Hundred of Adelaide;

1.1.62 **"Staffing Schedule"** means the staffing model for the current Prison capacity of 274 prisoners which is attached at Schedule 8;

1.1.63 **"Statement of Requirements and Specifications"** means the outputs and minimum standards for the Work specified in Schedule 1;

1.1.64 **"Succession Phase"** means the phase of the Contract set out in clause 34.2;

1.1.65 **"Term"** means the Initial Term and any Further Term under clause 4.2;

1.1.66 **"Transition Plan"** means the transition plan set out in Annexure 1, which has been approved by the Minister and which sets out the steps that the Parties intend to take to ensure an orderly and efficient transition of the operation and management of the Prison by the State to the Contractor by the Operational Start Date;

1.1.67 **"Transition Period"** means the period of time from the Commencement Date to the Operational Start Date;

1.1.68 **"Transitional Services"** means the Services which the State agrees to provide under the Transition Plan;

1.1.69 **"Visiting Inspector"** means a person appointed by the Governor for the purposes of section 20 of the Act;

1.1.70 **"Visiting Tribunal"** means a tribunal constituted under section 17 of the Act;

1.1.71 **"Work"** means the management and operation of the Prison as a prison for the Term, being the detention, security, supervision, custody, management and welfare of each Prisoner which the State determines should be imprisoned at the Prison; and

1.1.72 "**Year**" means the twelve month period commencing on the Commencement Date and each anniversary of the Commencement Date thereafter during the Term.

1.2 **Interpretation**

1.2.1 Clause headings shall not be used in the interpretation of the Contract.

1.2.2 Words:

(a) in the singular include the plural and vice versa;

(b) importing a gender include every gender;

(c) denoting a natural person include bodies corporate and un-incorporate and vice versa.

1.2.3 Where any word or phrase is given a defined meaning in the Contract, any other part of speech or other grammatical form of that word or phrase shall (unless the context otherwise requires) have a corresponding meaning.

1.2.4 A reference to:

(a) writing includes any mode of representing or reproducing words, figures, drawings or symbols in a visible form delivered posted or transmitted electronically;

(b) a thing or matter includes a reference to a part of the thing or matter;

(c) a statute includes a statute which amends, consolidates or replaces the statute referred to and to all orders, regulations, instruments or other subordinate legislation made under the statute;

(d) dollars and $ refer to an amount in Australian currency;

(e) a clause, Schedule or Attachment is a reference to a clause, Schedule or Attachment to the Contract.

1.2.5 Where specific obligations and responsibilities are identified the Contract shall not be construed so as to limit the generality of the Contractor's obligations.

1.2.6 In the event of any inconsistency:

(a) between the provisions of the Schedules and the provisions of the clauses of the Contract, the provision of the clauses of the Contract prevail;

(b) between the provisions of the Schedules and the Policies and Procedures, the provisions of the Schedules prevail;

(c) between the provisions of the Contract and the Contractor's Tender, the provisions of the Contract prevail;

(d) between the provisions of the Contractor's Tender, those provisions which are later in time prevail over those which are earlier;

to the extent necessary to resolve the inconsistency.

1.3 **Contra Proferentem**

In the interpretation of this Contract no rule of construction applies to the disadvantage of one Party on the basis that the Party put forward the Contract or any part of the Contract.

2. CONTRACT ADMINISTRATION

2.1 The State appoints the person named in Schedule 2 as its Contract Administrator for the purposes of this Contract.

2.2 The Contractor appoints the person named in Schedule 2 as its Contract Administrator.

2.3 The State's Contract Administrator has authority to:

2.3.1 exercise all of the powers and functions of the State under this Contract other than the power to amend this Contract; and

2.3.2 bind the State in relation to any matter arising out of or in connection with this Contract.

2.4 The Contractor's Contract Administrator has authority to:

2.4.1 exercise all of the powers and functions of the Contractor under this Contract including the power to amend this Contract; and

2.4.2 bind the Contractor in relation to any matter arising out of or in connection with this Contract.

2.5 A notice served on a Contract Administrator is taken to be notice to that Contract Administrator's Party.

3. WARRANTIES BY CONTRACTOR

3.1 Express Warranties

The Contractor warrants that:

3.1.1 in the exercise and performance of the Contract it will deal with the State fairly and in good faith;

3.1.2 all statements and representations contained in the Contractor's Tender are accurate and may be relied upon by the State;

3.1.3 it shall carry out the Work according to the highest standards of care, skill, competence and diligence required for work of this nature;

3.1.4 it had no knowledge of the details and pricing of any competing tender at the time that the Contractor's Tender was lodged;

3.1.5 it has not paid or agreed to pay any consideration directly or indirectly to any trade or industry association on behalf of or for the benefit of any competing tenderer;

3.1.6 it has not paid or agreed to pay any consideration directly or indirectly to any competing tenderer or received any consideration from any competing tenderer in relation to the subject matter of this Contract;

3.1.7 it has fully informed itself as to the risks associated with the performance of the Work;

3.1.8 as at the date of execution of the Contract, it has fully informed itself of the features of the Site and surroundings, the physical condition of the Site and any characteristics of the Site which might particularly affect the performance of the Work and accepts the Site in its present condition and state of repair;

3.1.9 it has fully informed itself as to the availability and cost of labour hire necessary to undertake the Work; and

3.1.10 it will maintain for the Term a quality system in compliance with AS/NZS ISO 9001-2000 in relation to the performance of the Work at the Prison and that it will hold third Party QA certification from a JASANZ registered certification body or second Party QA certification from a South Australian Government registered quality system auditor in respect of its quality system.

3.2 Reliance

The Contractor acknowledges that the State has relied upon the representations contained in the Warranties set out in clause 3.1 and the

Staffing Schedule in relation to the employment of a specified number of staff at the Prison. The State will have recourse to these representations when assessing:

3.2.1 any operational risk at the Prison; or

3.2.2 the Contractor's progress in meeting the Contractor's Obligations under this Contract including the Statement of Requirements and Specifications, throughout the Term.

3.3 **Probity**

3.3.1 In performing its obligations under this Contract, the Contractor must at all times:

(a) act lawfully; and

(b) not be a Party to any act or thing which, in the State's reasonable opinion:

(i) is prejudicial to the goodwill, reputation or overall public image of the State; or

(ii) puts at risk the probity of any transaction or agreement related to, or impacted by, the performance of the Work.

3.3.2 The State is entitled to:

(a) engage a probity auditor or adviser to advise on compliance with this clause; and

(b) determine its reasonable opinion on the advice of such a probity auditor or adviser.

3.3.3 Where a probity auditor engaged by the State determines that the Contractor has materially breached clause 3.3.1, then without prejudice to any other rights of the State, the Contractor must immediately pay the costs and expenses of the probity audit.

4. TERM

4.1 **Initial Term**

4.1.1 The Contract commences on the Commencement Date and expires at the end of the Initial Term, unless extended in accordance with this clause.

4.1.2 The State appoints the Contractor to carry out the Work from the Operational Start Date.

4.2 **Extension for Further Term**

The State may extend the Initial Term for a Further Term of up to five (5) years by giving notice in writing to the Contractor no less than ninety (90) days prior to the expiration of the Initial Term, in which case the Contract shall continue for the Further Term on the same terms and conditions with the exception of this clause 4 which shall be omitted.

5. TRANSITION PERIOD

5.1 The State will, during the Transition Period, continue to manage and operate the Prison.

5.2 The Parties shall work and cooperate with each other during the Transition Period to ensure the smooth transition of the operation and management of the Prison from the State to the Contractor.

5.3 The Contractor must perform its obligations set out in the Transition Plan so that the Contractor is in a position to commence performing the Works on the Operational Start Date.

5.4 In the event that a discrepancy is found following the asset reconciliation process set out in the Transition Plan and where such discrepancy will result in a cost to the Contractor to rectify such discrepancy then the provisions of clause 8.2 will apply.

5.5 The State will provide to the Contractor and the Contractor's Staff safe access to the Prison and the Site during the Transition Period to enable the Contractor to perform its obligations under the Transition Plan.

5.6 The Contractor must ensure that the Contractor's Staff follow the directions of the State and its employees in relation to the security of the Prison when they are at the Prison or Site.

5.7 The Contractor must comply with all reasonable directions of the State and all Policies and Procedures which have been notified to the Contractor while at the Prison.

5.8 The Parties will monitor the Transition Plan throughout the Transition Period to determine the effectiveness of the Transition Plan and, if necessary, may amend the Transition Plan by agreement.

5.9 The Minister will provide the Transitional Services during the Transition Period. The Minister may agree to provide some more limited Transitional Services to the Contractor after the Operational Start Date.

5.10 Provided the Contractor is not in breach of any of its obligations under the Transition Plan, the State shall pay the Contractor the costs of implementing the Transition Plan as detailed in Schedule 4.

6. OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR

6.1 Performance of Work generally

6.1.1 The Contractor is engaged to perform the Work from the Operational Start Date.

6.1.2 The Contractor must perform the Work in compliance with:

(a) the standards and requirements set out in the Statement of Requirements and Specifications which are to apply as minimum standards and requirements;

(b) the Act;

(c) relevant Departmental Policies and Standard Operating Procedures;

(d) Chief Executive's Rules;

(e) Executive Director's Instructions;

(f) directions issued from time to time by the Minister for Correctional Services or the Chief Executive; and

(g) the statements and representations as to how the Contractor will perform the Work that are set out in the Contractor's Tender to the extent that the Contractor's Tender represents that the

Contractor will adopt standards and requirements that exceeds the minimum standards and requirements.

6.1.3 Without limit to the generality of clause 6.1.2 the Contractor shall:

(a) ensure that the detention, security, supervision, custody, management, safety and welfare of each Prisoner meets or exceeds the standards and requirements described in clause 6.1.2 and the Act; and

(b) receive Prisoners into the Prison as directed by the State.

6.1.4 The Contractor's Staff who are appointed as Correctional Officers are authorised to perform the respective office holder functions specified in the Act for the designated office to which the employee is appointed or for which the employee holds an equivalent position at the Prison.

6.2 **Prisoner programs and services**

6.2.1 The Contractor must provide Prisoners with access to the programs and services as specified in the Statement of Requirements and Specifications.

6.2.2 The Contractor must provide equipment for Prison Employment Programs and agrees that all rights and title to Industry Equipment will pass to the State in accordance with clause 10.1.3.

6.3 **Staff**

6.3.1 The Contractor must not:

(a) reduce the number of staff specified in the Staffing Schedule; or

(b) transfer staff who are allocated to nominated staff positions in the Staffing Schedule so as to leave a position vacant,

without the prior written approval of the State.

6.4 **Drug Testing**

6.4.1 Where required by the Chief Executive the Contractor must, subject to the person's consent, require a person who enters the Prison to submit to a Drug Test.

6.4.2 Where a person does not consent to submit to a Drug Test the Contractor may refuse the person entry to, or cause the person to be removed from, the Prison.

7. FUNCTIONAL RESPONSIBILITIES AND COMPLIANCE

7.1 **Escorts**

7.1.1 The Contractor is responsible from the Operational Start Date for the provision of emergency or unplanned escorts of Prisoners in circumstances where the State transport provider is unavailable or where the circumstances of the emergency require immediate transportation of the Prisoner by the Contractor ("**Emergency/Unplanned Escorts**").

7.1.2 The Contractor may invoice the State the cost of Emergency/Unplanned Escorts at the rate specified in paragraph (c) of item 1 of Schedule 4 - Pricing.

7.2 **Authorised Functions and Cooperation with the State**

The Contractor must:

7.2.1 discharge its responsibility to properly carry out the functions the

State has authorised the Contractor and its staff to carry out under the Statement of Requirements and Specifications;

7.2.2 ensure any powers delegated to its employees or other persons under its control are properly exercised;

7.2.3 fully cooperate with the State and do all necessary acts to assist the State to discharge the responsibility of the Chief Executive under the Act for lawful custody of Prisoners;

7.2.4 fully cooperate with the State to assist its Contract Administrator and Auditors to carry out the range of performance monitoring and audit functions required to ensure that the State discharges the responsibilities of the Chief Executive and the Minister for Correctional Services under the Act; and

7.2.5 otherwise cooperate with the State to assist the State to discharge the responsibilities of the Chief Executive and the Minister for Correctional Services under the Act in respect of the care and custody of Prisoners and the management and operation of the Prison.

7.3 Provision of Information to the State

The Contractor must provide to the State comprehensive, timely and accurate information in relation to the implementation of the Transition Plan or any aspect of the Work when that information is required by the State.

7.4 Reporting

The Contractor must provide the Reports as specified in the Performance Schedule.

7.5 Use of Computer Systems

The Contractor must use the JIS where indicated in the Statement of Requirements and Specifications to record information about Prisoners. In relation to the use of State computer systems and programs, the Contractor must:

7.5.1 only use those computer systems and programs licensed to the State which the State specifically authorises for performance of the Work and only in a manner as directed by the State from time to time; and

7.5.2 notify the State immediately of any unauthorised use of the State's computer systems or programs of which it becomes aware; and

7.5.3 ensure that the Contractor's Staff comply with the obligations contained in the above provision concerning computer systems.

7.6 Compliance with Laws

7.6.1 The Contractor must ensure that it and its employees, agents and subcontractors carry out the Work in accordance with all Laws.

7.6.2 Where a Change in Laws occurs after the date of execution of the Contract that will cause an increased cost in performing the Works, the Contractor must provide a notice to the State within 5 business days of becoming aware of the Change in Laws. The notice must be accompanied by documentary evidence that the Change in Laws has increased the costs of performing the Works, and the Contractor's proposal for an adjustment of the Operating Price to comply with the Change in Laws.

7.6.3 If the State is reasonably satisfied that the Contractor has demonstrated that the Change in Laws has increased the costs of

carrying out the Works, then the State must adjust the Operating Price (acting reasonably having regard to the nature of the Change in Laws and the Contractor's notice provided under clause 7.6.2).

7.6.4 If the State is not reasonably satisfied that the Contractor has demonstrated that the Change in Laws has increased the costs of carrying out the Works, the Parties will deal with the matter in accordance with the process for the settlement of disputes provided for in clause 14.

7.7 Compliance with the State's Policies and Procedures

7.7.1 The Contractor must ensure that in carrying out the Work, the Contractor complies with the relevant Policies and Procedures existing at the Commencement Date and any alterations or additions made to the Policies and Procedures after that date which are notified to the Contractor.

7.7.2 The Contractor acknowledges that:

(a) the Policies and Procedures are made to facilitate the effective and efficient delivery and management of correctional services under the Act and are directly applicable to the performance of the functions authorised to be performed by the Contractor as an engaged service provider and for which the Chief Executive remains ultimately obliged to properly perform; and

(b) it is necessary for the Policies and Procedures to be regularly updated for the State to ensure continuous improvement in corrections management and the proper performance of all office holder functions.

7.7.3 The State must ensure that current versions of the Policies and Procedures are available to the Contractor. The State may satisfy its obligations under this clause by distributing the Policies and Procedures to the Contractor electronically.

7.7.4 Where an alteration or addition made to the Policies and Procedures after the Commencement Date effects a change in the Statement of Requirements and Specifications, the provisions of clause 8 will apply.

7.8 Directions by the State

7.8.1 The Contractor must carry out the Work in accordance with the reasonable instructions and directions ("**Directions**") that it may receive from time to time from either the State's Contract Administrator or the DCS Delegate including, without limit, any instructions and directions relating to the detention, transfer, removal, discharge or release of a Prisoner from the Prison.

7.8.2 Where the Direction does not result in a change to the Statement of Requirements and Specifications then the Contractor must comply with the Direction at no additional cost to the State.

7.8.3 Where the Direction relates to a change in the Statement of Requirements and Specifications the provisions of clause 8 will apply.

7.9 Statutory Powers

7.9.1 The Contractor acknowledges that custody of any Prisoner who is, or is to be, detained in the Prison is vested in the Chief Executive Officer by virtue of Section 24 of the Act and that certain statutory powers under the Act can only be exercised by employees of the Department

("**Statutory Powers**").

7.9.2 The Contractor acknowledges that the DCS Delegate has been appointed by the Chief Executive to make decisions about the operation of the Prison as the authorised delegate of the Chief Executive for the purposes of the Act.

7.9.3 The Contractor shall ensure that where performance of the Works involves the use or exercise of any of the Statutory Powers such use or exercise of the Statutory Powers is only carried out in accordance with the Act.

7.9.4 Where any of the State employees (including the DCS Delegate and the DCS Contract Compliance Officer) is exercising any of the Statutory Powers, the Contractor shall act and shall ensure that all Contractor's Staff act so as to allow the Statutory Power to be exercised in accordance with the Act.

7.9.5 The Contractor shall ensure that the powers conferred by Section 86 of the Act are only exercised by those of the Contractor's Staff who are Correctional Officers.

8. ADJUSTMENT OF MINIMUM STANDARDS

8.1 Adjustment Permitted

Subject to clause 8.2 the State may adjust the Statement of Requirements and Specifications from time to time.

8.2 Reasonable Notice

8.2.1 Before an adjustment is made the State undertakes that reasonable notice shall be given to the Contractor of the change in the Statement of Requirements and Specifications. The change operates as a direction to the Contractor and is subject to the Parties agreeing in good faith a varied amount payable (cost plus fixed profit margin), if any, as either an adjustment of the future instalments of the Operating Price or a lump sum reimbursement of additional costs incurred in undertaking the Work under the Contract.

8.2.2 In the event that the Parties are unable to agree upon an adjustment under clause 8.2.1, the Parties will deal with the matter in accordance with the process for the settlement of disputes provided for in clause 14.

9. OPERATION AND MANAGEMENT COSTS

9.1 Contractor Costs

From the Operational Start Date, the Contractor will be responsible for all costs relating to the operation, management and maintenance of the Prison except those otherwise expressly specified in the Contract.

9.2 The State's Costs

The State will be responsible for meeting the costs of the following:

9.2.1 wide area network operational charges;

9.2.2 maintenance of the Electronic and Physical Security systems; and

9.2.3 those costs expressly specified elsewhere in the Contract.

9.3 Assistance provided by the State

If the Contractor requests and receives any assistance from the State other than assistance in relation to the specific services provided for in the Contract as the responsibility of the State, the State may, at its discretion, charge the Contractor a reasonable fee sufficient to cover the cost of provision of the service. To avoid any doubt this clause 9.3 does not impose any obligation on the State to give any such assistance to the Contractor.

9.4 **Compensation for Lost Property**

The Contractor is responsible for the loss, destruction or failure to locate any property belonging to any Prisoner which is held by the Contractor for the Prisoner. The Contractor indemnifies the State in respect of any action brought by a Prisoner where the cause of action is based upon the Contractor's loss or failure to locate property belonging to any Prisoner which is held by the Contractor.

9.5 **Costs of riots etc**

If the capacity to accommodate Prisoners at the Prison is reduced through loss of cells or rooms due to riots or mutinies, fire damage or damage by Prisoners, the Contractor shall bear all reasonable costs related to the provision of any alternative accommodation required as determined by the State and the State will not compensate the Contractor for the loss.

10. ASSET AND EQUIPMENT

10.1 **Ownership**

10.1.1 As at the Commencement Date, the Site, Prison, plant and equipment, Prison Equipment and Consumables on the Site are the property of the State, except where the State has otherwise expressly certified. The Contractor must not dispose of the property of the State without prior approval of the State.

10.1.2 The State agrees that from the Operational Start Date the Contractor may take possession of and use the Prison Equipment and Consumables as the State's bailee exclusively for the purpose of undertaking the Work.

10.1.3 All Prison Equipment (including Industry Equipment) and Consumables purchased for the operation of the Prison shall become the property of the State upon purchase unless otherwise approved in writing by the State.

10.1.4 The Contractor must maintain records of the purchase, receipt, issue and disposal approved by the State of all Prison Equipment in accordance with the asset maintenance management requirements of the Statement of Requirements and Specifications.

10.1.5 The Contractor must maintain an asset register in accordance with the requirements of the Statement of Requirements and Specifications.

10.1.6 The Contractor must carry out regular stock takes of all Prison Equipment and Consumables and must report any loss or damage to the State.

10.2 **Replacement**

Where any item of Prison Equipment requires replacement, the Contractor must at its own expense replace the same with an item of at least the same quality standard, performance capacity, safety standard, energy efficiency rating (where relevant) and upon delivery of the replacement item to the Prison:

10.2.1 the provisions of clause 10.1.3 apply to Prison Equipment acquired pursuant to this clause 10.2;

10.2.2 the item shall form part of the Prison Equipment; and

10.2.3 the item shall be subject to the provisions of this Contract.

10.3 **Requirements for Additional Equipment**

The Contractor shall submit to the State on an annual basis its request for additional Prison Equipment that may be required for the Prison in excess of a value of $5,000 per item of Prison Equipment. Prison Equipment which is approved by the State for purchase shall be paid for by the State. This clause 10.3 does not apply to Industry Equipment.

10.4 **Use**

The Contractor shall take all reasonable care when handling and using the Prison Equipment and shall use the Prison Equipment only for the purposes for which the Prison Equipment was acquired.

10.5 **Loss and Compensation**

10.5.1 The Contractor is responsible, from the Operational Start Date, for the loss or failure to locate any Prison Equipment at the Prison. The Contractor is liable to pay compensation to the State for the value of any lost Prison Equipment or for the repair or replacement of any Prison Equipment that has been deliberately or negligently damaged or destroyed.

10.5.2 The Contractor is responsible for the cost of repair to the Prison as a result of damage caused by intentional or negligent acts of Prisoners.

11. MAINTENANCE, REPAIR AND REPLACEMENT

11.1 **Cleaning and Maintenance**

From the Operational Start Date the Contractor shall, at its own cost and expense and in accordance with the Statement of Requirements and Specifications:

11.1.1 keep the Prison and the Prison Equipment in a thorough state of cleanliness;

11.1.2 do all things necessary to keep and maintain the Prison and Prison Equipment in the same order and condition as the Prison or Prison Equipment was in at the Operational Start Date, fair wear and tear excepted;

11.1.3 promptly advise the State in writing of any defects or damage in any part of the Prison or Prison Equipment;

11.1.4 replace any broken, malfunctioning or worn-out fixtures or fittings with an item of at least the same quality standard, performance capacity, safety standard and energy efficiency rating (where relevant).

11.2 **State Maintenance**

The State must at its own cost and expense maintain the Prison Electronic and Physical Security Systems.

11.3 **Reimbursement of Maintenance Costs**

11.3.1 If the State is required to carry out any maintenance at the Prison that the State reasonably considers is a direct result of a failure by the Contractor to meet the highest standards of care, skill, competence

and diligence in the performance of Work, the State will, before the maintenance is carried out, consult with the Contractor about the likely costs of the maintenance and notify the Contractor of the State's preferred maintenance provider.

11.3.2 The Contractor must pay to the State the direct costs incurred by the State for that maintenance as invoiced by the State's preferred maintenance provider.

11.4 **Relief against impacts caused by failure of State maintained assets**

11.4.1 Where the Contractor is able to demonstrate to the reasonable satisfaction of the State that a failure by the State to maintain the State maintained assets including the Prison Electronic or Physical Security Systems has;

(a) increased the costs of carrying out the Works;

(b) resulted in the Contractor failing to meet a Key Performance Indicator; or

(c) caused the Contractor to Default

the State must, acting reasonably having regard to the impact on the Contractor, provide appropriate relief to the Contractor. That relief may, at the discretion of the State, be in the form of waiving Rebates or other Default remedies under the Contract, an adjustment of the future instalments of the Operating Price or a lump sum reimbursement of additional costs incurred in undertaking the Works.

11.4.2 If the State is not reasonably satisfied that the Contractor has demonstrated that the failure to maintain the State maintained assets including the Prison Electronic or Physical Security Systems has materially impacted on Contractor, the Parties will deal with the matter in accordance with the process for the settlement of disputes provided for in clause 14.

11.5 **Alterations and Removals**

The Contractor must not:

11.5.1 make or allow to be made any alterations or additions to the Prison; or

11.5.2 remove any fixtures, fittings or Prison Equipment from the Site,

unless it has first obtained the State's written consent.

11.6 **New and Upgrade Works Report**

11.6.1 The Contractor must submit to the State each year by the date notified by the State, a report specifying the new and upgrade works which it requests the State to carry out at the Prison.

11.6.2 the State may, in its absolute discretion, refuse or agree to carry out those new or upgrade works at the Prison.

11.6.3 If the State agrees to carry out any new or upgrade works at the Prison, the State must pay for all costs and expenses of carrying out those new or upgrade works.

11.6.4 the State may at its own expense carry out any new or upgrade works at the Prison which it believes is appropriate, including the upgrade of

facilities or security systems.

11.6.5 The new and upgrade works will be carried out by the State's preferred maintenance contractor but it may engage the Contractor to undertake the works at the State's discretion.

11.7 Safe Access

Where after the Operational Start Date the State notifies the Contractor that it requires persons to undertake work at the Prison under clause 11.6 or to plan for a future upgrade and extension of any part of the Prison:

11.7.1 the Contractor must provide the State and its agents or representatives with reasonable access to the Prison and Site to enable the works to be undertaken or planned;

11.7.2 the Contractor must provide appropriate security measures to ensure that those persons are safe and secure at the Prison;

11.7.3 the State must use reasonable endeavours to ensure that those persons follow the directions of the Contractor and its employees in relation to the security of the Prison when they are at the Prison or Site; and

11.7.4 the State will reimburse the Contractor for any reasonable costs incurred by the Contractor in providing the security required by paragraph 11.7.2.

12. CONFIDENTIALITY

12.1 Confidentiality under the Act

Where Confidential Information is protected pursuant to sections 85C, 85CA and 85D of the Act, the disclosure of that Confidential Information must be in accordance with those sections.

12.2 Disclosure of Confidential Information by Contractor

Confidential Information must remain confidential and must not be disclosed by the Contractor to any third Party except:

12.2.1 as required by Law;

12.2.2 as approved in writing by the State;

12.2.3 for the purposes of giving effect to the Contract or taking legal advice or prosecuting or defending legal proceedings in relation to the Contract

12.2.4 to the Contractor's own auditors; or

12.2.5 to a statutory law enforcement agency upon reasonable request.

12.3 Disclosure of Confidential Information by the State

Confidential Information must remain confidential and must not be disclosed by the State to any third Party except:

12.3.1 as required by Law;

12.3.2 as approved in writing by the Contractor;

12.3.3 to Parliament, the Governor, Cabinet or a Parliamentary or Cabinet committee or subcommittee;

12.3.4 to any agency, authority, instrumentality, Minister or Officer of the State of South Australia to whom it is customary for the State to

disclose information such as the Confidential Information (whether or not the State is legally obliged to do so); or

12.3.5 for the purposes of giving effect to the Contract or taking legal advice or prosecuting or defending legal proceedings in relation to the Contract.

12.4 **Exclusion from Confidential Information**

The Parties acknowledge that Confidential Information excludes:

12.4.1 information which comes into the public domain other than by the unauthorised disclosure by the Contractor of any Confidential Information; and

12.4.2 information in relation to which it is apparent to the Parties that no confidentiality attaches.

12.5 **Terms of Contract**

12.5.1 The Government Party must not disclose Schedule 1 or 8 of this Contract to any other person without the consent of the Contractor, unless it is a disclosure under clause 12.3.

12.5.2 For the avoidance of doubt the terms of the Contract (other than Schedule 1 and Schedule 8) are not Confidential Information.

13. INFORMATION PRIVACY

13.1 **Observance by Contractor**

The Contractor must:

13.1.1 comply with the South Australian Government Information Privacy Principles (a copy of which can be found at http://www.dpc.sa.gov.au/documents/rendition/B17711#sthash.s76QhRX6.dpuf) ("**IPPs**") as if the Contractor were an "agency" for the purposes of the IPPs, in undertaking its obligations under this Contract including in relation to all Personal Information received, created or held by it for the purposes of this Contract;

13.1.2 allow the Government Party to undertake, and cooperate with any audit or investigation which the Government Party deems necessary to verify that the Supplier is complying with the IPPs;

13.1.3 only collect, use and disclose Personal Information for the purpose of fulfilling its obligations under this Contract unless otherwise permitted under this Contract or the IPPs.

13.1.4 The Contractor must promptly notify the Government Party if it fails to comply with this clause or if it becomes aware of any actual or threatened disclosure of or unauthorised access to Personal Information.

13.2 **Privacy Act**

Nothing in this clause is intended to limit any obligation of the Contractor under the *Privacy Act 1988* (Cth) that the Contractor may have as an organisation with respect to Personal Information.

14. SETTLEMENT OF DISPUTES

14.1 **Precondition of Court Proceedings**

Unless a Party to the Contract has complied with this clause that Party may not commence court proceedings in relation to any dispute under the Contract

except where that Party seeks urgent interlocutory, prerogative or declaratory relief.

14.2 **Notice of Dispute**

Any Party claiming that a dispute has arisen in relation to the Contract shall give notice to the other Party designating as its representative in negotiations relating to the dispute a person with authority to settle the dispute. The Party who is given written notice shall promptly give notice to the other Party, designating as its representative in negotiations relating to the dispute a person with similar authority.

14.3 **Resolution by Designated Representatives**

14.3.1 The designated representatives shall seek to resolve the dispute within 10 days after the last designation required by clause 14.2.

14.3.2 Notwithstanding the existence of a dispute each Party must continue to perform its obligations under this Contract.

14.3.3 This clause survives any expiry or termination of this Contract.

15. FINANCIAL STATEMENTS AND RECORDS

15.1 **Obligation to Keep Records**

15.1.1 The Contractor shall ensure that it and its subcontractors keep the Records.

15.1.2 The Records must be held and maintained at the Prison.

15.2 **Examination of Records**

15.2.1 Subject to clause 15.2.2 the Contractor must allow the State, the DCS Contract Compliance Officer, State Contract Administrator, the Auditors and any person authorised by the Act or by the State free access at all times to examine the Records whether held at the Prison or made available electronically. The State and its authorised representatives are hereby licensed by the Contractor to take such copies of Records as may be required from time to time.

15.2.2 The Contractor agrees to provide access to the State:

(a) to the personnel records of Contractor's Staff subject to any relevant requirements of the Privacy Act; and

(b) to Corporate Financial records subject to any relevant requirements of the Australian Stock Exchange.

15.3 **Access Facilitated**

Where the Records are not stored on hard copy, the Contractor shall, if required by the State, promptly provide the State, the State Contract Administrator, the Auditors or any other person authorised by the Act or by the State with such facilities as may be necessary for the State to legibly reproduce those records.

15.4 **Records are Official Records**

15.4.1 The Contractor agrees to maintain the Records as official records for the purposes of the *State Records 1997* (SA) *and* the Records shall not be destroyed without the prior written approval of the State. If requested by the State, the Contractor shall provide the Records to the State upon termination or expiry of the Contract.

15.4.2 The Contractor agrees that in performing its obligations under this

Contract it will act in a manner that ensures that the State is able to comply with the Contracting and Official Records Standard.

15.5 **Intellectual Property Rights**

The Parties agree that the State owns all intellectual property rights in:

15.5.1 the State's software which it provides to the Contractor for the recording of data;

15.5.2 the Records created by the Contractor in accordance with the requirements of the Statement of Requirements and Specifications; and

15.5.3 any Reports created by the Contractor in accordance with the requirements of this Contract.

15.6 **Financial Statements**

The Contractor shall provide to the State the Contractor's annual report within 3 months of the end of each yearly period for which the Contractor is audited during the Term.

16. CONTRACTOR'S STAFF

16.1 **Employees must be Approved for Employment**

The Contractor shall not employ or sub-contract any person to work in connection with the Contractor's performance of the Work, unless:

16.1.1 the Contractor provides the State with all information in relation to that person that the State requires;

16.1.2 the person is designated by the Minister as an officer of the Department under section 4A of the Act;

16.1.3 the person has made an Associations or Relationships Declaration;

16.1.4 the person has submitted to a Drug Test;

16.1.5 the person has submitted to a police criminal history check and has been granted a security clearance.

16.2 **Employment of Correctional Officers**

In addition to clause 16.1, the Contractor shall not employ any person to perform the duties of a Correctional Officer at the Prison unless the person has completed the Correctional Officer Training to the satisfaction of the State.

16.3 **Duties**

The Contractor must ensure the Contractor's Staff discharge functions and exercise powers only in accordance with this Contract and the provisions of the *Correctional Services Act 1982* (SA) and any regulations made thereunder.

16.4 **Drug Testing**

The Contractor must require a person who is a member of the Contractor's Staff to undergo a Drug Test where:

16.4.1 the person has, while on duty, been involved in a critical incident;

16.4.2 there is reasonable cause to believe that the person has recently consumed a Drug; or

16.4.3 reasonably required by the Chief Executive.

16.5 **Notice of Ongoing Conduct**

The Contractor must, at the earliest opportunity, advise the State in writing of:

16.5.1 any instances where the Contractor's Staff has returned a positive result to a Drug Test;

16.5.2 any instances where the Contractor's Staff has or is reasonably suspected of having an association or relationship with a person known to have a criminal history or reputation;

16.5.3 any instances where the Contractor's Staff is charged with a criminal offence after the initial security clearance referred to in clause 16.1 has been issued by the State;

16.5.4 any criminal convictions of the Contractor's Staff (whether or not such a conviction is formally recorded) after the initial security clearance referred to in clause 16.1 has been issued by the State ;

16.5.5 any order issued under any Act of Parliament which places a restriction on the Contractor's Staff to possess or use a firearm; and

16.5.6 any other matter notified by the Chief Executive to the Contractor in writing for the purpose of this clause.

16.6 **Loss of Confidence**

16.6.1 The Chief Executive may, where on reasonable grounds he does not have confidence that a member of the Contractor's Staff is a suitable person to be engaged in the Contractor's performance of the Works, direct the Contractor that that person must cease to be engaged in connection with the Contractor's performance of the Works under this Contract.

16.6.2 Where the Contractor receives a direction from the Chief Executive under this clause 16.6 the Contractor must immediately remove that person from the Prison and must cease to engage that person in the Contractor's performance of the Works under this Contract.

17. SUBCONTRACTING

17.1 **Subcontracting Permitted**

17.1.1 The Contractor may engage subcontractors to assist it to perform its obligations under the Contract.

17.1.2 The Contractor must ensure that the subcontractors are competent and professional with qualifications and experience appropriate to the tasks they will perform under this Contract.

17.2 **Liabilities**

17.2.1 Nothing in this Contract relieves the Contractor from its liabilities or obligations under this Contract to provide the Works in accordance with this Contract.

17.2.2 Notwithstanding any approval to subcontract given by the State under clause 17.1, the Contractor shall be liable for the acts, defaults and neglect of any subcontractor or any employee or agent of the subcontractor as fully as if they were the acts, defaults or neglect of the Contractor or the officers, employees or agents of the Contractor.

17.3 **Security Clearance of Subcontractors**

The Contractor must ensure that sub-contractors comply with the Standard Operation Procedure for the issuing of Identity Cards (SOP 025) in relation to sub-contractors attending at the Prison.

18. ACCESS AND OCCUPATION

18.1 Right to Occupy

18.1.1 The Contractor may occupy the Site to enable it to undertake the Work.

18.1.2 The right to occupy the Site conferred by this clause rests in contract only and does not create in or confer upon the Contractor any tenancy or estate or interest whatsoever in or over the Prison or the Site.

18.2 Other Entry to the Prison

The Contractor must comply with the requirements in the Statement of Requirements and Specifications in relation to the entry onto the Site of any person other than the Contractor's Staff.

18.3 Access by DCS Contract Compliance Officer, Auditors etc

The DCS Contract Compliance Officer, State Contract Administrator, Auditor, agent or any other person so authorised in writing by the State shall have access at all times to those areas of the Site as is necessary in order to carry out the task to which the access relates.

19. PERFORMANCE SECURITY

19.1 Provision of Security

The Contractor must, within 14 days of the Commencement Date, lodge with the State as security for the due and proper performance of its obligations under the Contract:

19.1.1 a Parent Company guarantee in the form set out in Attachment A of Schedule 5; and

19.1.2 an unconditional bank guarantee substantially in the form set out in Attachment B of Schedule 5 to this Contract that:

(a) is in favour of the Minister;

(b) is in the amount of 10% of the Operating Price;

(c) is unconditional, irrevocable and payable on demand;

(d) is issued by a financial institution approved in writing by the State with a Standard and Poors credit rating of at least A-; and

(e) specifies a location within Adelaide where a demand is to be given and payment made, without further confirmation from the issuer.

19.2 Replacement of Security

19.2.1 If the State approves a security provided in accordance with clause 19.1 that has an expiry date and that security is due to expire or terminate, then at least 30 calendar days prior to the time at which that existing security is due to expire or terminate, the Contractor must procure a replacement security that will become effective upon expiry of the existing security and which provides security for the due and proper performance of its obligations under the Contract for a period of no less than 12 months after the end of the Initial Term or the Further Term and which otherwise meets the requirements of this Contract.

19.2.2 If the Contractor fails to provide the replacement security in accordance with this clause, the State may make a demand on and

convert to cash the entire amount of the existing security at any time after the replacement security is due to be provided and may hold such cash until such time as the Contractor provides replacement security complying with the requirements of this Contract.

19.3 **Right to Terminate**

The State may terminate this Contract by written notice to the Contractor if the Contractor fails to satisfy the conditions set out in clause 19.1 and 19.2 within the time specified in those subclauses.

19.4 **Recourse to Security**

19.4.1 The State may have recourse to the security referred to in clause 19.1 if and to the extent that:

(a) The Contractor fails to perform or breaches any of its obligations under this Contract;

(b) The Contractor enters into a form of Insolvency Administration; or

(c) This Contract is terminated by the State.

19.5 **Rights of Conversion**

The State may at any time convert into money the security deposit held pursuant to clause 19.1.2 that does not consist of money whether or not it is then entitled to exercise a right under the Contract in respect of the security deposit. The State shall not be liable in any way for any loss occasioned by such conversion.

19.6 **Release of Security**

The State must release the parent company Guarantee and the Bank Guarantee (or so much of it as remains) to the Contractor 12 months after the end of the Initial Term or the Further Term after the Contractor has completed its disengagement obligations, if the Contractor has no outstanding liability to the State.

19.7 **Survival**

This clause 19 survives the termination or expiration of this Contract.

20. OPERATING PRICE

20.1 **Payment**

20.1.1 Provided the Contractor is not in breach of any of its obligations under the Contract the State shall, from the Operational Start Date, pay the Contractor the Operating Price for the Work as set out in the Pricing Schedule.

20.1.2 The Operating Price is based on the number of Prisoners held in custody at the Prison during each year of the Term as calculated in accordance with the Pricing Schedule.

20.1.3 Subject to clause 20.2 payment will be made on a pro-rata basis monthly in arrears by electronic funds transfer to an account nominated by the Contractor with:

(a) the first payment calculated from the Operational Start Date prorated to the end of the month;

(b) the second and subsequent payments calculated for each subsequent month.

20.1.4 The Contractor must provide a Tax Invoice to the State's Contract Administrator setting out:

(a) date of invoice and month covered by invoice;

(b) the average daily lockup count of Prisoners at the Prison during the month;

(c) amount to be paid including GST component;

20.1.5 The Contractor must provide with each Tax Invoice the periodic reports as described in clause 0.

20.2 **Performance Withholding Fee**

20.2.1 The State is permitted to withhold the Monthly Performance Withholding Fee from the monthly payment of the Operating Price.

20.2.2 Within 30 days of the end of each Year the Monthly Performance Withholding Fees less any applicable Rebates will be paid by the State to the Contractor upon receipt of a tax invoice.

20.3 **Annual Variation**

The Operating Price shall be adjusted for the second and subsequent Contract Years in accordance with the formula specified in item 2 of Schedule 4 - Pricing.

21. GOODS AND SERVICES TAX (GST)

21.1 **Treatment of GST**

21.1.1 For the purpose of this clause:

"GST" means the goods and services tax which results from the enactment of *A New Tax System (Goods and Services Tax) Act* 1999 and the related legislation;

21.1.2 All amounts payable by the State under the Contract are taken to be net figures exclusive of any allowance for GST payable by the Contractor in respect of the taxable supply it makes to the State. If GST is payable on a taxable supply under the Contract, the State agrees to pay to the Contractor a further amount (payable at the same time as the consideration for the taxable supply) equal to the amount of the consideration multiplied by the prevailing GST rate. The Contractor must also issue a valid GST tax invoice before payment can be made by the State under the Contract.

21.1.3 If it is determined on reasonable grounds that the amount of consideration collected from the State as an allowance for GST differs, for any reason, from the amount of GST paid or payable by the Contractor, including by reason of:

(a) any amendment to the GST;

(b) the issue of a ruling or advice by the Commissioner of Taxation; or

(c) a refund to the State in respect of a supply made under this Contract,

the State shall be entitled to a refund of any additional consideration collected from the State.

22. INSURANCE

22.1 Extent of Cover

The State shall have and maintain for the Term the insurances described in Schedule 6.

22.2 Notice of Claims

The Contractor shall, as soon as practicable but in any case within 7 days, inform the State in writing of the occurrence of any event of which it is aware that may give rise to a claim under the policies of insurance described in Schedule 6 and shall ensure that the State is kept fully informed of all subsequent action and developments concerning the claim.

22.3 Obligations Unaffected

The effecting of insurance shall not limit the liabilities or obligations of either Party under the provisions of the Contract.

23. INDEMNITY

23.1 Indemnity Given by Contractor

23.1.1 In this clause:

(a) "**Claim**" includes any claim, action, demand, proceeding, judgement or order; and

(b) "**Loss**" means any costs, losses, damages, liabilities and expenses.

23.1.2 Subject to paragraph 23.1.3, the Contractor shall release and indemnify, and keep indemnified, the State from and against any Loss or Claim to the extent that any Loss or Claim arises from or in connection with this Contract including without limitation:

(a) the use or occupation of the Prison or Site or carrying out of Works by the Contractor;

(b) any breach of the Contractor's obligations under this Contract;

(c) any loss of life or injury to any person whomsoever caused or contributed to by the Contractor;

(d) any damage to property whatsoever; or

(e) the State attending, responding to or participating in any application for judicial review of an administrative decision of the Contractor or any complaint, inquiry, inquest or commission, including a coronial enquiry into the death of a Prisoner. The aforementioned indemnity in sub-paragraph (e) shall only apply to the extent that the Contractor has been found by the relevant judicial body to be in breach of this Contract or to have committed a negligent act or omission.

23.1.3 The Contractor shall not be liable for or in respect of personal injury to or the death of any person or loss of or damage to property to the extent that such injury, death, loss or damage has resulted from:

(a) any breach of the Contract by the State; or

(b) any negligent act or omission on the part of the State

or for or in respect of any claims, demands, actions, suit or proceedings, costs and expenses in respect thereof.

23.1.4 The Contractor shall only be liable to indemnify the State in respect of

any Loss or Claim pursuant to paragraph 23.1.2, if:

(a) the State notifies the Contractor promptly upon being served with any legal process or written threat of litigation in respect of a Claim;

(b) the Contractor has the sole control at its own cost over the defence of the Claim and any negotiation for its settlement or compromise provided that the Contractor shall not take any action or fail to take any action in respect of the Claim which is to the detriment of the State's interests or reputation, including any admission of liability by the State or its officers, employees or agents, without the prior written consent of the State; and

(c) the State takes no action in respect of the Claim that in the Contractor's reasonable opinion, is contrary to the Contractor's interests, including any admission of liability by the State or its officers, employees or agents, without the prior written consent of the Contractor provided that notwithstanding this paragraph 23.1.4, the State may join the Contractor as a Party to any action taken against it in respect of a Claim, and the State may exercise all rights available to it under this indemnity and the Contract against the Contractor.

In the event that the Contractor fails to take over the defence of any Claim against the State in respect of which paragraph 23.1.1 applies, the conditions in paragraph 23.1.4 shall not apply so as to restrict the State in any way in regard to its defence of the Claim.

24. LIMITATION OF LIABILITY

24.1 The State agrees to limit the aggregate liability of the Contractor under this Contract to $ 15 million.

24.2 The limitation of liability referred to in clause 24.1 does not apply to the following heads of liability:

24.2.1 personal injury, including sickness and death;

24.2.2 loss of, or damage to, tangible property;

24.2.3 infringement of Intellectual Property Rights;

24.2.4 any liability to a third party arising from any negligent or wrongful act or omission of the Contractor, or arising from any breach of the Contractor's contractual obligations to the State;

24.2.5 an intentional tort;

24.2.6 a breach of trust; and

24.2.7 fraud or dishonesty.

25. EXCLUSION OF CONSEQUENTIAL LOSS

25.1 A Party (the **First Party**) does not have any liability to the other Party (the **Second Party**) for any indirect or consequential loss incurred or sustained by the Second Party:

25.1.1 as a result of any act or omission of the First Party; or

25.1.2 due to any breach of this Contract by the First Party.

25.2 the exclusion of liability of the First Party under clause 25.1 does not apply to liability:

25.2.1 for personal injury, including sickness and death;

25.2.2 arising from fraud or criminal conduct;

25.2.3 in respect of loss of, or damage to, tangible property;

25.2.4 which, but for this exclusion, would be insured liabilities under the terms of insurance policies that have been effected and maintained as required by this Contract;

25.2.5 expressly imposed under this Contract, including the Operating Price;

25.2.6 for infringement of Intellectual Property Rights.

25.3 In this clause, indirect and consequential loss are limited to loss of goodwill, revenue, profits, opportunity, business and anticipated savings.

26. CONTRACT MANAGEMENT GROUP

26.1 Formation of Contract Management Group (CMG)

26.1.1 As soon as possible after the Commencement Date of this Contract, the Parties will ensure that a CMG is formed comprising:

(a) the State's Contract Administrator;

(b) the Contractor's Contract Administrator;

(c) three (3) representatives appointed by the Contractor; and

(d) three (3) representatives appointed by the State.

26.1.2 Each Party must notify the other in writing of its nominated representatives and any changes thereto.

26.1.3 One of the State's representatives will chair each meeting.

26.2 Functions of Contract Management Committee

The functions of the CMG are:

26.2.1 to discuss relevant Contract and operational issues relating to the performance of the Work by the Contractor;

26.2.2 to consider long range planning and strategic objectives in relation to the detention and custody of Prisoners;

26.2.3 to carry out such other functions as may be agreed by the Parties from time to time.

26.3 Quorum

The quorum for a meeting of CMG is the presence of four members comprising two representatives from each Party.

26.4 Meetings

26.4.1 The CMG will meet monthly.

26.4.2 CMG meetings may be held concurrently with other scheduled meetings when it is convenient to do so.

26.4.3 All CMG meetings shall have an agenda published by the State's Contract Administrator sufficiently in advance of the meeting to allow members a reasonable opportunity to prepare for the meeting.

26.4.4 The meetings will be held in Adelaide.

26.4.5 Each Party will bear all costs associated with the attendance of its representatives at meetings of the CMG.

26.5 **Minutes**

26.5.1 CMG meeting minutes will be issued by the State's Contract Administrator within 5 Business Days after the meeting.

26.5.2 Final minutes will be confirmed at the beginning of the next meeting.

27. DCS CONTRACT COMPLIANCE OFFICER

27.1 **Monitoring**

The DCS Contract Compliance Officer will on behalf of the State monitor the Contractor's compliance with the Contract including the Contractor's operational performance in accordance with the Statement of Requirements and Specifications.

27.2 **Facilities for DCS Contract Compliance Officer**

The Contractor must provide the work-space and facilities at the Prison as specified in the Statement of Requirements and Specifications at no cost to the State.

27.3 **Information and Access**

The Contractor shall provide the DCS Contract Compliance Officer with any information required by the State including access to all books and records held at the Prison or elsewhere to enable it to assess the quality of the Contractor's performance.

28. PERFORMANCE MANAGEMENT

28.1 **Periodic Meetings**

The Prison Manager must attend monthly meetings with the DCS Deputy Chief Executive Statewide Operations and provide operational reports as required.

28.2 **Key Performance Indicators**

28.2.1 Key Performance Indicators ("**KPI**") are selected Service Levels chosen to reflect aspects of the Contract of particular importance to the State.

28.2.2 The Key Performance Indicators are set out in the Performance Schedule.

28.3 **Performance Review**

28.3.1 The Key Performance Indicators and the other Service Levels specified in the Performance Schedule will be reported on by the Contractor at the frequency specified by the State in the Performance Schedule.

28.3.2 The Contract Administrators shall meet monthly for the purpose of discussing the progress of the Contractor in relation to the achievement of the Key Performance Indicators and the other Service Levels.

28.4 **Rebates**

28.4.1 If the Contractor fails to meet a Key Performance Indicator the State is entitled:

(a) for the KPIs in Table 1 of the Performance Schedule to the Rebates set out therein which are payable within 30 days of the failure to meet the KPI;

(b) for the KPIs in Table 2 of the Performance Schedule to retain the percentage of the Monthly Performance Withholding Fee as set out in the Performance Schedule.

28.4.2 The Parties acknowledge that Rebates are liquidated damages for a failure to comply with a Key Performance Indicator required under this Contract, representing an agreed limitation of the Contractor's liability for loss to the State in terms of the impaired operation of the Prison.

28.4.3 The State may by written notice to the Contractor elect not to receive the payment of Rebates in relation to a failure to satisfy a KPI and to thereby preserve its rights or entitlements to damages or financial compensation.

28.4.4 Unless the State has elected not to receive payment of the failure to satisfy a KPI, then the Rebates paid by the Contractor are the State's only right to financial compensation for the default.

28.4.5 For the avoidance of doubt, the payment of Rebates does not have any effect on the rights of the State to terminate the Contract.

28.5 Review of Performance Indicators

28.5.1 The State will review the key performance indicators ("KPIs") in the Performance Schedule on an annual basis in consultation with the Contractor with a view to assessing whether service levels are being, and are capable of being, assessed according to the measurement systems set out in this clause.

28.5.2 Subject to clause 8.2, the State reserves the right to change key performance indicators and/or to reset targets.

29. AUDIT

29.1 Appointment of Auditor

The State may appoint an Auditor to carry out an Audit. Without limitation, the Auditor may report on compliance by the Contractor with the Statement of Requirements and Specifications. The Auditor shall report directly to the State.

29.2 Access

The Contractor will afford to the Auditor reasonable and timely access, without restriction, to all books and records as the Auditor notifies that it requires to assess the Contractor's compliance with the Contract. The Contractor shall permit the Auditor to remove and obtain copies of such books and records as required. The Parties will use their best endeavours to develop protocols in relation to the removal of books and records.

29.3 Information

The Contractor shall provide the Auditor with any information required by the State to enable it to audit the Contractor's compliance with the Contract, provided that nothing in this Clause shall relieve the Contractor of any of its obligations under this Contract.

29.4 Report

A copy of the Auditor's report shall be forwarded to the Contractor. The Contractor acknowledges that if the Auditor's report indicates that the Contractor has not complied with any of its obligations under the Contract the State will not be taken to have waived its rights in relation to the Contractor's

breach if it does not take any action within a reasonable time after it receives the Auditor's report.

30. DEFAULT AND TERMINATION FOR DEFAULT

30.1 Default

If a Default occurs, the State may either:

30.1.1 give the Contractor a written Default Notice; or

30.1.2 where the Default is also a failure to meet a KPI under clause 28 the State may exercise its remedies under clause 28.4 as an alternative to pursuing a remedy under this clause 30.

30.2 Default Notice

A Default Notice must:

30.2.1 state that it is a notice under this clause;

30.2.2 specify the alleged Default;

30.2.3 require the Contractor to remedy or cure the Default; and

30.2.4 specify the time and date by which the Contractor must remedy the Default and in any event, not less than seven (7) days.

30.3 Defaults not capable of remedy

30.3.1 If a Default which is not capable of being cured or remedied has occurred, the Contractor must within the time period specified in the Default Notice, show cause in writing why the State should not exercise a right referred to in clause 30.4.1;

30.3.2 The State may either:

(a) direct the Contractor to comply with the reasonable requirements of the State in relation to the Default and if required by the State the Contractor must pay compensation to the State for the proper redress of that Default within 5 days of the compensation being determined; or

(b) terminate the Contract under clause 30.4.

30.3.3 Where the Contractor complies with the requirements of clause 30.3.2(a) the Default shall be deemed to be remedied.

30.4 Right of the State to Terminate

The State may terminate this Contract by giving three months notice in writing to the Contractor in any of the following circumstances:

30.4.1 where a Default is not capable of remedy and the Default has not been deemed as remedied under clause 30.3.3;

30.4.2 if by the time specified in a Default Notice the Contractor has failed to cure or remedy a Default,

30.4.3 the State has served on the Contractor Default Notices on more than three occasions in respect of the same breach of an obligation of this Agreement irrespective of whether the Contractor has remedied the breaches;

30.4.4 this Agreement becomes void or unenforceable as against the Contractor in any material respect as a result of an act or omission by the Contractor;

30.4.5 any representation or warranty made or given by the Contractor is

proved to be false, misleading, deceptive, incomplete or inaccurate in any material respect when it was made;

30.4.6 any director, secretary, or officer of the Contractor is convicted of a serious criminal offence and the Contractor fails to remove such person from his or her office immediately after a conviction is made, delivered or recorded; or

30.4.7 there is a Change of Control of the Contractor.

30.5 **Contractor to pay costs**

The Contractor must, on demand, reimburse the State for all costs incurred by the State in connection with the preparation and service of a Default Notice or a notice terminating this Contract under this clause 30.

30.6 **Remedy by the State**

Without prejudice to any right pursuant to this clause 30, the State may take action to remedy a Default by the Contractor and offset against any payments owed to the Contractor all costs reasonably incurred by the State in connection with remedying the default. Except where it is impractical to do so because of the nature of the Default, the State will notify the Contractor prior to taking action to remedy a Default under this clause.

30.7 **Other Rights**

If the Contractor breaches or repudiates this Contract, nothing in this clause prejudices or detracts from the any other right or remedy that the State may have under this Contract or under the general law.

30.8 **No payment after Termination**

The State is not required to make any further payments to the Contractor in respect of any performance of the Work after the date of termination, except for any work required by the State under clause 34.

31. TERMINATION FOR INSOLVENCY

31.1 If there is an Insolvency Event, the State may terminate the Contract immediately by written notice to the Contractor, effective from the date of termination specified in the notice.

31.2 The State is not required to make any further payments to the Contractor in respect of any performance of the Work after the date of termination.

31.3 The rights given by this clause are in addition to any other rights of the State under the Contract or otherwise and may be exercised notwithstanding that there has been no breach of Contract on the part of the Contractor.

31.4 In the interpretation of this clause 31, any reference to the Contractor shall include a reference to a corporation that has provided security for the due and proper performance of the Contract under clause 19.

32. TERMINATION WITHOUT CAUSE

32.1 After the Commencement Date, the State may at any time terminate this Contract in whole or in part by giving the Contractor three (3) months notice (or such other period as may be agreed between the Parties) in writing of such termination.

32.2 The rights given by this clause are in addition to any other rights under the Contract or otherwise and may be exercised notwithstanding that there has been no Default or breach of Contract by the Contractor.

32.3 The Contractor will immediately comply with any directions given in the notice and do all that is possible to mitigate its losses arising from the termination of the Contract. The State 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 32.

33. FORCE MAJEURE

33.1 Definition

"**Force Majeure**" means an event or circumstance which prevents a Party from complying with any of its obligations under this Contract and which that Party:

33.1.1 did not cause;

33.1.2 cannot control or influence; and

33.1.3 cannot prevent or avoid through prudent management processes, policies and precautions, including the use of alternative resources, the procuring of services from another source, and work around plans;

and includes:

33.1.4 fire, flood, earthquake, elements of nature, acts of God, malicious damage, explosion, sabotage, civil disorder, rebellion or revolution in Australia;

33.1.5 any change of law which makes compliance with the affected Party's obligations under this Contract illegal.

33.2 Operation

33.2.1 The affected Party's rights and obligations directly affected by the Force Majeure and any corresponding entitlement of the other Party will be suspended to the extent and for so long as the performance of the affected Party's rights and obligations are prevented or delayed by the Force Majeure.

33.2.2 The affected Party must notify the other Party if the Force Majeure is preventing it from complying with any of its obligations as soon as it becomes aware of the Force Majeure.

33.2.3 The affected Party must:

(a) use its best endeavours to work around or overcome the effect of the Force Majeure;

(b) keep the other Party informed of the continuation and expected duration of the Force Majeure and of measures taken to comply with this clause; and

(c) recommence performance of its obligations as soon as possible without delay after the Force Majeure has ceased to exist.

33.2.4 If the affected Party is materially unable to perform its obligations under this Contract by reason of a force majeure for a continuous period of one (1) month or a culminated period of three (3) months, then the other Party may terminate this Contract by written notice without prejudice to the terminating Party.

34. DISENGAGEMENT AND SUCCESSION

34.1 **Disengagement Period**

34.1.1 The Contractor shall work and cooperate with the State for a period of up to 3 months (the "disengagement period") immediately after termination or expiration of this Contract to ensure an orderly and efficient transition from the operation of the Prison by the Contractor to the operation of the Prison by some other person.

34.1.2 At the end of each month of the disengagement period the Contractor shall provide the State with an invoice itemising the reasonable costs and expenses incurred by the Contractor in respect of any work requested by the State during that period.

34.1.3 The State will review the itemised invoice and provided it is satisfied that the costs and expenses were reasonably incurred it will reimburse the Contractor.

34.1.4 During the disengagement period, the Contractor shall return and surrender to the State all records relevant to the operation and management of the Prison and such other documents as the State requires.

34.1.5 If required by the State, during the disengagement period the Contractor will continue to manage and operate the Prison on the basis of the obligations and performance requirements of the Contract.

34.2 **Succession**

34.2.1 The Contractor shall cooperate with the State to apply and implement the procedures set out in this clause.

34.2.2 The Succession Phase shall commence three (3) months prior to the expiration of the Contract. However, if the Contract is terminated prior to expiration, the Parties agree to commence the Succession Phase upon issuance of the Notice of Termination.

34.2.3 The Parties agree to meet at the commencement of the Succession Phase to review and update succession processes on the basis of the experience and learning gained throughout the Term.

34.2.4 The objective of the Succession Phase is to ensure a smooth, efficient and effective transition at the end of the Contract for any of the following options that may be applicable in the circumstances:

(a) extension of the Contract subject to revised service levels;

(b) selection of and transition to a new service provider; or

(c) return of the services to State provision,

with minimal impact on the business of the Prison.

34.2.5 Succession to the selected option is to occur throughout the transition period.

34.3 **Co-operation**

34.3.1 Upon termination or expiration of the Contract, and in the event that the State wishes to enter into another contract for the operation and management of the Prison, the Contractor shall comply with all reasonable requests of the State to provide information relating to the Contractor's costs of operating and managing the Prison. Such information shall include information relating to the anticipated cost of a transfer of the Prison to a new contractor.

34.3.2 During the transition period the Contractor must not remove any item of Prison Equipment from the Site without first obtaining the consent of the State to the removal of the particular item.

34.3.3 If at the expiration of the Contract:

(a) the Contract is not renewed; or

(b) the Contractor is not awarded another contract to manage and operate the Prison,

then the Contractor must refund to the State an amount to cover the liability for any new contractor to pay for accrued or accruing leave entitlements of employees who continue to be employed at the Prison. The amount for accrued or accruing leave entitlements shall be calculated by use of a methodology specified by the State in consultation with the Contractor and the calculated amount is to be paid:

(c) in the form of a bank guarantee for the calculated amount; or

(d) in cash,

within 14 days of demand by the State.

34.3.4 If the State so elects it may first deduct any fees payable to the Contractor at the expiration of the Agreement from the calculated amount.

34.3.5 The process is to be based on:

(a) the appointment of an independent actuary determined by agreement between the Parties to apply the relevant methodology and make the calculation of the amount payable;

(b) the application of AASB 1028 or such other recognised actuarial methodology as may be agreed by the Parties for calculation of annual leave and long service leave accruals; and

(c) the application of a methodology that takes account of the factors outlined in clause 34.4 for valuing an appropriate contribution to accrued sick leave entitlements.

34.3.6 For these purposes the Contractor must provide information and Records to the State showing the following details in respect to each transferring employee:

(a) length of service in the Prison in employment with the Contractor;

(b) details of awards, rates of pay and incidents of on costs;

(c) annual leave, long service leave and sick leave balances;

(d) the Contractor's own calculation of its liability for annual leave, long service leave on a cash basis; and

(e) details of the Contractor's leave accounting policies and the data relevant to staff turnover at the Prison.

34.4 **Accrued Sick Leave Entitlement Methodology**

The factors to be taken into account in developing a methodology for valuing an appropriate contribution to accrued sick leave entitlements are to be agreed by the Parties.

35. RIGHT OF THE STATE TO RECOVER DEBT

Without limiting the State's rights under any other provision in the Contract, any debt due from the Contractor to the State under or by virtue of any provision of the Contract may be deducted by the State from any payment which may be or become payable to the Contractor by the State. Nothing in this Clause shall affect the right of the State to recover from the Contractor the balance that remains owing after any such deduction.

36. ASSIGNMENT AND NOVATION

36.1 Assignment

The Contractor shall not, without the prior written approval of the State and except on such terms and conditions as are determined in writing by the State, assign, mortgage, charge or encumber its interest or any part of its interest in this Contract or any benefit or moneys or interest under it.

36.2 Deemed Assignment

If the Contractor is a proprietary company within the meaning of the Corporations Act, any change in the shareholding within the company, the beneficial ownership or effective control of the company will be regarded as an assignment requiring the prior written approval of the State.

36.3 Novation

A novation of the Contract requires the express prior consent of all Parties to the novation. The State may withhold its consent to any proposed novation of the Contract without having to account for its reasons.

37. SEVERABILITY

In the event that any term, condition or provision of the Contract shall be determined to be invalid, unlawful and unenforceable to any extent, such term, condition or provision shall, to that extent, be omitted from the Contract.

38. WAIVER

38.1 No right under the Contract shall be deemed to be waived except by notice in writing signed by each Party.

38.2 The failure of the State to enforce at any time any clause of the Contract shall not be interpreted as a waiver of such clause. The waiver by the State in respect of any breach of a clause of the Contract by the Contractor shall not be deemed to be a waiver in respect of any other clause or of any subsequent breach of that clause.

39. COSTS AND STAMP DUTY

Each Party shall bear its own costs of and incidental to the preparation, negotiation and signing of the Contract provided that the State shall pay any stamp duty payable on the Contract.

40. NOTICES

40.1 Address for Notices

Notices under the Contract may be delivered by hand, registered mail or email to the addresses specified in Schedule 2 or any substitute address as may have been notified in writing by the relevant Party from time to time.

40.2 Deeming Rules

40.2.1 If, before 1600 hours local time on a business day in the place of delivery, a Party delivers a notice by hand, the notice will be taken as given on the day of delivery, and in any other case, on the business day next following in the place of delivery.

40.2.2 If a Party gives notice by registered mail, the notice will be taken as given on the third business day after the notice is posted.

40.2.3 If a Party gives notice by email, the notice will be taken to be given when the recipient, by an email sent to the email address for the sender stated in clause 40.1 or by a notice delivered by another method in accordance with this clause 40.2, acknowledges having received that email. An automatic "read receipt" does not constitute acknowledgment of an email for the purposes of this clause 40.

41. AMENDMENTS TO CONTRACT

Subject to this clause, the Contract shall not be amended except by an agreement in writing signed by the Contractor and the State.

42. SURVIVAL

Notwithstanding any termination or expiration of this Contract, the following provisions of this Contract will survive in their entirety and continue to apply:

42.1 this clause 42;

42.2 clause 3 (Warranties by the Contractor);

42.3 clause 6.3 (Provision of Information to the State)

42.4 clause 7.8 (Directions by the State);

42.5 clause 10.5 (Loss & Compensation);

42.6 clause 11.3 (Reimbursement of Maintenance Costs);

42.7 clause 12 (Confidential Information);

42.8 clause 13 (Information Privacy);

42.9 clause 15.1 (Obligation to Keep Records);

42.10 clause 19 (Performance Security);

42.11 clause 22 (Insurance);

42.12 clause 23 (Indemnity)

42.13 clause 24 (Limitation of Liability)

42.14 clause 24 (Exclusion of Consequential Loss)

42.15 clause 29 (Audit);

42.16 clause 34.1 (Transition Period)

42.17 clause 35 (Right of State to Recover Debt);

42.18 clause 37 (Severability); and

42.19 clause 43 (Laws).

43. LAWS

43.1 Governing law

This Contract is governed by the law in force in South Australia.

43.2 Jurisdiction

Each Party submits to the non-exclusive jurisdiction of the courts of that place and courts of appeal from them. Each Party waives any right it has to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

43.3 **Compliance with Laws**

The Contractor must comply with the laws in force in South Australia in the course of performing this Contract.

44. ENTIRE CONTRACT

44.1 This Contract supersedes any prior contract between the Parties for the operation and management of the Prison and any such prior contract is taken to expire on and from the Commencement Date.

44.2 This Contract incorporates the attached schedules and attachments.

44.3 This Contract contains the entire agreement between the Parties with respect to its subject matter.

45. COUNTERPARTS

This Contract may be executed in any number of counterparts each of which is taken to be an original. All of those counterparts taken together constitute one (1) instrument. An executed counterpart may be delivered by facsimile.

46. NO PARTNERSHIP OR AUTHORITY

46.1 The Parties agree that nothing contained or implied in the Contract shall constitute one Party the partner of the other Party nor render one Party liable for debts or liabilities incurred by the other Party.

46.2 The Contractor acknowledges that it does not have the authority to enter into contracts or incur debts for or on behalf of the State and subject to any express provisions of the Contract that require otherwise, covenants that it shall not at any time hold itself out as competent to act on behalf of the State.

47. STATUTORY POWERS OF CHIEF EXECUTIVE

Nothing contained in or implied by this Contract constrains or places any fetter on the Chief Executive in the exercise of any statutory power under the Act.

48. GOVERNMENT POLICY

48.1 **Auditor General**

Nothing in this Contract derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987* (SA).

48.2 **Disclosure of Contract**

48.2.1 Subject to clause 12.5.1 the State may disclose this Contract and/or information in relation to this Contract in either printed or electronic form and either generally to the public or to a particular person as a result of a specific request.

48.2.2 Nothing in this clause derogates from:

(a) the Contractor's obligations under any provisions of this Contract; or

(b) the provisions of the *Freedom of Information Act 1991* (SA).

48.3 **Industry Participation Policy**

48.3.1 The Contractor must implement the Contractor's Tailored Industry Participation Plan ("TIPP").

48.3.2 The Contractor must provide an Industry Participation Report (IPP Report) in respect of each Industry Participation Reporting Period within two weeks of the end of each period, in the format set out in http://www.industryadvocate.sa.gov.au/resources-and-downloads.

48.3.3 The Industry Participation Reporting Period is:

(a) the period between the Commencement Date and the date six (6) months after the Commencement Date;

(b) each subsequent six (6) month period during the Term; and

(c) if the Agreement ends on a date that is not an anniversary of the Commencement Date, the period from the conclusion of the preceding Industry Participation Reporting Period until the date of termination or expiry of the Agreement.

48.3.4 The Contractor must attend any meeting scheduled by the Industry Participation Advocate ("IPA") during the Term to review how the TIPP is being implemented and advanced, and for this purpose, the Contractor must provide all information reasonably requested by the IPA. The IPA must give the Contractor not less than ten (10) Business Days' notice of any such meeting.

48.3.5 The Contractor's failure to comply, in whole or in part, with the commitments contained within the TIPP will be a factor taken into account in the award of future contracts for the Government of South Australia.

48.4 **Respectful Behaviours**

48.4.1 The Contractor acknowledges the State's zero tolerance towards men's violence against women in the workplace and the broader community.

48.4.2 The Contractor agrees that, in performing the Work, the Contractor's Staff will at all times:

(a) act in a manner that is non-threatening, courteous and respectful; and

(b) comply with any instructions, policies, procedures or guidelines issued by the State regarding acceptable workplace behaviour.

48.4.3 If the State believes that the Contractor's Staff are failing to comply with the behavioural standards specified in this clause, then the State may in its absolute discretion:

(a) prohibit access by the relevant Contractor's Staff to the Site; and

(b) direct the Contractor to withdraw the relevant Contractor's Staff from performing the Work.

49. SPECIAL CONDITIONS

The Parties agree that the conditions specified in Schedule 9 form part of this Agreement.

EXECUTED AS AN AGREEMENT

The Minister for Correctional Services hereby approves clause 12.5 of this Contract for the purposes of clause 13(2) of Schedule 1 of the Freedom of Information Act 1991.

.....
Signed by the Hon. Corey Wingard MP

SIGNED by **THE MINISTER FOR CORRECTIONAL SERVICES** for and on behalf of the Crown in right of the State of South Australia in the presence of:)

.....
The Hon. Corey Wingard MP

.....
Signature of Witness

Gary Perry
Name of Witness

THIS AGREEMENT is executed by

SERCO AUSTRALIA PTY LTD

(ABN 44 003 677 352) by a Director and

the Company Secretary:

.....
Signed:

MARK W. IRWIN
Name:

DIRECTOR
Position: Director

.....
Signed:

HEATH WATT
Name:

CO SEC
Position: Company Secretary

SCHEDULE 1

Statement of Requirements and Specifications

SCHEDULE 2

Notices

DCS Contract Compliance Officer -	The person appointed to that position by the State and as notified to the Contractor from time to time
DCS Delegate-	Director Operational Support & Performance
State Contract Administrator -	Deputy Chief Executive Statewide Operations
Contractor's Contract Administrator -	Managing Director Justice & Immigration Services

Address for the State:

The State Contract Administrator

Department of Correctional Services

L2, 400 King William Street

Adelaide SA 5000

Address for Contractor:

The Contractor's Contract Administrator

Serco Justice & Immigration

Level 1, 39 Brisbane Avenue

Barton ACT 2601

PO Box 121

Fyshwick ACT 2609

SCHEDULE 3

Inventory

The Parties agree that the Inventory as at the Commencement Date will be confirmed by both Parties after execution of this Contract

SCHEDULE 4

Pricing

1 Operating Price

Subject to clause 2 of this schedule:

(a) the Operating Price per annum for each year of the Term for up to 274 prisoners being held in custody at the Prison is Sixteen Million, Four Hundred and Fifty Five Thousand and Six Hundred and Ninety Four dollars ($16,455,694) (ex-GST) which equates to a monthly Operating Fee of One Million, Three Hundred and Seventy One Thousand and Three Hundred and Eight Dollars ($1,371,308) (ex-GST);

(b) Additional Prisoner Fee: if the Average Daily Prisoner number for the month is higher than 274 Prisoners, the Operating Price for the month is increased by the amount of One Thousand, Four Hundred and Seventy-Eight ($1,478) (ex-GST) for each Prisoner in excess of 274 Prisoners;

(c) Prisoner Escort Fee: The hourly rate per Prisoner for Emergency / Unplanned Escorts will be invoiced at the rate of $148 (ex-GST) per hour;

(d) For the purpose of clause 5.10, the price referred to in Item 1(a) of this Schedule includes the costs of implementing the Transition Plan of One Million, Nine Hundred and Seventy Seven Thousand and Nine Hundred and Seventy Two Dollars ($1,977,972) (ex-GST) amortised over the Initial Term;

(e) Prisoner Allowances – The Operating Price excludes costs for Prisoner allowances and wages. Any costs related to Prisoner allowances and wages will be managed through the Justice Information System and will be funded by the State; and

(f) Prisoner Medication – The costs for Prisoner pharmaceutical and medication will be a pass through cost and will be reimbursed by the State on a monthly basis upon receipt of an itemised invoice.

2 Annual Variation

(a) The Operating Price, Additional Prisoner Fee and Prisoner Escort Fee described in Item 1 of this Schedule shall be varied on the 1st of July during each year of the Term and each variation shall operate until the following 1st of July and be calculated by means of the following formula:

$P = P1 + P2$

Where:

$P1 = 0.7 \times P$

$P2 = 0.3 \times P$

And:

P	is the Operating Price expressed in dollars.
P1	is the wage index affected component of the Operating Price.
P2	is the consumer price index affected component of the Operating Price.

(b) The Operating Price, Additional Prisoner Fee and Prisoner Escort Fee described in paragraph (a) of this item 2 shall be varied on the 1st of July 2020 and each 1st of July thereafter during the Term ("Price Variation Date") and each variation shall operate until the following 1st of July and be calculated by means of the following formula:

$NP = NP_1 + NP_2$

Where:

$NP_1 = P_1 \times (LPI_2/LPI_1)$

$NP_2 = P_2 \times (CPI_2/CPI_1)$

And:

NP	is the new Operating Price payable calculated in accordance with the formula and expressed in dollars.
NP_1	is the new price for the wage index affected component of the Operating Price.
NP_2	is the new price for the consumer price index affected component of the Operating Price.
P_1	is the wage index affected component of the Operating Price.
P_2	is the consumer price index affected component of the Operating Price.
LPI_1	is the *Wage Price Index: based on 6345.0 Labour Price Index, Table 2b, Series ID A2610259A; Quarterly Index: Total hours of pay excluding bonuses; South Australia; Private and Public; All Industries* as published by the Australian Bureau of Statistics. For the first Price Variation Date it will be the March 2019 index. For each subsequent

Price Variation Date, it will be the March index of the year immediately preceding the Price Variation Date.

LPI_2 is the *Wage Price Index: based on 6345.0 Labour Price Index, Table 2b, Series ID: A2610259A; Quarterly Index; Total hours of pay excluding bonuses; South Australia; Private and Public; All Industries* as published by the Australian Bureau of Statistics. For the first Price Variation Date it will the March 2020 index. For each subsequent Price Variation Date, it will be the March index of that year.

CPI_1 is the *Consumer Price Index: based on 6401.0 Consumer Price Index, Tables 1 and 2, Series ID: A2325821J; All groups index (Adelaide)* as published by the Australian Bureau of Statistics. For the first Price Variation Date it will be the March 2019 index. For each subsequent Price Variation Date, it will be the March index of the year immediately preceding the Price Variation Date.

CPI_2 is the *Consumer Price Index: based on 6401.0 Consumer Price Index, Tables 1 and 2, Series ID: A2325821J; All groups index (Adelaide)* as published by the Australian Bureau of Statistics For the first Price Variation Date it will be the March 2020 index. For each subsequent Price Variation, it will be the March index of that year.

SCHEDULE 5

Performance Security

Attachment A - Parent Company Guarantee

Attachment B - Unconditional Bank Guarantee

Attachment A - Parent Company Guarantee

DEED OF GUARANTEE DATED 201

BY: [insert details]("the Parent") in favour of the Crown in right of the State of South Australia 5000 ("the State")

RECITALS:

A. The State has or is about to enter into an agreement ("the Contract") with [insert details] ("the Contractor") for the supply of certain services to the State.

B. The Contractor is a subsidiary of the Parent.

C. The State requires as a condition to its entry into the Contract with the Contractor that the Parent guarantee the performance by the Contractor of its obligations under this Agreement, and indemnify the State against any cost or expense, loss or damage may incur or suffer as a result of any breach by the Contractor of the Contract.

D. The Parent has agreed to provide such guarantee and indemnity.

GUARANTEE AND LIMIT OF LIABILITY

1. GUARANTEE

The Parent guarantees the performance by the Contractor of all its obligations under the Contract.

2. PARENT MAXIMUM LIABILITY

The State and the Parent acknowledge and agree that the maximum liability of the Parent under or pursuant to this Deed in respect of the Contractor's indebtedness or obligations to the State shall be limited to the Maximum Guaranteed Amount in addition to costs and expenses. The Maximum Guaranteed Amount is $100,000,000.

3. INDEMNITY

Parent agrees to indemnify the State, and keep the State indemnified, against any cost or expense, loss or damage it incurs or suffers as a result of any breach by the Contractor of any or all of its obligations under this Agreement.

4. SUBSTITUTED SERVICE

If the Contractor breaches the Contract, the Parent shall rectify the breach.

5. NO ABROGATION

Neither the guarantee nor the indemnity given under this Deed will be affected in any way by:

5.1. any variation, modification, addition to or alteration of this Agreement;

5.2. any waiver, extension of time or other indulgence granted by the State to the Contractor;

5.3. any failure by the State to give notice of any breach by the Contractor of the Contract;

5.4. the whole or any part of this Deed being or becoming void, voidable or unenforceable;

5.5. the insolvency of the Parent or the Contractor; or

5.6. any repeal of or amendment to the legislation constituting the State,

it being the intention of the Parent and the State that this Guarantee and Indemnity be unconditional and absolute in all circumstances.

6. CONTINUING GUARANTEE AND INDEMNITY

The guarantee and indemnity contained in this Deed is a continuing guarantee and indemnity, is irrevocable and remains in full force and effect until the Contractor performs all its obligations under this Agreement.

7. PAYMENT

Parent must pay amounts due under this Deed within 7 days of demand by the State, and interest is payable on amounts due but not paid at the rate of 15% per annum.

8. TAXES

8.1. All payments to be made by the Parent hereunder shall be made free and clear of all deductions or withholdings on account of Taxes except to the extent required by law.

8.2. If the Parent is required by any law to make any deduction or withholding from any sum payable by it hereunder for or on account of Taxes (other than Taxes imposed by the Commonwealth of Australia or any political subdivision thereof resulting from the Parent being a resident or having a principal office in such jurisdiction), the sum payable by the Parent in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the State would receive (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made PROVIDED THAT the State shall furnish any form or document as required by law to establish any exemption from such Taxes if such exemption is available.

8.3. For the purposes of the Contract "Taxes" means present and future taxes, duties, assessments or charges of whatever nature (together with interest, penalties and expenses in connection with them) imposed or levied by or on behalf of the country of origin of the Parent or the Commonwealth of Australia or any political subdivision thereof or authority therein having power to tax unless it is a tax imposed on the overall net income of the State.

9. REPRESENTATIONS AND WARRANTIES

The Parent represents and warrants to the State as follows:

9.1. The Parent has been duly established as a body corporate under the laws of Australia.

9.2. The Parent has the corporate power and legal authority to enter into execute and deliver this Deed and perform its obligations under this Deed and this Contract

9.3. The Parent has taken all necessary action to authorise the executive delivery and performance of this Deed and this Contract in accordance with their respective terms and such execution and delivery and performance does not require the consent or approval of any person.

9.4. The execution delivery and performance by the Parent of this Deed and this Contract did not and will not violate in any respect any provision of:

9.4.1. any constitution treaty law or regulation or any judgement order or decree of any governmental agency; or

9.4.2. any document or agreement to which the Parent is a party or which is binding upon the Parent.

9.5. Neither the execution, delivery or performance of this Deed by the Parent, nor the carrying out of this Contract hereby required or contemplated will:

9.5.1. violate in any respect any act law decree rule or regulation or any determination order or award of any court or any governmental judicial or public body or authority applicable to the Parent; or

9.5.2. conflict with or result in any breach of or require any consent or other undertaking or instrument to which the Parent is a party or which is binding upon it or any of its assets.

9.6. This Deed and this Contract constitute legally valid and binding obligations of the Parent enforceable in accordance with their respective terms.

9.7. The Parent is not immune from suit in relation to any proceedings or actions in respect of itself as to its obligations under or pursuant to this Deed and this Contract including under any legislation or rule of law whether any such proceedings are by way of arbitration or otherwise.

10. SUBMISSION TO JURISDICTION

The Parent submits to the jurisdiction of the courts of South Australia for the purpose of determining any disputes arising out of this Deed, and appoints the Contractor its agent for the service of any notices or legal proceedings under or in respect of this Deed.

11. NOTICES

11.1. Any demand or notice to the Parent will be effectively signed on behalf of the State if it is signed on behalf of the State by any officer of the State.

11.2. Any demand or notice to the Parent may be served personally, by ordinary prepaid mail or by email to the addresses in this Deed, or at the address of the Contractor set out in the Contract.

11.3. A demand or notice if:

11.3.1. posted is served when in the ordinary course of the post it ought to have been delivered;

11.3.2. sent by email is served when the recipient, by email sent to the email address of the sender, acknowledges having receive the email; and

11.3.3. served personally, is served on delivery.

11.4. A written certificate signed by an officer of the State as to the date on which any demand or notice was served is prima facie evidence of the facts certified.

EXECUTION as a Deed
THE COMMON SEAL of)
PARENT COMPANY was affixed)
in the presence of:)

.....
Director

.....
Secretary

Attachment B – Unconditional Bank Guarantee

TO: MINISTER FOR CORRECTIONAL SERVICES

c/- Department for Correctional Services
L2, 400 King William Street Adelaide SA 5000 ("**State**")

WHEREAS:

A. The State and Serco Australia Pty Ltd (ABN 44 003 677 352 ("**Contractor**") have entered into a Contract for the management operation and maintenance of the Adelaide Remand Centre.

B. It is a term of the Contract between the State and the Contractor that the Contractor provide security to the State for the due performance of its obligations under the Contract

C. The Contractor has requested [ ] ("**Bank**") to provide this undertaking and the State has agreed to accept this undertaking as security for the purposes of the Contract.

IN CONSIDERATION of the State accepting this undertaking, the Bank undertakes unconditionally to pay the State on written demand from time to time any sum or sums to an aggregate amount not exceeding $1,617,313 ("**Guaranteed Sum**").

The Bank will pay the Guaranteed Sum or any parts of it to the State on demand without reference to the Contractor and even if the Contractor has given the Bank notice not to pay the money, and without regard to the performance or non-performance of the State or the Contractor under the terms of the Contract .

Any alteration to the terms of the Contract or any extension of time or any other forbearance by the State or the Contractor will not impair or discharge the Bank's liability under the undertaking.

This undertaking shall remain in force until the earlier of either:

(a) the State notifies the Bank in writing that the undertaking is no longer required;

(b) the Bank has paid to the State the whole of the Guaranteed Sum, or

(c) 4pm on the 31st day of March 2024.

Notwithstanding anything stated in this undertaking, the Bank has the right to terminate it at any time by paying the State the Guaranteed Sum or the balance outstanding of the Guaranteed Sum, or any lessor amount that the State may require.

This undertaking is personal to the State. The State must not assign or transfer its interests under this undertaking without the prior written consent of the Bank, which consent must not be unreasonably withheld or delayed.

This undertaking is subject to the laws of South Australia.

DATED at this day of 2019

SIGNED on behalf of the Bank by its)
duly authorised agent in the presence of:)

.....	.....
Signature of Witness	Signature of Person Signing
.....	.....
Print Name	Print Name
.....	.....
Position	Position

SCHEDULE 6

Insurances

1. INSURANCE

The State shall effect the following insurances with the South Australian Government Captive Insurance Corporation (SAicorp) and shall meet the normal premium costs of such insurances.

These insurances shall provide joint insurance protection to the State and the Contractor in accordance with commercially available insurance policies scope of coverage and subject to such policies' normal terms, conditions and exceptions.

2. PUBLIC LIABILITY AND PRODUCTS LIABILITY WITH LIMITS OF INDEMNITY

Public Liability:	$100,000,000 Limit any one claim unlimited in all in the period of insurance.
Products Liability	$100,000,000 Limit any one claim and in the aggregate in the period of insurance or for any greater limits that the State shall subsequently select.

This policy shall insure both the State's and the Contractor's legal liability for accidental bodily injury (including illness) to third Parties and loss, destruction or damage to third Party property.

3. Major Exclusions

3.1 Professional Services Liability including medical malpractice.

3.2 Directors and Officers Liabilities including Trustees Liability.

Deductible: $5000 each and every claim.

4. PROFESSIONAL (SERVICE) LIABILITY

3.3 Limit of Liability $50,000,000 any one claim and in the aggregate in any one year of insurance.

or such higher limit, as the State shall subsequently select.

Insuring both the State's and the Contractor's Legal Liability for personal injury (including illness) to third Parties and third Party property damage arising from a negligent act of professional services.

The term Professional Services shall include the provision of medical services.

Deductible: $ 50,000 each and every claim.

5. ASSETS INSURANCE

The insurance of all assets (including against glass breakage, burglary and theft) of the Adelaide Remand Centre owned by under lease, borrowed or entrusted to the State or for which the State shall be legally liable or have assumed the responsibility thereof.

Sum Insured: Replacement and Reinstatement including extra costs of reinstatement.

Burglary/Theft $ 200,000

Deductible: $5,000 each and every claim.

6. CONSEQUENTIAL LOSS INSURANCE (OPTIONAL AT CONTRACTORS REQUEST)

Insurance for Consequential loss / loss of profits of the Contractor, consequent on any damage or destruction to any part of the Adelaide Remand Centre, as insured by SAicorp on behalf of the Department for Correctional Services.

Limit of Liability: $9,000,000 any one claim

Deductible: $ 5,000 each and every claim.

7. FIDELITY GUARANTEE

Limit of Liability:	$200,000 any one claim and in all in the period of insurance.
Principal Exclusion	Money, negotiable instruments, cheques, promissory notes or other convertible securities being the property of the Contractor or subcontractors.

Deductible: $ 5,000 any one claim.

8. MOTOR VEHICLE (INCLUDING MOBILE PLANT)

Insuring:	Motor Vehicle Own Damage	$ market value.
	Third Party Property Damage	$20,000,000.
Insuring:	Vehicles owned by, leased, borrowed or under care or the responsibility of the State.	
Excluding:	Vehicles owned by, leased, borrowed or the responsibility of the Contractor.	

Deductible: the relevant deductable applicable under the covering insurance policy each and every claim.

9. MACHINERY BREAKDOWN - BOILER EXPLOSION

Limit of Liability: $200,000 - any one claim for material damage as a result of Machinery Breakdown

$20,000 - any one claim for spoilage of or damage to goods including foodstuffs, medicines and all other items under refrigeration.

$20,000 - any one claim for the loss of refrigerant gases as a result of Machinery Breakdown.

$20,000,000- in respect to damage to surrounding property and third Party injury as result of explosion or escape of pressured gases or steam due to sudden and violent explosion or implosion of pressure vessels.

Excluding Machinery Breakdown of:

(i) Mobile plant/motor vehicles.

(ii) Office machinery/computer systems.

(iii) Diesel gas or petrol fuelled reciprocating engines other than standby generators valued at in excess of $20,000 each.

Deductibles: Breakdown: $5,000.

Spoilage: 20% of claim with minimum of $1,000.

Loss of Refrigerant: $1,000.

Boiler Explosion: $5,000.

SCHEDULE 7

Performance Schedule

1. PERFORMANCE INDICATORS

1. Key Performance Indicators

Key Performance Indicators (KPIs) have been established for the purposes of measuring performance of the Contractor. Performance targets have been set for each KPI.

2. Performance

Performance will be assessed by measuring the Contractor's performance in relation to the Key Performance Indicators contained in this schedule.

The Contractor is to report the following information, on a monthly basis to the State Contract Administrator which should be attached to the invoice for the monthly service fee.

Table 1

No	Key Performance Indicator	Performance Target	Rebate payable per occurrence
1	**Escape** (Secure Perimeter)	0	$100,000
2	**Escape** (Escort/Outside secure perimeter)	0	$50,000
3	**Loss of Control**	0	$100,000
4	**Death in Custody (Unnatural causes)**	0	$100,000
5	**The number of releases/detainments in error**	0	$25,000

Table 2

No	Key Performance Indicator	Annual Performance Target	Rebate (Percentage of Monthly Performance Withholding Fee)
6	**Reduction in the Rate of Return by Prisoners released to Bail**	10%	25%
7	**Timely resolution of Bail matters**	20%	5%
8	**Admission and Intake Assessments** Prisoner Interview forms completed.	100%	5%

No	Key Performance Indicator	Annual Performance Target	Rebate (Percentage of Monthly Performance Withholding Fee)
	Stress Screening forms completed. Notice of Concern and Initial Response Plans completed.	100% 100%	
9	**Specified Incidents**	<4%	5%
10	**Hours Out Of Cell**	95% compliance	5%
11	**Prison staff hours lost due to industrial disputes**	0	5%

3. Key Performance Indicator Definitions and Targets

KPI 1 – Escape (From Secure Perimeter)

Measure:
The number of events where Prisoner(s) escaped from the secure perimeter during the period.

Definition:
An Escape refers to where a Prisoner(s) has effectively removed him from:

- the Prison perimeter.

Commentary:
When counting the number of Escapes, each escaped Prisoner counts as one (1) event.

Performance Standard:
Nil Escapes.

KPI 2 – Escape (Escort/Outside secure perimeter)

Measure:
The number of events where Prisoner(s) escaped whilst outside the Prison perimeter.

Definition:
An Escape refers to where a Prisoner(s) has effectively removed him/herself from:

- the custody of contractors/volunteers or employees whilst on escort; or
- a vehicle or other form of transport conveying him to or from a place of lawful confinement or other approved places (e.g. on escort at courts, hospital, etc).

Commentary:
When counting the number of Escapes, each escaped Prisoner counts as one (1) event.

Performance Standard:
Nil Escapes.

KPI 3 Loss of Control

Measure:
Number of loss of control events at the Prison during the period.

Definition:
Loss of Control means a situation where the Contractor loses control of a building(s) or outside area and force is used to regain control.

This includes a riot, sustained resistance to lawful authority or an incident resulting in Prisoners controlling all or part of the Prison.

Commentary:
For the purposes of this measure, more than one (1) Prisoner must be involved in the incident for a Loss of Control to have occurred.

This KPI measures each incident of loss of control rather than each individual Prisoner involved in such an incident. For example, if several Prisoners were involved in a riot together, such riot would be recorded as a single instance of loss of control.

Performance Standard:
Nil losses of control.

KPI 4 – Death in Custody (Unnatural Causes)

Measure:
Number of events where Prisoner(s) die in the Prison from other than natural causes during the period.

Definition:
A Death in Custody (Unnatural Causes) means a death which the Coroner finds was caused by homicide, suicide, accidental cause or a drug overdose or there is sufficient evidence available to DCS to suggest that the most likely cause of death was homicide, suicide accidental cause or a drug overdose.

Performance Standard:
Nil Deaths in Custody (Unnatural Causes).

KPI 5 – The number of releases/detainments in error

Measure
The number of site-based administration errors resulting in either the discharge/release of a Prisoner prior to the lawful discharge date or detainment of a Prisoner beyond the lawful discharge/release date during the period.

Commentary
Release in Error refers to either the actual discharge/release of a Prisoner prior to the lawful discharge/release date or the detainment of a Prisoner beyond the lawful discharge/release date - where all relevant information was available to the Contractor to perform a discharge/release or where in all the circumstances the Contractor should have obtained all relevant information.

Performance Standard:

Nil releases/detainments in error.

KPI 6 – Reduction in Rate of Return by Prisoners Released to Bail

Measure:
The rate of return to custody of prisoners on bail due to further offending or non-compliance with bail conditions within one year of discharge.

1 Jan-31 Dec 2020 (year 1)
1 Jan-31 Dec 2021 (year 2)
1 Jan-31 Dec 2022 (year 3)
1 Jan-31 Dec 2023 (year 4)
1 Jan-31 Dec 2024 (year 5)
1 Jan-31 Dec 2025 (year 6)
1 Jan-31 Dec 2026 (year 7)

Definition:
Measured rates of return will apply to prisoners released to Bail from the Adelaide Remand Centre (ARC) and will also include prisoners transferred to another site (from the ARC) who are subsequently discharged to bail in the proceeding 30 days.

Commentary:
A return by prisoners released to bail refers to prisoners released on bail that return to custody due to further offending or failing to comply with bail conditions within one year of discharge.

Performance Standard:
A rate of reduction in the baseline rate at Adelaide Remand Centre of 10% or more.

For achievement of a rate of reduction in the baseline rate of 10% or more the withholding fee will be returned in full.

For achievement of a rate of reduction in the baseline rate of up to 5% (inclusive) 50% of the withholding fee will be returned.

The baseline rate is 47%.

Note 1 – Due to the one-year time lapse (to obtain the results), any portion of the withholding fee that is to be retained for non-achievement of the target for year 1 will be deducted from the 2021 withholding fee. Any portions to be retained for subsequent periods will be deducted from the subsequent withholding fee.

For example, if the result for 2020 (year 1) was between 5% and 10%, then 50% of the withholding fee related to KPI 6 would be deducted from the 2021 total withholding fee.

Note 2 – In the event that the contract is extended for a second term, this performance measure will continue with any deductions (for non-achievement) to be made from withholding fees in subsequent years.

Before the commencement of any second term, the content of this KPI and associated baseline will be reviewed.

KPI 7 – Timely Resolution of Bail Matters

Measure:
A reduction in the average length of stay for prisoners who are subsequently discharged to bail.

Definitions:
The average number of days that prisoners are on remand at the ARC before being discharged to bail and also includes prisoners transferred to another site (from the ARC) who are subsequently discharged to bail in the proceeding 10 days

Commentary:
Measured rates of return will apply to all prisoners released to Bail from the Adelaide Remand Centre.

Performance Standard:
A reduction of 20% in the average length of stay.

The baseline is 18.9 days

The target is 15.1 days

KPI 8 – Admission and Intake Assessments

Measure

Percentage of Prisoner Interview forms completed.

Percentage of Stress Screening forms completed.

Percentage of Notice of Concern and Initial Response Plans completed.

Commentary:
Measured completions relate to the percentage of forms completed on the day of arrival for all prisoners admitted to the ARC.

Notice of Concern and Initial Response Plans are only initiated if upon admission the prisoner presents with risks or meets the criteria within the DCS Prisoner Stress Screening Form.

Performance Measure:
100% compliance

KPI 9 – Specified Incident Rate

Measure:
The number of Specified Incidents occurring at the Prison during the year should not exceed 4% of the daily average population. Percentage of fee withheld if more than 4% occur in a twelve month period.

Definition:
A specified incident means:

1. Accident Serious/Immediately Notifiable Workplace Injury
2. Fire

3. Prohibited Item find of Firearms, ammunition, explosives
4. Security Equipment Misplacement, Loss or theft
5. Security System Failure
6. Prohibited Items find
7. Hostage
8. Serious assault
9. Self Harm

Commentary:

1. Accident Serious
Where an accident occurs on the site that causes injury (except where the injury is the result of a sporting or training injury) resulting in the admission of the injured person(s) to a hospital and that person(s) requires an overnight stay (i.e. an inpatient admission) or

Immediately Notifiable Work Related Injury

Where a work related injury occurs that:

- has acute symptoms associated with exposure to a substance at work; or
- a work-related injury that requires treatment as an in-patient in a hospital immediately after the injury (disregarding any time taken for emergency treatment or to get the person to hospital); or
- results in death.

2. Fire

Where a fire is being managed with the assistance of MFS/CFS staff.
******False alarms do not require reporting, but must be recorded in accordance with the DCS Policies and Procedures.***

3. Prohibited Item* find of Firearms, ammunition, explosives
Where an illegal or unauthorised article is located which has been identified as:
- A firearm or ammunition, or explosives; or
- Any device that has been constructed or modified for the purpose of firing ammunition or detonating explosives.

*For the purposes of this KPI prohibited items are excluded if they are located:
- in a prisoner's property delivered to the prison by the police or on prisoner transfer;
- at the access control point; or
- on inspection of mail items.

4. Security Equipment Misplacement, Loss or theft
Where the internal or external security of the Prison is threatened due to the misplacement, loss or theft of a security key, bunch of security keys, or security equipment item.

Where the security of the Government Radio Network is threatened due to the misplacement, loss or theft of a GRN radio.

5. Security System Failure
Where the failure of a Prison's security system seriously compromises the security of the Prison and this failure is due to the ineffective operation of the system by the Contractor (e.g. entire electronic security system failure, or penetration of the Prison's secure perimeter occurs).

6. Prohibited Item Find

Where a dangerous substance that has not been approved for Prisoner use is located which has been identified as:

- a flammable, corrosive or toxic substance; or
- any other substance that may cause physical harm to the Prisoner or other persons through inhalation or exposure.

Or

Where an electronic device that has not been approved for Prisoner use is located which has been identified as:

- a mobile telephone, any camera or photographic device or electronic storage device; or
- any other electronic device that has the potential to compromise the good order and safety of the Prison.

Or

Where a Prisoner is found to be in possession of equipment, or any article:

- capable of being used to effect an escape - i.e. plans for bomb making, Prison maps/plans, escape implements; or
- that threatens the good order and safety of the prison.

7. Hostage

A hostage situation occurs when a person(s) seizes, detains or otherwise holds another person(s) as security for the fulfilment of a condition(s).

8. Serious Assault

A serious assault is an act of physical violence committed by a person(s), resulting in actual bodily harm to one or more person(s)

A serious assault is defined as an occurrence where:

- there is at least one apparently reliable witness to the assault; or
- the victim claims an assault and there is no obvious reason to doubt this claim; or
- a visible injury has occurred and there is sufficient circumstantial or other evidence to make an assault the most likely cause of the injury on the basis of the balance of probabilities;

and

- the victim requires medical treatment and assessment by a medical officer resulting in overnight hospitalisation in a medical facility (e.g., Prison clinic, infirmary, hospital or a public hospital); or
- extended periods of ongoing medical treatment are required.

A serious sexual assault is defined as an occurrence where:

- there is at least one apparently reliable witness to the assault; or
- the victim claims an assault and there is no obvious reason to doubt this claim; or
- a visible injury has occurred and there is sufficient circumstantial or other evidence to make an assault the most likely cause of the injury on the basis of the balance of probabilities;

and

- the victim reports that any person in any manner has sexually assaulted him/her, or there is clear evidence of such an assault having occurred, irrespective of whether the person has been hospitalised or not.

An assault can be:

- Prisoner on Prisoner
- Prisoner on Employee
- Prisoner on Visitor/ Volunteer /Member of the Public
- Employee on Prisoner
- Contractor/Visitor/Volunteer/Member of the Public on Prisoner
- Contractor/Visitor/Volunteer/Member of the Public on Employee

9. Self-Harm

Self-Harm refers to an incident where:

- a Prisoner is escorted to an external medical facility following an act of critical self-harm, or other life threatening behaviour; or
- the use of force was rendered to prevent further self-injury by the Prisoner; or
- where a Prisoner voluntarily refuses food or liquid for a period greater than three days as means of protest.

Performance Standard:

The number of Specified Incidents occurring at the Prison not to exceed 4% of the daily average number of Prisoners) per year.

KPI 10 – Hours Out Of Cell

Counting Rule

The actual hours that a Prisoner is not confined to his cell, room or dormitory either by way of being secured in that space and or being restricted to that space by way of a curfew. The Contractor should count restrictions / lockdowns caused by lunch breaks, searches and or any other operational delays to unlock as being **time in cell**.

Measure:

Number of hours a Prisoner spends out of their cell on a daily basis.

Commentary:

The measure does not include those Prisoners that are accommodated in the Management Cells.

Definition:

Accommodation Unit	Daily Target (hrs)	Monthly Result (hrs)	Monthly Daily Average (hrs)	YTD Result Cumulative (hrs)	Yearly Daily Average (hrs)

The Contractor must provide a break down for each accommodation area within the facility. The Contractor must record the target daily hours out of cell for each discrete accommodation area.

The indicators must include:

- the sum of the daily hours for each day of the month;
- monthly total daily hours divided by number of days in the month;

- a cumulative total of each month;
- YTD hours divided by the total number of days for the financial year.

Performance Standard:
7 Hours per day per Prisoner

KPI 11 – Prison staff hours lost due to industrial disputes

Measure
The total aggregate number of Prison staff hours lost during the period.

Commentary
This KPI relates to prison staff hours lost at the prison due to industrial disputes occurring during the period.

Performance Standard:

Nil hours lost.

2. SERVICE LEVELS

The Contractor is to report the following information, on a monthly basis to the State's Contract Administrator.

1. The number of alleged assaults on Prison staff

The total number of alleged assaults on Prison staff by Prisoners occurring during the period.

Any event, which is reported to DCS as an incident, involving the alleged physical assault of any staff by a Prisoner is an alleged assault on staff.

Any alleged assault by a Prisoner on a DCS employee, Contractor's staff, a program worker, a volunteer or any official or professional visitor, who has been authorised to be in the Prison, is to be included as an alleged assault on Prison staff.

2. The number of attempted escapes

Where a Prisoner(s) attempts to remove him/herself from:

- the Prison perimeter (NOTE: this includes situations where the attempt has been terminated before the perimeter has been breached); or
- the custody of contractors/volunteers or employees 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.).

3. The number of incidences of use of force

Where an Emergency Response Group is used to move or restrain a Prisoner/s.

or

Where reasonable force is used to subdue a non-compliant Prisoner using restraint equipment or restraint techniques and/or weapons resulting in a Prisoner and/or staff injury requiring medical treatment in circumstances where:

- it is necessary to prevent or stop any disturbance in which there exists a threat of death, bodily harm, escape or property damage; or
- a strip search must be effected and the Prisoner is non-compliant; or all other reasonable methods of control have been exhausted.

4. The number of contraband searches

The number of searches for contraband by the Contractor, on suspicion, during the period.

Contraband is any prohibited item specified in regulation 9 of the Regulations under the Correctional Services Act 1982.

This indicator records searches on suspicion, in accordance with s37(1)(b). An event is one search on suspicion, which can be either a general suspicion, e.g. to search 3 cells today, or a specific suspicion, e.g. to search this Prisoner at this time.

The following constitutes 1 event:

- 1 Prisoner strip search on suspicion.
- 1 Prisoner pat down search on suspicion.
- 1 cell search or 1 cottage/flat room search.
- 1 area search.

This indicator does not include the routine daily procedures or daily security checks of buildings or the security checks of Prisoners, vehicles or visitors coming into or out of the Prison under s37(1)(a).

5. The daily average number of Prisoners

The daily average Prisoner population for the month.

6. The number of urine tests conducted

The number of urine specimens ordered to be taken for testing (eg. Parole, Home D etc.) from Prisoners during the period.

7. The number of tests of the business continuity plan and emergency orders conducted

The number of tests conducted during the period.

8. The number of hospitalisations

The number of hospital days or sum of part days spent by Prisoners as in-patients at hospital during the period.
Inpatient at hospital includes:

- any day surgery.
- any admission to hospital - part days measured in hours - the criterion is admission not the time spent in hospital.

Inpatient does not include any procedure where the Prisoner is not admitted, such as outpatient treatment or radiography.

9. The number of medical consultations

The number of medical consultations by Prisoners both to Prison medical staff and as an outpatient at hospital or local health care provider during the period.
Medical staff are:

- a nurse;
- a doctor;
- a psychiatrist, psychologist or a specialist; and
- any medical team.

A medical consultation is to be counted as an event or as a combination of events per Prisoner e.g. if the Prisoner first consults a nurse and is subsequently passed to a doctor and/or a specialist that is 1 event although they may happen at different times and locations.

Medical consultations do not include any medication rounds or induction medical checks.

10. The number of Prison staff training hours

The total number of Prison staff training hours occurring during the period.

A Prison staff-training hour is one Prison staff member training for one hour. Part Hours are to be aggregated.

11. The number of WH&S incidents

The number of incidents relating to Work Health & Safety reported during the period.

12. The number of injuries to staff

The number of staff injuries sustained during the period.

Any injury or sickness that is recorded for Workcover purposes.

13. The number of injuries to Prisoners

The number of Prisoner injuries sustained during the period.

Any injury or sickness sustained while participating in a work or education program.

14. The number of WH&S workplace inspections conducted

The number of Workplace Inspections/Audits conducted during the period.

Any documented inspection of a work area or unit.

15. The total expenditure on asset maintenance

Total expenditure on Asset Maintenance during the period.

16. Number of Contraband Finds

The number of prohibited items (as specified in Regulation 9 of the Correctional Services Regulations) found in the period.

17. The number of alleged assaults (Prisoner on Prisoner)

The total number of alleged assaults on Prisoners by Prisoners occurring during the period.

Any event, which is reported to DCS as an incident, involving the alleged physical assault of any Prisoner by a Prisoner is an alleged assault on Prisoners.

18. The number of Activity hours

The total number of Activity hours prisoners are engaged in for the period.

SCHEDULE 8

Staffing Schedule

SCHEDULE 9

SPECIAL CONDITIONS

1. Double bunk and safe cell upgrade works

From the Operational Start Date the Contractor will undertake works to increase the capacity of the prison by replacing the remaining single beds (in cells) with double bunks and to upgrade all cells to a standard in accordance with the 'Safe Cell Guidelines' as provided by the State in the tender documentation for the operation of the Prison.

The final specification for the upgrade works is to be agreed between the parties prior to the Operational Start Date and the works should be completed before 31 December 2019.

The State will make every effort to maintain the temporary reduction in capacity (of 92) to assist with the completion these works.

The cost for these works is Three Million, One Hundred and Eighty Two Thousand Dollars ($3.182m) and is payable in three instalments as follows:

1. 50% at 1 June 2019 upon receipt of a Tax Invoice;
2. 25% at Operational Start Date; and
3. 25% upon completion of the works, as confirmed by the Contractor and the State, upon receipt of a Tax Invoice.